



Pulling The Plug

Court rejects suit that blames electromagnetic fields for illness

By MARIE P. GRADY

When Judy Prescott Barnett started searching for the cause of health problems that plagued her family, she didn't have to look very far. She blamed the electromagnetic fields emanating from the power lines 40 feet behind her Trumbull home.

A year after she purchased the house in 1985, Connecticut Light & Power received state approval to install higher capacity transmission lines and towers on a right of way it had been granted on the rear of the property in 1923. Since then, Barnett, the mother of twins, has been diagnosed with lupus and tumors of the uterus and spine while her husband has suffered a brain tumor and stroke.

Fed up with the utility's response to her concerns and frustrated in her efforts to get relief in Superior Court, Barnett recently took her case to the 2nd Circuit Court of Appeals. Her central argument? That there is a constitutional right to be free from the intrusion of excessive levels of electromagnetic fields (or EMFs) in one's home, which in Barnett's case amount to 20 to 30 times the average.

The trouble is that no U.S. agency has yet determined what an excessive EMF exposure level is, said the court in rejecting her challenge. "Indeed, that is a scientific policy question better decided by the legislature than the courts," said the court in its April 20 summary order denying her relief.

Barnett is being represented by Gabriel North Seymour, a lawyer from Falls River in Connecticut's Northwest Corner, and her father, Whitney North Seymour, a former New York state senator and U.S. attorney during the Nixon administration.

Gabriel North Seymour declined comment other than to say that Barnett is considering taking her case to the U.S. Supreme Court.

"She firmly believes that her own, and her husband's, severe health damage is the direct result of high levels of EMF radiation," the plaintiff's lawyers argued in briefs to the court.

Jonathan M. Freiman, Chair of the Appellate and Complex Legal Issues Practice Group at Wiggin and Dana, successfully argued the case on behalf of defendants, including CL&P, Northeast Utilities and United Illuminating Co.

"We're pleased with the court's decision," he said. "The issue of appropriate levels of EMF emissions is vested in the legislature, the people's elected representatives, acting on the advice of scientific policy makers who have addressed this issue for decades; it's not a question for a judge."

The U.S. Supreme Court will typically only take a case where there is a split in the circuit courts or the issue is of national importance. In this case, Freiman said, no state in the nation has set a limit on EMF exposure and the Barnett case marks the first time a circuit court has determined there is no constitutional right to be free from high levels of EMF exposure.

Exposure Common

For decades, property owners across the state and country have complained about the potential dangers posed by high-voltage lines. A cursory search of the Web reveals dozens of sites devoted to the topic. But while the subject often comes up before zoning boards and other land use commissions, so far, there has been little significant legal action.

Everyone living in the modern world



Law Tribune File Photo

Wiggin and Dana attorney Jonathan Freiman successfully argued that the legislature, and not the courts, should set policy on safe levels of electromagnetic field exposure.

has some exposure to EMFs, ranging from those emitted by household electrical appliances to ubiquitous power lines. Whether they generate health risks has been a question leading to conflicting answers.

Although environmental studies done under the aegis of the World Health Organization suggest there is a possibility EMF exposure may be linked to health conditions such as childhood leukemia, a 2007 WHO summation of the research states that the evidence is not strong enough to be conclusive. A 2002 California Department of Health Services study, meanwhile,

found that “EMFs can cause some degree of increased risk of childhood leukemia, adult brain cancer, Lou Gehrig’s Disease, and miscarriage.”

Neither the National Institutes for Health nor the Centers for Disease Control has issued guidelines on safe levels of EMFs connected to electricity or radiofrequency levels associated with cell phone use. However, in a report issued last week, the International Agency for Research on Cancer, an arm of the World Health Organization, found that radiofrequency levels associated with cell phones are “possibly carcinogenic.” Both EMFs and RFs are non-ionizing forms of radiation, unlike X-rays, which at high levels can cause cellular changes.

According to two U.S. surveys conducted in the 1990s, average home EMF levels hover around 1 mG, or milligauss units. Readings conducted by the utility company at Barnett’s request in 1990 showed levels as high as 32 mG in her home. The International Commission on Non-Ionizing Radiation Protection has recommended limiting the general public’s exposure to 833 mG, but no legislature or agency has adopted that recommendation, according to Freiman.

In 1994, Barnett filed a lawsuit in Superior Court seeking damages and an injunction preventing the power company from

using its right of way on her property in a manner which elicited high levels of EMFs. A judge dismissed the case after a utility company executive testified that the EMF levels at the home were a natural byproduct of electricity no different from that emanating from the cord of a lamp.

In 2006, Barnett testified against plans to erect a Trumbull United Illuminating substation next to her property, telling the Connecticut Siting Council that she and her husband had developed tumors and believed the power lines around their home were to blame. During that process, according to her 2nd Circuit appeal, the plaintiff found out that CL&P could have reduced the EMF levels by as much as 50 percent near her home via a process called “reverse phasing,” or altering the direction of the electrical current on alternative lines.

She claimed that the company’s failure to disclose that during her Superior Court suit amounted to concealment and misrepresentation. Freiman, representing CL&P, argued that the company was under no obligation to do so and the Connecticut Siting Council had decided to require the technique only on future power projects after years of studies failed to show definitive EMF health risks.

In addition to constitutional claims

filed under the First, Fourth, Fifth, Ninth and Fourteenth Amendments, Barnett accused the utility companies and officials of a host of misconduct, including infliction of emotional distress. The 2nd Circuit upheld the district court’s dismissal of the constitutional claims and its decision not to exercise supplemental jurisdiction over the state law claims.

Roger Reynolds, senior staff attorney for the Connecticut Fund for the Environment, said his agency has never been involved in a case concerning EMF exposure. Although North Seymour would not comment on the case beyond her written arguments to the court, she did say that the plaintiff was forced to move out of a house she considers uninhabitable. The plaintiff now resides in Arizona but still owns the Trumbull property.

For its part, the 2nd Circuit said the constitutional right to be “safe and secure in one’s home” is not so expansive as to cover the invisible byproducts of electricity and dangers which remain unknown, if they exist at all.

“We have reviewed the relevant case law and conclude that no case establishes a constitutional or common-law privacy or property right to be free from unreasonable levels of EMFs.” ■