MONIKA PATEL AND ALPESH PATEL, Plaintiff/Appellant, v. PUBLIC SERVICE ENTERPRISE GROUP, INC., NEW JERSEY TURNPIKE AUTHORITY/GARDEN STATE PARKWAY, ARYAN A. PATEL, JOHN DOE 1-5, AND XYZ CORPORATION 1-10 Defendants/Respondents	SUPERIOR COURT OF NEW JERSEY APPELLATE DVISION DOCKET NO.: A-001948-24 Civil Action APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO.: ESX-L-82-22 SAT BELOW: HON. ROBERT H. GARDNER, J.S.C. ON APPEAL FROM THE TRIAL COURT'S FEBRUARY 28, 2025 ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT PSE&G

APPELLANTS' BRIEF

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PRELIMINARY STATEMENT

This appeal arises out of a summary judgment order entered in favor of defendant Public Service enterprise Group, Inc. ("PSE&G") in a personal injury lawsuit. As the following will demonstrate, long standing New Jersey tort law confirms the trial court made multiple errors in granting summary judgment to PSE&G, and must be reversed.

This is an automobile accident case. Plaintiff Monika Patel ("Monika") sustained serious and permanent injuries when the vehicle she was a passenger in heading north on the Garden State Parkway ("GSP") came into contact with a fallen utility power wire. The impact with the wire caused the vehicle to roll onto its side. The utility power wire, along with a nearby transformer, were owned and maintained by PSE&G.

After discovery concluded, PSE&G moved for summary judgment arguing that it does not have a duty to conduct continuous inspections of its assets, that it did not breach any duty because it allegedly inspected its assets involved in this accident three and a half months before the accident, and that its actions and inactions did not proximately cause Monika's injuries. As the following will demonstrate, PSE&G's arguments are both factually and legally incorrect, and its motion for summary judgment should have been denied.

Long standing New Jersey tort law establishes Monika and her husband Alpesh Patel ("Alpesh") (collectively "Plaintiffs") have viable claims against PSE&G. There are multiple issues of material fact regarding PSE&G's liability that must be determined by a fact-finder, preventing summary judgment. Specifically, the well settled law in New Jersey confirms a party has a duty of care to act as a reasonable person would, to discover and eliminate dangerous conditions related to things it created and that are in its control, in order to keep the public safe. This is basic tort law in New Jersey. In this case, PSE&G therefore has a duty of care to maintain its transformers and power wires in safe condition, and to avoid creating conditions that would render the public unsafe. The overwhelming evidence in this case establishes PSE&G breached that duty of care.

In addition, Plaintiffs' claims against PSE&G fall under the doctrines of Res ipsa loquitur and the doctrine of common knowledge. As such, Plaintiffs are not required to establish a specific act or omission by PSE&G or an applicable standard of care because it is common sense that utility power wires under the control of a utility company should not fail and fall onto a busy multi-lane highway such as the GSP.

The applicable standards, which are long standing and well established in New Jersey, along with the factual record viewed most favorably to the Plaintiffs as required in the summary judgment setting, make clear PSE&G was negligent

causing Monika's injuries. The factual record confirms that PSE&G improperly configured and maintained its equipment that was involved in Monika's accident. As a result of the accident, Minika sustained injuries to her hips and knees. Monika was forced to miss significant time at her job and underwent four (4) surgical procedures to repair injuries she sustained. Monika's husband Alpesh suffered the loss of his wife's companionship and service.

Finally, discovery revealed PSE&G spoliated evidence by failing to preserve its utility power wire involved in the accident, and also failed to produce records in discovery that it included in support of its summary judgment motion. PSE&G's spoliation and failure to provide discovery entitles Plaintiffs to bar records not provided, and an adverse inference at the time of trial related to the spoliation.

For each of these reasons, as set forth in full detail below, PSE&G's motion for summary judgment should have been denied. Despite this, the trial court inexplicably granted PSE&G's motion, and dismissed Plaintiffs' complaint with prejudice on February 28, 2025. This appeal ensued. The trial court's order must be reversed.

TABLE OF ORDERS, JUDGMENTS & RULINGS

Pa282-Pa283 Order for Summary Judgement in Favor of Defendant Public Service Enterprise Group, Inc. dated February 28, 2025

PROCEDURAL HISTORY AND ORDER ON APPEAL

1. Plaintiffs filed their complaint against PSE&G on February 7, 2022. (Pa5).

2. PSE&G filed its answer on May 18, 2022. (Pa20).

3. PSE&G filed for summary judgment on January 17, 2025. (Pa1).

4. The trial court granted PSE&G's summary judgment motion in an Order dated February 28, 2025. (Pa282).

5. Plaintiffs filed their Notice of Appeal of the February 28, 2025 Order on March 7, 2025. (Pa284).

STATEMENT OF FACTS

PSE&G owns and maintains the utility pole involved in the accident. (Pa262).

PSE&G maintains the poles, wire and transformers. (Pa169-Pa170).

The wire fell down across all four (4) lanes of the Garden State Parkway near the intersection of East Ridgewood. (Pa46).

PSE&G employee Patrick Foster ("Foster") who was on scene after the accident did not have an understanding as to what caused the wire to fall. (Pa50). Foster is unsure whether the transformer was involved and the wire falling. (Pa51-Pa52).

While investigating the downed wire, Foster discovered the primary bushing was blown and there were holes on the side of the transformer leaking oil. (Pa52).

The damage to the transformer could cause a wire to come down. (Pa52). PSE&G does not replace transformers unless there is a problem with the transformer. (Pa61-Pa62).

Plaintiffs' interrogatories to PSE&G included Interrogatory no. 14 stating "identify all documents that may relate to this action, and attach copies of each such document." PSE&G's response included "PSE&G Job Report No.: PSED-11112020-0729; Police Report." (Pa258).

PSE&G's interrogatory answers confirmed there are no maintenance records or inspection records of the downed utility pole and/or downed utility wires relevant to the accident. (Pa262).

PSE&G does conduct pole inspection but does not have any inspection process for its wires or transformers. (Pa171).

PSE&G does not replace transformers until they fail. (Pa171-Pa172).

The downed wire and the transformer involved in this incident were both replaced rather than repaired. (Pa172).

PSE&G typically removed downed wires in these types of instances but allowed the NJTA to remove the wires from this incident. (Pa202-Pa204).

The "cause code" on the PSE&G Plant Operation Report indicates "external vehicle." Other cause codes that were not utilized for this incident are "tree," "vegetation," "animal," "balloons," "lightning," "weather." (Pa77; Pa280).

There were no tree limbs near the poles or wires when PSE&G appeared at the accident location. (Pa88).

Plaintiffs' weather expert Compuweather verified there were zero (0) cloud to ground lightning strokes within five (5) miles of the location of the accident on the date of the accident. (Pa128).

The PSE&G lines that fell onto the Garden State Parkway were in a Spacer Cable System (SCS) configuration. (Pa137).

PSE&G did not investigate how the wire fell. (Pa163-Pa164).

PSE&G does not know the cause of the wires being down in the roadway. (Pa163-Pa164).

The purpose of the National Electrical Safety Code (NESC) is the "practical safeguarding of persons and utility facilities during the installation, operation, and maintenance of electrical supply and communication facilities, under specified conditions. (Pa139).

NESC rules contain basic provisions under specified conditions that are considered necessary for the safeguarding of the public. (Pa140).

The IEEE (same organization that publishes the NESC) has published papers confirming electrical tracking is a known problem in SCS configurations. (Pa140). PSE&G knew or should have known that SCS is susceptible to tracking and therefore mechanical failure. (Pa141).

PSE&G constructed the wires in the SCS configuration, maintain them in this configuration and should have inspected the wires to observe them in this configuration. (Pa141).

The entire circuit along with multiple spacers fell across the Garden State Parkway. This created an unreasonably hazardous condition to motorists on a multi-lane highway in violation NESC Section 012 entitled "General Rules" which states construction and maintenance should be done in accordance with accepted good practice ***for the given local conditions known at the time by those responsible for the construction or maintenance of the communication or supply lines or equipment***. (Pa140-Pa141).

It is more probable that the damage to the transformer was caused by the circuit failure than vice versa. A failure at the transformer would likely be isolated to the transformer and not cause damage to the primary lines a few spans away. However, a failure of the circuit could more likely cause damage to the transformer. (Pa141).

PSE&G changed the configuration at the location after the incident from the SCS configuration to a traditional cross-arm configuration which is less susceptible to tracking and mechanical line failure. (Pa143-Pa144).

PSE&G failed to adequately safeguard the public from the hazard from the incident distribution circuit on the date of the accident at the location of the accident. (Pa145).

PSE&G'S use of a SCS system configuration on the date of the accident at the accident location was a cause of the circuit falling across the Garden State Parkway. (Pa145).

PSE&G's failure to comply with the New Jersey Administrative Code and the National Safety Code was a cause of the incident circuit falling across the Garden State Parkway on the date of the accident at the location of the accident. (Pa145).

LEGAL ARGUMENT

POINT I

STANDARD OF REVIEW FOR SUMMARY JUDGMENT APPEALS (Issue Not Raised Below)

It is well settled that in an appeal of an order granting summary judgment, appellate courts "employ the same standard [of review] that governs the trial court." Busciglio v. DellaFave, 366 N.J.Super. 135, 139, (App.Div.2004). As only a legal issue is involved in the absence of a genuine factual dispute, that standard is de novo, and the trial court rulings "are not entitled to any special deference." Manalapan Realty, L.P. v. Manalapan Twp. Comm., 140 N.J. 366, 378, (1995). Thus, the appellate court should first decide whether there was a genuine issue of material fact, and if none exists, then decide whether the trial court's ruling on the

law was correct. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J.Super. 162, 167, (App.Div.), certif. denied, 154 N.J. 608, (1998).

A party is entitled to summary judgment only if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The "summary judgment procedure pierces the allegations of the pleadings to show that the undisputed facts are otherwise than as alleged." Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954).

"[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 530 (1995) (emphasis added). Accordingly, only "when the evidence is 'so one-sided that one-party must prevail as a matter of law,' the trial court should not hesitate to grant summary judgment." Id. In other words, any genuine issue of material fact in dispute will defeat summary judgment. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 (1954) (emphasis added).

PSE&G's trial court summary judgment motion fell woefully short of satisfying the summary judgment standard. There are multiple factual disputes regarding PSE&G's liability that must be determined by the fact-finder. Specifically, the well settled law in New Jersey is that a party has a duty of care to act as a reasonable person would, to discover and eliminate dangerous conditions related to things it created and that are in its control, in order to keep the public safe. In this case, PSE&G has a duty of care to maintain its transformers and power wires in safe condition, and to avoid creating conditions that would render the public unsafe. The overwhelming evidence in this case establishes PSE&G breached that duty of care. At a minimum, there are multiple factual disputes regarding whether PSE&G breached its duty of care.

Even further, Plaintiffs' claims against PSE&G fall under the doctrines of Res ipsa loquitur and the doctrine of common knowledge. As such, Plaintiffs are not required to establish a specific act or omission by PSE&G or an applicable standard of care because it is common sense that utility power wires under the control of a utility company should not fail and fall onto a busy multi-lane highway such as the GSP. Each of these reasons confirm summary judgment is inappropriate in this case. Any single dispute of a material fact when viewed most favorably to the Plaintiffs requires the denial of PSE&G's motion.

In addition, discovery revealed PSE&G spoliated evidence by failing to preserve its utility power wire involved in the accident, and also failed to produce records in discovery that it relied on and produced for the first time with its summary judgment motion. PSE&G's spoliation and failure to provide discovery entitles Plaintiffs to bar records not provided, and an adverse inference at the time of trial related to the spoliation. Another reason why this case cannot be dismissed via summary judgment.

POINT II

PSE&G WAS NEGLIGENT CAUSING THE ACCIDENT (Pa282-Pa283)

Negligence is a well settled New Jersey cause of action. Negligence is defined as conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. 2 Restatement, Torts, Sec. 282; Harpell v. Public Service Coord. Transport, 20 N.J. 309, 316 (1956); Prosser, Torts, p. 119. The defendant's conduct is compared with that which the hypothetical person of reasonable vigilance, caution and prudence would have exercised in the same or similar circumstances or conditions. Overby v. Union Laundry Co., 28 N.J. Super. 100, 104 (App. Div. 1953), aff'd 14 N.J. 526 (1954); McKinley v. Slenderella Systems of Camden, N.J., Inc., 63 N.J. Super. 571 (App. Div. 1960).

In determining the existence of a duty of care, the determination "involves identifying, weighing, and balancing several factors—the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." Carter Lincoln–Mercury, Inc. v. Emar Group, Inc., 135 N.J. 182, 194, (1994) (quoting Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439, (1993)). "A major consideration in the determination of the existence of a duty under 'general negligence principles' is the foreseeability of the risk of injury." Alloway v. Bradlees, Inc., 157 N.J. 221, 230, (1999).

In this case, the Plaintiffs allege PSE&G was negligent in the ownership and maintenance of its transformer and overhead utility power wires, causing a large section of wire to fall onto the GSP where it was impacted by a vehicle that Monika was a passenger in. The vehicle rolled on its side and as a result Monika sustained serious and permanent injuries. PSE&G's duty to the public in this instance is obvious. Utility power lines should be prevented from falling on roadways, particularly one of the busiest highways in New Jersey, the GSP. In this case, PSE&G is responsible for keeping the highway safe from its utility wires, and it was negligent in its responsibility.

PSE&G's defense essentially argues we didn't know there was any issue with our assets; we don't know what happened; we don't have a duty to the public.

The record confirms PSE&G doesn't adequately inspect its assets and doesn't bother to replace them until failure occurs. The facts are as follows:

- While investigating the downed wire, PSE&G troubleshooter Patrick Foster ("Foster") discovered the transformer primary bushing was blown and there were holes on the side of the transformer leaking oil. (Pa43; Pa52).

- The damage to the transformer could cause a wire to come down. (Pa52).

- PSE&G in its interrogatory answers confirmed there are no maintenance records or inspection records of the downed utility pole and/or downed utility wires relevant to the accident. (Pa262).

- PSE&G does conduct pole inspection but does not have any inspection process for its wires or transformers. (Pa171).

- PSE&G does not replace transformers until they fail. (Pa61-Pa62; Pa171-Pa172).

Both the fact and expert discovery (as set forth below) in this case establish PSE&G was negligent in that it configured the wires over the GSP in a fashion more susceptible to failure, and it failed to inspect the transformer and wires involved in the accident. These actions and inactions caused the power lines to fall onto the GSP causing Monika's accident and injuries.

A. Plaintiffs Do Not Need To Prove A Regulatory Violation To Establish Negligence (Pa282-Pa283; Transcript 5:14-17)

PSE&G argued to the trial court that Plaintiffs cannot establish it violated any regulation and as such it is entitled to summary judgment. First, this is disputed by Plaintiffs' expert James Orosz, P.E. ("Orosz") who opines PSE&G's

failure to comply with the New Jersey Administrative Code ("NJAC") and the National Electrical Safety Code ("NESC") was a cause of the incident circuit falling across the GSP on the date of the accident at the location of the accident. (Pa145). Second, even if it is determined that PSE&G did not violate any regulation, it is well settled PSE&G could be held negligent anyway. In Kane v. Hartz Mountain Industries, 278 N.J. Super. 129, 142 (App. Div. 1994), the New Jersey Appellate Division confirmed compliance with a legislative enactment or an administrative regulation does not prevent a finding of negligence where a reasonable man would take additional precautions. Restatement (Second) of Torts, § 288 C (1965), citing Kelley v. Howard S. Wright Constr. Co., 90 Wash.2d 323, 582 P.2d 500 (1978); Pruett v. Precision Plumbing, Inc., 27 Ariz. App. 288, 554 P.2d 655 (1976).

In this case, Orosz opines that PSE&G did in fact violate both the NJAC as well as the NESC. Even if it did not, however, it would have been reasonable to expect that PSE&G would take sufficient precautions to prevent a utility power line from falling on the GSP. This is particularly true due to the heavy public use of the GSP in Bergen County.

B. Plaintiffs Do Not Need To Establish Notice Of The Dangerous Condition (Pa282-Pa283; Transcript 5:13-24)

PSE&G argued to the trial court that it had no notice of either the transformer or power wire being faulty before the accident. The record, when

viewed in a light most favorable to the Plaintiffs however, confirms PSE&G had constructive notice of the hazardous condition. Even if it is determined that PSE&G did not have actual or constructive notice, it is well settled that when a dangerous condition is caused by a party, notice is not necessary for a finding of negligence.

The mode-of-operation doctrine is an extension of the general principle that when a proprietor creates a dangerous condition, "notice, actual or constructive, of [that] dangerous condition is not required...." Craggan v. IKEA U.S., 332 N.J. Super. 53, 61, (App.Div.2000). See also Smith v. First Nat. Stores, 94 N.J. Super. 462, 466, (App.Div.1967) ("Notice, either actual or constructive, is not required where a defendant ... creates a dangerous condition.").

The trial court stated in its opinion that "this is not a mode-of-operation case." (Transcript, pg. 5:18). The mode-of-operation doctrine, however, is **an extension of the general principle that when a proprietor creates a dangerous condition, "notice, actual or constructive, of [that] dangerous condition is not required....**," as set forth above. Mode-of-operation is therefore not necessary to be established. Even if proving this lawsuit did fall under the "mode-of-operation" doctrine, Plaintiffs would satisfy their burden.

Mode-of-operation is typically used in connection with accidents arising from self-service stations at supermarkets. Nisivoccia v. Glass Gardens, Inc., 175

N.J. 559, 563 (2003). This rule, however, is not limited to only supermarket cases. There are many situations when the mode of operation doctrine makes clear that notice is unnecessary. Craggan v. IKEA USA, 332 N.J. Super. 53 (App. Div. 2000) (trip on string in self-help loading area); O'Shea v. K. Mart Corp., 304 N.J. Super. 489 (App. Div. 1997) (golf bag fell from shelf and hit plaintiff); Ryder v. Ocean County Mall, 340 N.J. Super. 504 (App. Div.) (slip and fall outside food court area while holiday shopping), certif. denied, 170 N.J. 88 (2001). Tymczyszyn v. Columbus Gardens, 422 N.J. Super. 253 (App. Div. 2011) (defendant's negligent snow removal created icy condition of sidewalk that caused plaintiff to fall); Atalese v. Long Beach Twp., 365 N.J. Super. 1 (App. Div. 2003) (actual or constructive notice not required where the County created depression in pedestrian-bicycle lane by negligently installing storm sewer extension).

In this case, it is undisputed that PSE&G created the condition of its transformers and power wires involved in the accident because it owns and maintains the utility pole, power wires and transformers involved in the accident. (Pa262; Pa169-Pa170). It is also clear from the discovery record that PSE&G's actions and inactions created the hazard causing the utility power lines to fall (See, Sections II; IIA; IIC; IID, IIE herein). Because PSE&G created the dangerous condition by its inactions, Plaintiffs do not need to establish any notice whatsoever in order to establish negligence. The mode-of-operation doctrine only further

confirms it is not necessary for Plaintiffs to establish negligence. PSE&G's argument that it had no notice of the condition is irrelevant.

C. Plaintiffs' Expert Orosz Opinions Are Not "net" Opinions (Pa282-Pa283; Transcript 5:20-21)

PSE&G made an "alternative" argument to the trial court that Plaintiffs' liability expert Orosz should be barred from testifying because his opinions are inadmissible "net" opinions. The trial court agreed and stated "I think that the Plaintiffs' expert is a net opinion." (Transcript, pg. 5:20). Consistent with PSE&G's other arguments, this argument is also incorrect and the trial court was wrong in agreeing with this argument.

Plaintiffs retained Orosz, a professional engineer, who drafted an expert report regarding PSE&G's liability. (Pa134-Pa145). Orosz provides the following opinions:

- The PSE&G lines that fell onto the GSP were in a Spacer Cable System (SCS) configuration. (Pa137).
- The purpose of the NESC is the "practical safeguarding of persons and utility facilities during the installation, operation, and maintenance of electrical supply and communication facilities, under specified conditions. (Pa139).
- NESC rules contain basic provisions under specified conditions that are considered necessary for the safeguarding of the public. (Pa140).
- The IEEE (same organization that publishes the NESC) has published papers confirming electrical tracking is a known problem in SCS configurations. (Pa140).

- PSE&G knew or should have known that SCS is susceptible to tracking and therefore mechanical failure. (Pa141).

- PSE&G constructed the wires in the SCS configuration, maintain them in this configuration and should have inspected the wires to observe them in this configuration. (Pa141).

- The entire circuit along with multiple spacers fell across the GSP. This created an unreasonably hazardous condition to motorists on a multi-lane highway in violation NESC Section 012 entitled "General Rules" which states construction and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the construction or maintenance of the communication or supply lines or equipment. (Pa140-Pa141).

- It is more probable that the damage to the transformer was caused by the circuit failure than vice versa. A failure at the transformer would likely be isolated to the transformer and not cause damage to the primary lines a few spans away. However, a failure of the circuit could more likely cause damage to the transformer. (Pa141).

- PSE&G changed the configuration at the location after the incident from the SCS configuration to a traditional cross-arm configuration which is less susceptible to tracking and mechanical line failure. (Pa143-Pa144).

- PSE&G's failure to comply with the NJAC and the NESC was a cause of the incident circuit falling across the GSP on the date of the accident at the location of the accident. (Pa145).

- PSE&G failed to adequately safeguard the public from the hazard from the incident distribution circuit on the date of the accident at the location of the accident. (Pa145).

- PSE&G'S use of a SCS system configuration on the date of the accident at the accident location was a cause of the circuit falling across the GSP. (Pa145).

- PSE&G's failure to comply with the NJAC and the NESC was a cause of the incident circuit falling across the GSP on the date of the accident at the location of the accident. (Pa145).

As the following will demonstrate, Orosz is a well credentialed expert whose opinions in this matter are admissible and not "net" opinions.

Orosz is an accomplished professional engineer who is uniquely qualified to opine in this case. He has been a licensed professional engineer in New York since 2005. He graduated from the United States Military Academy at West Point in 1993 with a Bachelor of Science degree in Electrical Engineering. He graduated from the University of Missouri, Rolla in 1998 with a Masters of Science degree in Engineering Management. He was employed by Consolidated Edison, a large publicly owned electric utility, for over a decade in various positions, to include technical and managerial. He has experience in designing electrical power systems, inspecting electrical power lines and equipment to include vegetation management and directing and managing maintenance programs. He has testified at multiple trials being qualified as both an electrical engineer and a utility engineer. (Orosz's qualifications are included in his expert report, Pa135). Suffice to say, Orosz is well qualified to provide expert opinions related to PSE&G's configuration and maintenance of the power lines and transformers involved in this accident.

NJRE 702, entitled "Testimony by Experts," permits expert witnesses to testify "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." In addition, NJRE 703 requires expert opinion to be based upon facts and/or data reviewed by

the expert at or before trial. See Buckelew v. Grossbard, 87 N.J. 512, 524 (1981); Nguyen v. Tama, 298 N.J. Super. 41, 48-49 (App. Div. 1997). Patterned after Federal Rule of Evidence 703, NJRE 703 is intended to "allow more latitude in the admission of expert opinion testimony" and "broaden the basis for expert opinions." Ryan v. KDI Sylvan Pools, Inc., 121 N.J. 276, 284 (1990); See Advisory Committee's Note, Fed. R. Evid. 703.

NJRE 703 permits an expert's opinion to be based on facts, data or another expert's opinion, either perceived by or made known to the expert, at or before trial. Buckelew v. Grossbard, 87 N.J. 512, 524 (1981); Nguyen v. Tama, 298 N.J. Super. 41, 48-49 (App. Div. 1997). An expert's opinion is only considered an impermissible "net" opinion if it constitutes a bare conclusion unsupported by factual evidence, or is made without an explanation as to the process used to arrive at the conclusion. Buckelew, 87 N.J. at 524. Therefore, under New Jersey law the "net" opinion doctrine allows expert testimony to be excluded only if it is based merely on unfounded speculation and unquantified possibilities. Vuocolo v. Diamond Shamrock Chem. Co., 240 N.J. Super. 289, 299 (App. Div. 1990); Nesmith v. Walsh Trucking Co., 123 N.J. 547, 548-49 (1991).

Evidential support for an expert opinion may include "what the witness has learned from personal experience." Buckelew v. Grossbard, 87 N.J. 512 (1981) (citing Bellardini v. Krikorian, 222 N.J. Super. 457, 463 (App. Div. 1988)). "The

requirements for expert qualifications are in the disjunctive. The requisite knowledge can be based on either knowledge, training or experience." Bellardini, 222 N.J. at 463.

New Jersey courts have consistently held that expert opinions in civil actions are not to be considered "net" opinions under NJRE 703 if they are grounded in facts or other documents that are included in the evidence of the case. Moreover, expert opinions are not to be considered "net" opinions under NJRE 703 if the reasons for the opinions are based upon some form of a factual analysis such as a review of discovery, review of records, or a reliance on the expert's experience. Nguyen v. Tama, 298 N.J. Super. 41, 49 (App. Div. 1997) (finding that since opinion was based upon a review of records as well as the expert's own personal experience, it was not a "net" opinion).

Importantly, the failure of an expert to consider factors thought important by an adverse party does not render the testimony inadmissible. Rosenberg v. Tavorath. 353 N.J. Super. 385, 402 (App. Div. 2002); See State v. Harvey, 121 N.J. 407, 429-30 (1990). Rather, deficiencies identified by the opposing party go to the weight rather than the admissibility of the expert's opinions, and are appropriate for attack on cross-examination. See State v. Noel, 157 N.J. 141, 146–47 (1999). The adversary may on cross-examination supply the omitted conditions

or facts and then ask the expert if the opinion would be changed or modified by them." State v. Freeman, 223 N.J. Super. 92, 116 (App. Div. 1998).

Each of Orosz's expert opinions in this case, as set forth above, were formulated after his review of the voluminous relevant factual record (except for the documents PSE&G failed to produce and the items PSE&G spoliated, as set forth below); his reference of literature on the relevant subjects; research and review of qualified written materials describing the accepted practices and standards of electrical safety; and his own twenty (20) plus years of experience, detailed in his report. Pursuant to the well settled standard for admissibility of expert opinions set forth above, Orosz's expert opinions are wholly admissible to assist the jury in deciding central issues in the case related to PSE&G. Quite simply, Orosz's opinions are not "net" opinions, they are expert opinions. The trial court did not explain why it determined Orosz's opinions are net opinions. Likely because there is no reasonable explanation.

D. Plaintiffs Do Not Require Expert Testimony To Establish PSE&G Was Negligent (Pa282-Pa283; Transcript 6:1-3)

As set forth above, Orosz is well qualified and his opinions are clearly admissible. Even if this court was to determine otherwise, Plaintiffs do not need expert testimony to establish PSE&G's negligence in this case. Specifically, Plaintiffs do not need expert testimony to establish utility power lines should not

be falling from their poles onto the GSP, as confirmed by the doctrine of Res ipsa loquitur and the common knowledge doctrine.

The doctrine of Res ipsa loquitur applies when it is reasonable to say that, under the circumstances, the injury to the plaintiff would not have occurred in the absence of the defendant's negligence. Prosser, Torts § 42, p. 201 (1955); Annotation 162 A.L.R. 1265 (1946) A plaintiff, therefore, is permitted to establish a Prima facie case of negligence by proof of her injury and the surrounding circumstances; she does not have to prove a specific act or omission by the defendant or an applicable standard of care. The procedural effect of applying the doctrine is to permit the jury to infer negligence. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 269, (1958); Kahalili v. Rosecliff Realty, Inc., 26 N.J. 595, at pp. 605, 606, (1958).

The doctrine of 'common knowledge' is related to Res ipsa loquitur, but there is a distinction between the two. In Res ipsa cases, plaintiff need only prove his injury, and need not prove a standard of care or a specific act or omission. Ordinarily, the common knowledge doctrine is applied after the plaintiff proves his injury and a causally related act or omission by the defendant. The effect of applying this doctrine is to allow the jury to supply the applicable standard of care and thus to obviate the necessity for expert testimony relative thereto. In other words, application of the doctrine transforms the case into an ordinary negligence

case where the jury, from its fund of common knowledge, assays the feasibility of possible precautions which the defendant might have taken to avoid injury to the plaintiff. Succinctly, the doctrine of common knowledge permits exception to the general rule that expert testimony is required in certain circumstances, and when applied, expert testimony is not needed to establish the applicable standard of care. Schueler v. Strelinger, 43 N.J. 330 at 345 (1964).

Plaintiffs are entitled to a Res ipsa loquitor charge at trial in this case. It is clearly reasonable to argue that utility power lines hanging over the GSP should not fall onto the highway. Plaintiffs' weather expert Compuweather verified there were zero (0) cloud to ground lightning strokes within five (5) miles of the location of the accident on the date of the accident. (Pa128). There were no tree limbs near the poles or wires when PSE&G appeared at the accident location. (Pa88). Available "cause codes" on the PSE&G Plant Operation Report that were available and not utilized included "tree," "vegetation," "animal," "balloons," "lightning," "weather." (Pa77-Pa78; Pa280). There is no evidence to suggest an outside event caused the wire to fall. As such, the Plaintiffs do not need expert testimony to infer negligence against PSE&G in this case. The common knowledge doctrine also confirms no expert testimony is required.

The trial court stated "This is not a Res ipsa loquitor case, because the conditions that existed were not in exclusive control of [PSE&G] nor does the fact

that they bespeak negligence in and of themselves." (Transcript, pg. 5:21). The trial also stated "nor is this a common knowledge issue, because apparently this wire fell down in the middle of a storm, in the middle of the night." (Transcript, pg. 6:1). Regarding Res ipsa, the trial court did not indicate under who else's control the utility wire and transformer were at the time of the accident. In fact, there is nothing in the record to suggest anyone other than PSE&G was in control of the utility wire and transformer. Regarding common knowledge, the trial court comments about the wire falling down in the middle of a storm in the middle of the night are both incorrect. The accident happened at approximately 9 p.m. (Pa17) and there were zero (0) cloud to ground lightning strokes within five (5) miles of the location of the accident on the date of the accident. (Pa128).

This is precisely the situation that invokes the doctrines of Res ipsa loquitur and the common knowledge doctrine. The trial court therefore erred in ruling otherwise.

E. PSE&G Spoliated Evidence And Failed To Produce Documents (Pa282-Pa283; Transcript 6:4-8)

As set forth above, New Jersey law clearly dictates PSE&G's summary judgment motion must be denied. It is also important for this court to be aware that Plaintiffs will be seeking an adverse inference at trial as well as an order barring PSE&G from utilizing its inspection reports that were never produced in

discovery, and produced for the first time with its application for summary judgment.

Courts use the spoliation inference during a litigation as a method of evening the playing field where evidence has been hidden or destroyed. It essentially allows a jury in the underlying case to presume that the evidence the spoliator destroyed or otherwise concealed would have been unfavorable to him or her. New Jersey does not recognize a separate tort for spoliation. Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 122 n.6 (2008) (citing Rosenbit v. Zimmerman, 166 N.J. 391, 406 (2001)). Rather, "spoliation claims, as between parties to a particular litigation, are technically claims for fraudulent concealment." Ibid. "Spoliation of evidence ... occurs when evidence pertinent to the action is destroyed, thereby interfering with the action's proper administration and disposition." Manorcare Health Servs., Inc. v. Osmose Wood Preserving, Inc., 336 N.J. Super. 218, 226 (App. Div. 2001) (quoting Aetna Life & Cas. Co. v. Imet Mason Contractors, 309 N.J. Super. 358, 364 (App. Div. 1998)).

"[A] duty to preserve evidence is a question of law to be determined by the court ...." Ibid.; see also Aetna, supra, 309 N.J. Super. at 366 (outlining a four-part test to determine when a duty to preserve evidence arises). A party asserting a claim of spoliation must establish: (1) That defendant in the fraudulent concealment action had a legal obligation to disclose evidence in connection with

an existing or pending litigation; (2) That the evidence was material to the litigation; (3) That plaintiff could not reasonably have obtained access to the evidence from another source; (4) That defendant intentionally withheld, altered or destroyed the evidence with purpose to disrupt the litigation; and (5) That plaintiff was damaged in the underlying action by having to rely on an evidential record that did not contain the evidence defendant concealed. Tartaglia, supra, 197 N.J. at 118 (citation omitted).]

In this case, PSE&G allowed the New Jersey Turnpike Authority to dispose of the downed wire immediately after it was repaired. The relevant facts are as follows:

- The downed wire and the transformer involved in this incident were both replaced rather than repaired. (Pa172).

- PSE&G typically removed downed wires in these types of instances but allowed the New Jersey Transit Authority to remove the wires from this incident. (Pa202-Pa204).

- PSE&G did not investigate how the wire fell. (Pa163-Pa164).

PSE&G's actions confirm it spoliated evidence, specifically the wires, that could have been inspected and tested by the Plaintiffs. Instead, knowing that there was an accident and injuries as a result of the downed wire, PSE&G permitted the New Jersey Turnpike Authority to collect and dispose of the wires. This must be considered by this court in the context of PSE&G's summary judgment motion.

In addition, PSE&G included field inspection reports related to the wires at issue with its summary judgment motion (Pa232-Pa236). These reports were never produced in discovery. Worse yet, both PSE&G's interrogatory answers and it's company representative deposition testimony confirm there was never any inspection of the transformers or wires at issue. The relevant facts are as follows:

- Plaintiffs' interrogatories to PSE&G included Interrogatory no. 14 stating "identify all documents that may relate to this action, and attach copies of each such document." PSE&G's response included "PSE&G Job Report No.: PSED-11112020-0729; Police Report." (Pa258).

- PSE&G in its interrogatory answers confirmed there are no maintenance records or inspection records of the downed utility pole and/or downed utility wires relevant to the accident. (Pa262).

- PSE&G does conduct pole inspection but does not have any inspection process for its wires or transformers. (Pa171).

Plaintiffs' expert Orosz was not able to consider the alleged inspections that PSE&G now says it conducted. Plaintiffs were not able to question PSE&G's company representatives regarding the alleged inspections. While it is Plaintiffs' position that PSE&G's motion would fail even if the inspections were considered for all the reasons set forth herein, Plaintiffs are entitled to an order at the time of trial barring the inspection evidence.

The trial court stated "there is no record in fact that there was any request at the time of the accident or shortly thereafter that counsel requested that any evidence be preserved pursuant to the rule". (Transcript, pg. 6:5). As set forth

above, a request to preserve is not a consideration in determining spoliation. The undisputed fact is that PSE&G knoew there was an accident resulting in injuries, and permitted the wire to be immediately disposed of.

PSE&G's spoliation of evidence and failure to produce discovery are both reason enough for the summary judgment motion to be denied, so that Plaintiffs can seek the appropriate relief at the time of trial. The trial court erred in permitting PSE&G to get away with this flagrant behavior.

CONCLUSION

New Jersey tort law is long established. In this case, Monika sustained serious injuries because a power line owned and maintained by PSE&G fell onto the GSP. The complete record in this case contains numerous genuine issues of material fact regarding PSE&G's negligence in failing to keep the public safe, causing Monika's accident and subsequent serious injuries. A jury must be allowed to make these relevant findings of fact at the time of trial.

When viewed in a light most favorable to the Plaintiffs, PSE&G cannot escape the fact that its actions and inactions created a hazard to the public. As such, and for all the reasons set forth above, PSE&G's motion for summary judgment should have been denied, and the trial court order granting PSE&G summary judgment should be reversed.

Brach Eichler LLC

By: ***/s/ Anthony M. Juliano***
Anthony M. Juliano

DATE: June 25, 2025

MONIKA PATEL AND ALPESH PATEL, Plaintiffs/Appellants, v. PUBLIC SERVICE ENTERPRISE GROUP, INC.; NEW JERSEY TURNPIKE AUTHORITY GARDEN STATE Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001948-24 **Civil Action** ON APPEAL FROM SUPERIOR COURT, LAW DIVISION ESSEX COUNTY DOCKET NO. ESX-L-832-22 Honorable ROBERT H. GARDNER, J.S.C. Sat Below

BRIEF OF DEFENDANT PUBLIC SERVICE ELECTRIC AND GAS COMPANY

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PRELIMINARY STATEMENT

By way of this appeal, Plaintiffs Monika and Alpesh Patel (collectively "Plaintiffs") once again seek to relitigate their claims against Public Service Electric and Gas Company ("PSE&G" or "Defendant") in connection with a motor vehicle accident that took place in Paramus, New Jersey – despite the trial court's granting of summary judgment to PSE&G.

Plaintiff Monika Patel ("Monika") asserts that she was a passenger in a motor vehicle driven by her son and Defendant, Aryan Patel ("Aryan") on the night of November 11, 2020. While traveling northbound on the Garden State Parkway ("GSP") in Paramus, New Jersey, the vehicle made contact with a downed utility wire, causing the vehicle to roll onto its side. PSE&G owns the wire and related infrastructure.

In a well-reasoned oral decision, the trial court granted summary judgment to PSE&G and dismissed Plaintiffs' claims against it, finding that: (1) Plaintiffs failed to satisfy the burden of proof necessary to show that PSE&G had actual or constructive notice of the condition of the downed wire; (2) the fact that there was a regulation violation of the New Jersey Administrative Code ("NJAC") does not create a prior right of action in this case; (3) this is not a mode of operation case; (4) Plaintiffs' expert is a net opinion; 5) res ipsa loquitor does not apply to this case; 5)

this is not a common knowledge issue; and 6) Plaintiffs cannot sustain the burden of proof as a matter of law on the issue of whether PSE&G spoliated evidence.

Plaintiffs' appeal retreads the same arguments rejected by the court below and fails to provide any justification–grounded in case law or otherwise–to merit a reversal of the trial court's decision. For the reasons set forth below, the trial court's order granting summary judgment to PSE&G should be affirmed in its entirety.

PROCEDURAL HISTORY

On February 7, 2022, Plaintiffs initiated this action by filing a Complaint against PSE&G, the New Jersey Turnpike Authority ("NJTA"), and Aryan Patel alleging permanent injuries to Plaintiff Monika Patel arising from a motor vehicle accident involving a fallen utility power line on the Garden State Parkway ("GSP"). (Pa5-16).[1] Defendant PSE&G filed its Answer on May 18, 2022. (Pa20-28).

Thereafter, Defendant NJTA was voluntarily dismissed without prejudice, and Plaintiffs reached a settlement with Defendant Aryan Patel, leaving PSE&G as the sole remaining defendant in this action. (Pa295).

Plaintiffs and PSE&G participated in mandatory arbitration on October 23, 2024. (Da1).[2]

[1] "Pa" refers to Plaintiffs' appendix.
[2] "Da" refers to Defendant's appendix.

On January 17, 2025, Defendant PSE&G filed a motion for summary judgment seeking dismissal of all counts in Plaintiffs' Complaint and any claims and crossclaims against defendants with prejudice. (Pa1). By order dated February 28, 2025, the Hon. Robert H. Gardner, J.S.C., granted PSE&G's motion for summary judgment and dismissed Plaintiffs' claims. (Pa282-283). On March 7, 2025, Plaintiffs filed their Notice of Appeal. (Pa284-287).

STATEMENT OF FACTS

This action arises from a single-vehicle motor vehicle accident that occurred on November 11, 2020, at approximately 11:00 p.m., on the northbound side of the GSP in Paramus, New Jersey. Monika was a passenger in a vehicle driven by her son, Aryan Patel. At an unknown time and for an unknown cause, a utility wire was brought down. Aryan failed to avoid making contact with the wire in the road, resulting in the vehicle rolling on its side. (Pa5-16). The police report indicates that Aryan stated the following about the accident: "I was driving and there was a wire in the road that I did not see until the last second." At the time of the accident, the weather was rainy and foggy. (Pa17, Pa239).

The wire and related infrastructure for the wire were owned by PSE&G. (Pa169-170, Pa262). Stephen Leonardo from the NJTA testified at his deposition that there are many other areas of the GSP in his district that have utility wires, similar to the subject wire, that pass over the highway. (Pa241). Prior to the accident

and the downed wire, a spacer cable system[3] was utilized on these particular wires. After the accident, PSE&G dead-ended the wire onto a crossarm (an 8-to-10-foot piece of wood used to secure the wire) on each side of the GSP. PSE&G then ran new wires across the GSP. The old wire was cut clear and left in the median to be picked up at a later time. (Pa240-241).

Plaintiffs provided no evidence that PSE&G had prior notice of the downed wire or any defect in its equipment. PSE&G's employee Patrick Foster ("Foster"), who responded to the accident site, testified that PSE&G only learned that the wire fell after the accident was reported by the police. (Pa82-83). He also testified that he was not sure why the wire fell. "Normally, when I pull up on a job, sometimes I'm able to determine what brought the wire down. In this particular instance, I don't recall having a reason for it to come down. It was raining. Something may have tracked and brought the wire down." (Pa50). Foster testified that there are a number of reasons why wires can come down including squirrels, tree limbs, conductors catching each other, and lightning. (Pa52). When referring to an internal PSE&G document about this incident, he clarified that the weather indicated it was raining that day. Specifically, when asked why he thought weather could have been the cause

[3] A spacer cable, as defined by the National Electric Safety Code ("NESC"), is a type of electric supply-line construction consisting of an assembly of one or more covered conductors, separated from each other and supported from a messenger by insulating spacers. The NESC has stated over the years that spacer cables are a normal component of an electric distribution circuit.

of the wire falling, Foster stated, "Thirty-four years as a troubleshooter, we have stuff come down when [there's bad weather.]" (Pa88-89). Regardless of speculation, Plaintiffs cannot point to a single source as to why or when the wire came down on the GSP.

PSE&G is a highly regulated utility company by the New Jersey Board of Public Utilities ("BPU"). PSE&G adheres to certain national standards, such as the NESC, which covers provisions for safeguarding the public from hazards arising from the installation, operation or maintenance of electric equipment and supply. (Pa242). The NESC has no preference for open wire crossarm construction. (Pa248). Furthermore, the NESC does not prohibit and has never prohibited the use of spacer cables for areas such as over the GSP. PSE&G employees, Carl Flar and Patrick Foster, testified that open wire on crossarms was installed after the accident because the wire needed to be safely pulled across the GSP and the crossarms were a means of securing the ends to get the wire across. At no point did either employee state that the use of spacer cables in the subject accident location was inappropriate for this installation. (Pa248).

PSE&G conducts inspections of its electrical assets. Specifically, PSE&G performed both thermographic and visual inspections on the subject assets in 2018, 2019 and 2020. The 2020 inspection was performed a mere three and a half months

prior to this accident. There were no issues noted, including to the spacer cable, at the subject accident site during these inspections. (Pa232-236, Pa242).

Plaintiffs never submitted evidence that PSE&G had any notice of when the wire came down. PSE&G first learned of the downed wire after the accident and immediately dispatched a team to respond and restore service. (Pa82-83). Plaintiffs' expert offered general criticisms regarding the type of cable system used (spacer cable) prior to the accident and cited alleged violations of regulatory standards. However, PSE&G's use of spacer cables was consistent with accepted practices and not prohibited by any standard. Moreover, the trial court found that Plaintiffs' expert's conclusions were unsupported and constituted an inadmissible net opinion.

In granting summary judgment, the court held that Plaintiffs failed to establish that PSE&G had notice of a hazardous condition, and that the mere occurrence of an accident was insufficient to infer negligence. The court also found that the elements required to invoke res ipsa loquitur or the common knowledge doctrine were not satisfied. (1T3-6).[4]

LEGAL STANDARD

A party is entitled to summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any,

[4] "1T" refers to the February 28, 2025 hearing on PSE&G's summary judgment motion.

show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528 (1995) (quoting Rule 4:46-2(c)). The determination of whether issues of material fact exist requires the court to consider "whether the *competent evidential materials* presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Kelsey v. Raymond, No. A-4511-12T2, 2015 WL 1781565, at *2 (N.J. Super. Ct. App. Div. Apr. 21, 2015) (citing Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014)) (emphasis added). "[A] non-moving party cannot defeat a motion for summary judgment merely by pointing to *any* fact in dispute." Brill, 142 N.J. at 529 (emphasis in original).

The New Jersey Supreme Court advises that "trial courts not [] refrain from granting summary judgment when the proper circumstances present themselves [,]" explaining:

> It is critical that a trial court ruling on a summary judgment motion not shut a deserving litigant from his [or her] trial. *At the same time, we stress that it is just as important that the court not allow harassment of an equally deserving suitor for immediate relief by a long and worthless trial.*
>
> [Brill, 142 N.J. at 540-41 (emphasis added) (internal citations and quotation marks omitted).]

Summary judgment "is designed to provide a prompt, businesslike and inexpensive method of disposing of any cause which . . . [does not] present any genuine issue of material fact requiring disposition at a trial." Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). It serves "to avoid trials which would serve no useful purpose and to afford deserving litigants immediate relief." Warthen v. Toms River Cmty. Mem'l Hosp., 199 N.J. Super. 18, 23 (App. Div. 1985). Summary judgment in a personal injury claim is appropriate where "no reasonable jury could find that the plaintiff's injuries were proximately caused by" the facts alleged. Vega by Muniz v. Piedilato, 154 N.J. 496, 509 (1998) (citing Brill). Appellate courts review the trial court's grant or denial of a motion for summary judgment de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73 (2022).

Here, the trial court properly granted PSE&G's motion for summary judgment under the applicable Rule 4:46-2 standards. Its decision should thus be affirmed.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT TO PSE&G (Raised below at 1T)

A. Plaintiffs Have Failed to Present Any Negligence on the Part of PSE&G

Plaintiffs have not presented any evidence or expert testimony in the present case to demonstrate that Defendant, PSE&G, was negligent. Under New Jersey law, the three elements essential for the existence of a cause of action in negligence are: "(1) a duty of care owed by defendant to plaintiff; (2) a breach of that duty by defendant; and (3) an injury to plaintiff proximately caused by defendant's breach." Endre v. Arnold, 300 N.J. Super. 136, 141 (App. Div. 1997). It is well established that negligence is never presumed. Rivera v. Columbus Cadet Corps., 59 N.J. Super. 445 (App. Div. 1960). In any case founded upon negligence, proofs ultimately must establish that defendant breached a duty of reasonable care which constituted a proximate cause of the plaintiff's injuries. Brown v. Racquet Club of Bricktown, 95 N.J. 280, 284 (1984).

Plaintiffs assert that as a result of the negligence and/or carelessness of Defendant PSE&G, a downed electrical wire was present on the GSP, causing the driver's vehicle to flip onto its passenger side and injure Monika. However, Plaintiffs cannot sustain a cause of action for negligence against PSE&G because: (1) PSE&G

does not owe Plaintiffs a duty to conduct continuous inspections of its assets; (2) PSE&G did not breach any duty to Plaintiffs because PSE&G inspected these particular assets three and a half months prior to the accident in accordance with state and national standards; and (3) PSE&G did not proximately cause Monika's injuries.

There is no evidence to establish that there was any type of defect or problem with the wires in question. In fact, inspections were completed three and a half months prior to the accident on July 30, 2020, and such records are completely devoid of any problems concerning the operation, installation, and appearance of the wires. The accident occurred on November 11, 2020, which is approximately three and a half months after PSE&G inspected their equipment.

The Court held in Bratka v. Castles Ice Cream Co., 40 N.J. Super. 576 (App. Div. 1956) that negligence is a fact, which must be proved and will never be presumed, nor will the mere proof of the occurrence of an accident raise a presumption of negligence. The Court explained that actionable negligence involves a breach of duty and resulting damage. In Bratka, the plaintiff instituted suit against his employer and truck owner for personal injuries sustained when he became locked in the refrigerated compartment of a truck which allegedly contained defective safety devices. Id. At 579. Judgment was entered in favor of the defendants since the evidence was insufficient to establish that the truck was defective or in a dangerous

condition at the time of the alleged incident. The Court pointed out that the existence of a mere possibility of a defendant's responsibility for the injury is insufficient. Although proof of a certainty is not required, the evidence must be such as to justify an inference of probability as distinguished from the mere possibility of negligence on defendant's part. Id. at 584-85.

In the case at bar, Plaintiffs have not demonstrated any negligence on the part of PSE&G with regard to the maintenance of its wires and have failed to meet their burden of producing evidence that reduces the likelihood of other causes. See Eaton v. Eaton, 119 N.J. 628 (1990); Jimenez v. GNOC Corp., 268 N.J. Super. 533 (App. Div. 1996); The Law of Torts, Sect. 19.7 at 46 (1986). Rather, Plaintiffs attempt to raise the same arguments that were presented to the trial court concerning negligence.

Plaintiffs argue that PSE&G had a duty of care to maintain its transformers and power wires in a safe condition and to avoid creating conditions that would render the public unsafe. Plaintiffs incorrectly–and absurdly–assert that PSE&G's argument is that "we don't have a duty to the public." (Pa12). This is simply false. To the contrary, PSE&G performs inspections of its assets, including the wires, transformers and related assets on a routine basis. Indeed, here, PSE&G performed thermographic and visual inspections of these same lines on July 11, 2018, September 19, 2019, and July 30, 2020. (Pa232-236). Plaintiffs fail to cite to any

statute or case law that places additional obligations on PSE&G to inspect its electric assets further.

Plaintiffs then shift their argument to assert that even if PSE&G cannot be found to have violated any regulation, the utility company *could* be held negligent anyway. (Pb14). Plaintiffs' reliance on Kane v. Hartz Mountain Industries, 278 N.J. Super. 129, 142 (App. Div. 1994) to insinuate that PSE&G should be taking additional precautions is unfounded. First, Kane v. Hartz Mountain Industries does not refer to utility companies, which are highly regulated entities by governing bodies, such as the BPU, that impose strict parameters and rules concerning the inspection and maintenance of utility assets. PSE&G also acts in accordance with the NESC. The 2017 Edition of the NESC, which was in effect at the time of the accident, states that lines and equipment shall be inspected **at such intervals as experience has shown to be necessary**. (Pa248) (emphasis added). While Plaintiffs state that it would be "reasonable to expect PSE&G [to] take sufficient precautions to prevent a utility power line from falling on the GSP," (Pb14)[5], they do not provide any examples of what would be "reasonable" under the circumstances according to existing case law or national standards. (Pb14).

PSE&G maintains that it complies with the safety regulations asserted by the NESC and the NJAC, as well as the regulations set forth by the BPU. Accordingly,

[5] "Pb" refers to Plaintiff's brief.

Plaintiffs' argument insisting that PSE&G was negligent in its inspection or maintenance of this wire must fail.

B. PSE&G Lacked Notice of Any Dangerous Condition

Plaintiffs proffered no evidence that PSE&G had actual notice of the downed wire prior to the accident. Rather, Plaintiffs insist that PSE&G should have had constructive notice of a potentially dangerous condition, regardless of the fact that PSE&G conducted an inspection of these particular wires and corresponding assets a mere three and a half months prior to the accident. Absent notice, PSE&G should not be held liable for a transient condition it had no opportunity to remedy. See Brown v. Racquet Club of Bricktown, 95 N.J. 280, 291 (1984).

To recover for injuries suffered, in addition to establishing a defendant's duty of care, a plaintiff ordinarily must also establish the defendant had actual or constructive knowledge of the dangerous condition that caused the accident. Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563 (2003). "An inference [of negligence] can be drawn only from proved facts and cannot be based upon a foundation of pure conjecture, speculation, surmise or guess." Long v. Landy, 35 N.J. 44, 54 (1961).

> Whether a reasonable opportunity to discover a defect existed will depend on both the character and the duration of the defect. Thus, proprietors have been absolved of liability where a defective condition was found not to be discoverable by **reasonable inspection**, or where a latent defect, undiscoverable except by extraordinary investigation, caused an injury shortly after a new owner bought a building.

> [Brown v. Racquet Club of Bricktown, 95 N.J. 280, 291 (1984) (emphasis added) (internal citations omitted).]

PSE&G should similarly be held to a reasonable due care standard. PSE&G conducted an inspection of the assets in question three and a half months prior to the accident and no dangerous condition was noted. As such, Plaintiffs' argument that PSE&G should have had constructive notice must fail.

Plaintiffs also attempt to argue that this is a mode-of-operation case stating that notice, whether actual or constructive, of a dangerous condition is absolutely not required when the defendant has created the dangerous condition. Again, Plaintiffs cannot point to how PSE&G *created* a dangerous condition, other than asserting that simply because PSE&G owns and maintains the utility pole, wires and transformers, the company therefore created the condition.

Plaintiffs accurately point to the fact that most case law concerning mode-of-operation typically addresses accidents concerning supermarkets or shops with self-service areas, both of which involve proprietors who have created dangerous conditions with their manner of conducting business. "The mode-of-operation doctrine is an extension of the general principle that when a proprietor creates a dangerous condition, 'notice, actual or constructive, of [that] dangerous condition is not required....'" Prioleau v. Kentucky Fried Chicken, Inc., 434 N.J. Super. 558, 573 (N.J. Super. 2014) (citing Craggan v. IKEA U.S., 332 N.J. Super. 53, 61 (App. Div.

2000)). When analyzing mode-of-operation liability, courts do not limit the analysis to the manner in which the business at issue was conducted. Rather, "a plaintiff must identify facts showing a nexus between the method or manner in which the business is operated when extending products or services to the public, and the harm alleged to have caused the plaintiff's injury." Id. at 579. Here, PSE&G was not a proprietor, nor did it have exclusive control over the subject accident location. Plaintiffs have not provided any evidence to support the assertion that the way in which PSE&G conducts its business caused Monika's injuries.

Judge Gardner properly opined that the issue in this case was one of notice and that mode-of-operation did not apply. (1T5:5-8). As he stated in his oral decision, Plaintiffs had the burden of proof to show that PSE&G either knew or should have known of the conditions as they existed at the time of the accident, or that the conditions existed for such an unreasonable amount of time that PSE&G should have been able to learn of the conditions. Judge Gardner did not find that the notice aspects were satisfied. (Transcript 5:8-15). Simply stated, notice–both actual or constructive–of a dangerous condition is significant and cannot be disregarded. This Court should affirm the trial court's findings concerning notice.

C. Plaintiff's Expert Opinion Was an Inadmissible Net Opinion

Pursuant to N.J.R.E. 703, although the facts or data relied on by an expert need not be admissible, the expert's testimony must be rooted in facts, science, data,

or the opinions of other experts. See N.J.R.E. 703. This Rule of Evidence "requires an expert 'to give the why and wherefore' of his or her opinion, rather than a mere conclusion." Rosenberg v. Tavorath, 352 N.J. Super. 385, 401 (App. Div. 2002) (quoting Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996), certif. denied, 145 N.J. 374 (1996)).

"The corollary of [Rule 703] is the net opinion rule, which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." Polzo v. Cnty. of Essex, 196 N.J. 569, 583 (2008) (quoting State v. Townsend, 186 N.J. 473, 494 (2006), rev'd on other grounds, 209 N.J. 51 (2012)). In applying the net opinion rule, "a trial court must ensure that an expert is not permitted to express speculative opinions or personal views that are unfounded in the record." Townsend v. Pierre, 221 N.J. 36, 55 (2015). Importantly, "an expert's bare opinion that has no support in factual evidence or similar data is a mere net opinion which is not admissible and may not be considered." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 372 (2011) (citing Polzo, 196 N.J. at 583). It is well settled under New Jersey law that the proponent of the expert testimony bears the burden of establishing three requirements for the admission of expert testimony: (1) the opinion will be useful to the jury because it involves subject matters beyond the ken of an average laymen; (2) the opinion is offered by a sufficiently qualified expert; and (3) the opinion is sufficiently reliable so as to not invite speculation. See

Hisenjai v. Kuehner, 194 N.J. 6, 16 (2008); Nesmith v. Walsh Trucking Co., 123 N.J. 547, 548 (1991) (quoting State v. Kelly, 97 N.J. 178, 208 (1984)).

Mr. Orosz's opinion that PSE&G violated both the NJAC and the NESC is the epitome of a net opinion. He opines that "PSE&G failed to adequately construct, inspect and maintain its electrical equipment in order to safeguard the public." (Pa145). However, Mr. Orosz fails to cite to any specific deficiencies as to how PSE&G's inspections violate the NJAC or the NESC. His opinion that PSE&G utilizing the spacer cable system prior to the accident was a cause of the circuit falling down across the parkway is based on speculation. There is no factual support for this opinion; Mr. Orosz fails to point to any standards in the NESC that say cable spacers are unsafe, unreliable or inappropriate for the accident location. (Pa145). And Mr. Orosz's insinuation that PSE&G failed to comply with the NJAC and NESC was a cause of the circuit falling down is incredibly broad and unfounded. (Pa145). Such a general, unsupported conclusion constitutes a net opinion and is inadmissible. See Buckelew v. Grossbard, 87 N.J. 512, 524 (1981); Pomerantz, 207 N.J. at 372. The trial court agreed and ruled accordingly.

D. The Doctrines of Common Knowledge and Res Ipsa Loquitor Are Inapplicable

Plaintiffs again attempt to invoke res ipsa loquitur and the doctrine of common knowledge, arguing that utility wires do not fall in the absence of negligence. However, these doctrines require that the defendant had exclusive control of the

instrumentality, and that the accident is one which ordinarily does not occur absent negligence. See Jerista v. Murray, 185 N.J. 175, 191 (2005). Plaintiffs failed to eliminate alternate causes such as squirrels, inclement weather, tree limbs, or other forces, and thus cannot meet the elements of either doctrine.

The application of res ipsa loquitur must be engaged with regard to the nature of its impact on the facts; where facts of a particular situation warrant its invocation, an inference of negligence may be drawn, though it is not compelled. Lorenc v. Chemirad Corp., 37 N.J. 56, 71 (1962). In the instant case, Plaintiffs have failed to demonstrate that the doctrine applies to the facts of this case. For the reasons stated above, Plaintiffs have not offered any proof to illustrate that PSE&G was negligent. The first factor, which is often referred to as the "ordinarily bespeaks negligence" factor, means that the plaintiff must show that the "balance of probabilities" weighs "in favor of negligence" on the defendant's part. Eaton v. Eaton, 119 N.J. 628, 638 (1990). In the ordinary case, negligence is never inferred. Buckelew v. Grossbard, 87 N.J. 512, 513 (1981). The doctrine of res ipsa loquitur permits a plaintiff the advantage of an inference of negligence to discharge the burden of proving negligence. Vespe. v. DiMarco, 43 N.J. 430, 436 (1964). The doctrine does not shift the burden of proof to the defendant. Eaton v. Eaton, 119 N.J. at 638.

And second, PSE&G was not exclusively in control of the instrumentality or agent that caused the accident; Plaintiffs conveniently disregard that this accident

was caused in part by the driver of the motor vehicle accident, Aryan Patel. The existence of a driver being involved in this accident–a factor completely outside the control of PSE&G–ensures that the doctrine of common knowledge should not be applied to the facts of this case. Furthermore, the doctrine of common knowledge ordinarily applies in malpractice cases where there is evidence of obvious or extreme negligence, neither of which have been found here. See Rosenberg by Rosenberg v. Cahill, 99 N.J. 318, 325 (1985). "The most appropriate application of the common knowledge doctrine involves situations where the carelessness of the defendant is readily apparent to anyone of average intelligence and ordinary experience." Id.

Judge Gardner held the following concerning Plaintiffs' assertion that res ipsa loquitor should apply to this matter: "This is not a Res Ipsa loquitur case, because the conditions that existed were not in exclusive control of the Defendant[,] nor does the fact that they are bespeak negligence in and of themselves." (1T5). Concerning Plaintiffs' assertion that common knowledge applies(??), Judge Gardner held that "the driver clearly has an obligation to make reasonable observations . . . this is [not] a common knowledge issue because apparently this wire fell down in the middle of a storm, in the middle of the night." (1T5:25-6:3).

In the present case, as before the trial court, Plaintiffs claims concerning the doctrines of res ipsa loquitor and common knowledge must fail.

E. Plaintiffs' Allegation of Spoliation is Unsupported

PSE&G did not spoliate evidence as suggested by Plaintiffs. "Spoliation of evidence in a prospective civil action occurs when evidence pertinent to the action is destroyed, thereby interfering with the actions' proper administration and disposition." Aetna Life and Casualty Co. v. ImetMason Contractors, 309 N.J. Super. 358, 364 (App. Div. 1998) (quoting Hirsch v. General Motors Corp., 266 N.J. Super. 222, 234 (Law Div. 1993)). "A plaintiff who destroys evidence interferes with a defendant's ability to defend a lawsuit and right to discovery." Id.

In the present case, Plaintiffs assert that PSE&G spoliated evidence by allowing the NJTA to take the downed wire from the accident site and by not producing inspection records that it relied upon in its summary judgment motion.

First, concerning the wire, Plaintiffs fail to cite to any duty wherein PSE&G employees were obligated to remove the wire from the accident site, rather than allow the NJTA to take it. Plaintiffs rely on testimony from PSE&G employee Mr. Flar who stated it is not typical for other entities or agencies to clean up downed wires. When asked why the NJTA would have taken it, he stated this the NJTA was cleaning up from the accident and "threw it into their truck." (Pa203). The fact that PSE&G did not remove the wire from the site is not evidence of spoliation; it was a mere joint effort to clean up the accident site by PSE&G and NJTA. Additionally,

Plaintiffs named the NJTA in this action and have not produced any record of a request–to either PSE&G or the NJTA–for this wire in the discovery process.

Judge Gardner correctly held in his opinion that there is no record in fact that Plaintiffs ever requested at the time of the accident or shortly thereafter that any evidence be preserved pursuant to the rule. PSE&G never received a request for the preservation of evidence from Plaintiffs, and Plaintiffs never provided any evidence to the contrary. The trial court was correct in its ruling that Plaintiffs could not sustain the burden of proof as a matter of law.

Second, regarding the three inspection records relied upon by PSE&G's expert in the timely served liability report, Plaintiffs argue they only became aware of inspection records upon the filing of the summary judgment motion. This is inaccurate. While the inspection reports were inadvertently and inexcusably not produced with the initial discovery requests, the inspection reports were utilized by PSE&G's expert in his report, which was served prior to the discovery end date. Plaintiffs should have been aware of their existence prior to discovery ending, or in the alternative, could have pursued remedies to extend discovery. Plaintiffs did not put PSE&G on notice that it had not been served these reports after receiving the expert report, nor did Plaintiffs request the reports. Furthermore, the 2020 inspection of the subject assets that took place three and a half months before the accident was referred to in PSE&G's arbitration statement as a main point in its liability argument.

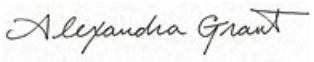
(Da4). Plaintiffs received PSE&G's arbitration statement, including PSE&G's liability report that refers to the inspection documents, on October 21, 2024. Again, and only after the filing of PSE&G's summary judgment motion on January 17, 2025–approximately seven months after Plaintiffs were made aware of the inspection documents–did Plaintiffs request these inspection documents. Discovery was amended to formally include these documents shortly thereafter.

The trial court found no evidence of spoliation on the part of PSE&G in granting its summary judgment motion, and PSE&G respectfully requests this Court to find the same.

CONCLUSION

For the foregoing reasons, PSE&G respectfully requests that the Court affirm the trial court's decision granting PSE&G's motion for summary judgment.

PSE&G
Attorney for Defendant, PSE&G



Alexandra Grant

Dated: July 25, 2025

MONIKA PATEL AND ALPESH PATEL, Plaintiff/Appellant, v. PUBLIC SERVICE ENTERPRISE GROUP, INC., NEW JERSEY TURNPIKE AUTHORITY/GARDEN STATE PARKWAY, ARYAN A. PATEL, JOHN DOE 1-5, AND XYZ CORPORATION 1-10 Defendants/Respondents	SUPERIOR COURT OF NEW JERSEY APPELLATE DVISION DOCKET NO.: A-001948-24 Civil Action APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO.: ESX-L-82-22 SAT BELOW: HON. ROBERT H. GARDNER, J.S.C. ON APPEAL FROM THE TRIAL COURT'S FEBRUARY 28, 2025 ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT PSE&G

APPELLANTS' REPLY BRIEF

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PRELIMINARY STATEMENT

Defendant/respondent Public Service Electric and Gas Company ("PSE&G") argues that plaintiffs/appellants Monika and Alpesh Patel ("Plaintiffs") seek to "relitigate their claims against PSE&G" and that the trial court issued a "well-reasoned oral decision" in granting summary judgment to PSE&G. The Plaintiffs are in fact largely relying on the same arguments made at the trial level, as is customary in a *de novo* review of a trial court granting summary judgment. The trial court did not, however, issue a "well-reasoned oral decision." A review of the two (2) pages in the transcript which contains the trial court's decision makes clear the trial court did not provide any reasoning whatsoever for the conclusions relied upon in granting summary judgment.

As set forth both in Plaintiffs' initial brief and herein, long standing New Jersey tort law confirms the trial court made multiple errors in granting summary judgment to PSE&G, and must be reversed.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT (Pa282-Pa283)

A. Plaintiffs Have Presented Evidence That PSE&G Was Negligent (Pa282-Pa283)

PSE&G argues it does not owe the public (including Plaintiffs) a duty to conduct continuous inspections of its assets (in this case its transformer and utility spacer cables) and also heavily relies on its assertion that it inspected the transformer and utility spacer cables three (3) months prior to the accident.[1]

PSE&G relies on the standard for establishing negligence and that negligence is not presumed and must be proven. With the exception of Plaintiffs' *res ipsa* argument, Plaintiffs do not take issue with these well settled principles of law. Plaintiffs do, however, take issue with PSE&G's assertion that the record is void of any evidence that it was negligent in the maintenance and control of its assets.

As previously stated in its original brief, the record confirms PSE&G doesn't adequately inspect its assets and doesn't bother to replace them until failure occurs

[1] As set forth in Plaintiffs' original brief, the inspection documents are inadmissible as they were not produced in discovery. In fact, in its interrogatory responses, PSE&G specifically certified it did not possess any inspection records related to the transformer or wire involved in the incident (Pa258, Pa262). PSE&G's attempt to now rely heavily on inspection records not produced in discovery is obviously improper and cannot be permitted.

(Pb pg. 13). Those facts, along with Plaintiffs' expert opinions related to PSE&G's negligence in configuring the wires over the GSP in a fashion more susceptible to failure, are more than sufficient to defeat summary judgment.

B. Plaintiffs Do Not Need To Establish PSE&G Had Actual Notice (Pa282-Pa283; Transcript 5:13-24)

PSE&G argues it did not have actual notice of the downed wire and as such Plaintiffs cannot sustain their claims. Again, PSE&G heavily relies on the inspection records it never produced in discovery to support its argument that it did not have actual notice of a potential hazard. PSE&G then admits that constructive notice of a dangerous condition is sufficient to establish a negligence claim, but argues that Plaintiffs have not established constructive notice because this is not a "mode of operation case."

As set forth in Plaintiffs' original brief, the mode-of-operation doctrine is **an extension of the general principle that when a proprietor creates a dangerous condition, "notice, actual or constructive, of [that] dangerous condition is not required...."** Mode-of-operation is therefore not necessary to be established. Even if proving this lawsuit did fall under the "mode-of-operation" doctrine, Plaintiffs would satisfy their burden. Because PSE&G created the dangerous condition by its inactions, Plaintiffs do not need to establish any notice whatsoever in order to establish negligence. The mode-of-operation doctrine only further confirms it is not

necessary for Plaintiffs to establish negligence. PSE&G's argument that it had no actual notice of the condition is irrelevant.

C. Plaintiffs' Expert Opinions Are Not Net Opinions (Pa282-Pa283; Transcript 5:20-21)

PSE&G argues that Plaintiffs' expert opinions are inadmissible "net" opinions. In support of this premise, PSE&G argues that Plaintiffs' expert did not state how PSE&G's inspection of the transformer and wire were improper. Perhaps if PSE&G actually produced the inspection records in discovery, Plaintiffs' expert could have opined as to whether or not such alleged inspection was proper.

PSE&G then argues there is no factual support for Plaintiffs' expert opinion that the spacer cable system was a cause of the wire coming down. This argument is plainly false. In reality, Plaintiffs' expert specifically opined that it is more probable that the damage to the transformer was caused by the circuit failure than vice versa. A failure at the transformer would likely be isolated to the transformer and not cause damage to the primary lines a few spans away. However, a failure of the circuit could more likely cause damage to the transformer. (Pa141).

Further, PSE&G changed the configuration at the location after the incident from the SCS configuration to a traditional cross-arm configuration which is less susceptible to tracking and mechanical line failure. (Pa143-Pa144). This subsequent remedial measure will become admissible at trial because PSE&G is arguing that it was not in exclusive control of the transformer and wire leading up to Plaintiffs'

accident. See, NJRE 407; Kane v. Hartz Mountain Indus., 278 N.J. Super. 129, 148 (App. Div. 1994), aff'd o.b., 143 N.J. 141 (1996).

Plaintiffs' expert opinion that PSE&G'S use of a SCS system configuration was a cause of the circuit falling across the GSP. (Pa145). Each of Orosz's expert opinions were formulated after his review of the voluminous relevant factual record (except for the documents PSE&G failed to produce and the items PSE&G spoliated); his reference of literature on the relevant subjects; research and review of qualified written materials describing the accepted practices and standards of electrical safety; and his own twenty (20) plus years of experience, detailed in his report. Orosz's expert opinions are wholly admissible to assist the jury in deciding central issues in the case related to PSE&G. Orosz's opinions are not "net" opinions, they are expert opinions. The trial court did not explain why it determined Orosz's opinions are net opinions.

D. The Common Knowledge Doctrine And Res Ipsa Are Applicable (Pa282-Pa283; Transcript 6:1-3)

PSE&G argues *res ipsa* does not apply because a squirrel or inclement weather or a tree limb or "other forces" could have caused the wire to fall onto the Garden State Parkway. However, there is no evidence whatsoever to support any such occurrence. The only weather evidence in the case confirms there were zero (0) cloud to ground lightning strokes within five (5) miles of the location of the accident on the date of the accident. (Pa128). There were no tree limbs near the

poles or wires when PSE&G appeared at the accident location. (Pa88). Available "cause codes" on the PSE&G Plant Operation Report that were available and not utilized included "tree," "vegetation," "animal," "balloons," "lightning," "weather." (Pa77-Pa78; Pa280). There is absolutely no evidence whatsoever in this record to suggest an outside event caused the wire to fall.

PSE&G next argues that the driver of the vehicle impacting the downed wire suggests that the doctrine of common knowledge should not apply to this case because the driver was not in PSE&G's control. PSE&G also relies on the trial court statement that "the driver has an obligation to make reasonable observations." Ordinary logic confirms that the driver impacting the downed wire has nothing to do with PSE&G's exclusive control of the wire prior to it falling onto the roadway.

PSE&G also relies on the trial court statement "this is not a common knowledge issue because apparently this wire fell down in the middle of a storm in the middle of the night." (Transcript 5:25-6:3). If there was any evidence to support either of those facts, the trial court's statement may make sense. However, the undisputed facts remain that the wire did not fall down in the middle of a storm or in the middle of the night. Again, the weather report shows (0) cloud to ground lightning strokes. The police report confirms the accident occurred at approximately 9 p.m. (Pa17).

Despite PSE&G's arguments and the trial court's statements, this case fits squarely into both *res ipsa* and common knowledge. The trial court therefore erred in ruling otherwise.

E. PSE&G Clearly Spoliated Evidence (Pa282-Pa283; Transcript 6:4-8)

PSE&G argues it did not spoliate evidence because the disposal of the downed wire was a joint cleanup effort between PSE&G and the NJTA. This despite PSE&G's own employee testifying that it is not typical for another agency to discard a downed PSE&G wire. PSE&G then relies on the trial court statement that there was no preservation notice provided to PSE&G. Unless Monika hand wrote a note from the back of the ambulance at the accident scene, any preservation letter would have been received after the wire was discarded. Surely PSE&G should have known that a serious accident involving a serious injury resulting from a car crashing into one of its downed wires that closed the GSP for hours and triggered multiple incident reports – would have triggered a responsibility to preserve evidence from the accident.

PSE&G lastly argues that even though it didn't produce the inspection reports during the discovery period, Plaintiffs should have requested the records after PSE&G's expert referenced the records, and after PSE&G utilized the records in support of its non-binding arbitration statement. Of course there is no Rule or caselaw cited by PSE&G to support the position that Plaintiffs should have requested

the inspection records after they were referenced in its expert report or after they were referenced in the arbitration statement. The simple fact remains the inspection records were not produced within the discovery period, and in fact ***PSE&G specifically certified there were no such records*** in its interrogatory responses. (Pa258, Pa262). PSE&G's attempt to blame the Plaintiffs for its own failure to produce what it now suggests is critical evidence, is ludicrous.

CONCLUSION

PSE&G has not, and cannot, establish summary judgment is appropriate in this case. New Jersey tort law is long established. Monika sustained serious injuries because a power line owned and maintained by PSE&G fell onto the GSP. The complete record in this case contains numerous genuine issues of material fact regarding PSE&G's negligence in failing to keep the public safe, causing Monika's accident and subsequent serious injuries.

When viewed in a light most favorable to the Plaintiffs, PSE&G cannot escape the fact that its actions and inactions created a hazard to the public. As such, and for all the reasons set forth above, PSE&G's motion for summary judgment should have been denied, and the trial court order granting PSE&G summary judgment should be reversed.

BRACH EICHLER LLC

By: ***/s/ Anthony M. Juliano***
Anthony M. Juliano

DATE: August 8, 2025