

Understanding Your Liability

in third-party contractor situations

A Case Study Review

Last year, a Los Angeles County jury found Qualcomm liable for \$7.1 million¹ in damages as a result of a burn incident. Qualcomm, a telecommunications equipment company, was found negligent in an electrical fire incident, where a third-party contractor suffered third-degree burns while servicing electrical equipment on the company's premise. The incident, which resulted in catastrophic injury, provides an opportunity to assess contractor safety and the liability incurred when contractors step foot on company property.

¹ See CASE NO. 37-2014-00012901-CU-PO-CTL SUPERIOR COURT STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO – CENTRAL.

A Case Study Review

Background

As part of a planned system upgrade, a third-party contractor visited Qualcomm to inspect the on-site generators. He was told the entire system would be turned off while he and others inspected the equipment, so without his personal protective equipment (PPE), he approached a 4,160-volt circuit breaker.

What the contractor did not realize was that the system was still live. When he approached the circuit breaker, after Transpower personnel removed it, a sudden arc flash occurred and his clothes immediately ignited. The resulting fire caused severe burns on 35% of his body, and the contractor spent a month in the hospital recovering from his injuries.

When the contractor brought suit, he claimed that Qualcomm and others were negligent and failed to provide a safe work environment. Qualcomm pushed back, arguing its employees turned off the main breaker on the property and followed appropriate safety procedure before opening the site to the contractor. Further, the company alleged that Transpower and the contractor did not heed safety warnings and did not have permission to remove the circuit breaker cover – contending he contributed to the arc flash incident.

The jury ultimately found Qualcomm 46% negligent, contractor Transpower Testing, Inc. 45% negligent, and the injured contractor himself 9% negligent.

Key Takeaways

This unfortunate incident has a number of implications, but for those in the safety community, there are three critical points to note:

1. The injured contractor was a contract employee, not a direct employee of Qualcomm.
2. The contractor's clothing ignited – indicating he was not wearing flame resistant (FR) apparel, which was later confirmed in his declaration to the court.
3. The contractor was not wearing his PPE because he was advised that the equipment would be de-energized.

Applying the Takeaways

Understanding 70E as it Relates to Third-Party Employees

Under NFPA 70E, safety onus is on both the host company and the contract employer. Below are specific responsibilities each party should take to provide for electrical worker safety under NFPA 70E:

- A host employer's responsibilities include:
 - Informing contract employers of known hazards covered by NFPA 70E, which are related to the contract employer's work, and might not be recognized by the contract employer or its employees.
 - Informing contract employers about any instances where the contract employer will need to make assessments required by Chapter 1 of NFPA 70E.
 - Reporting observed contract employer-related violations of this standard to the contract employer.

A Case Study Review

Applying Takeaways (continued)

- A contract employer's responsibilities include:
 - Ensuring each of the contract employer's employees is instructed in the hazards communication by the host employer, in addition to providing the basic training required by NFPA 70E.
 - Ensuring each employee follows work practices required by NFPA 70E and safety-related work rules required by the host employer.
 - Advising the host employer of unique hazards presented by the contract employer's work, hazards identified during the course of work that were not communicated by the host employer, or measures a contractor took to correct any violations reported by the host employer under NFPA 70E 110.3(A)(2) and to prevent such violations from reoccurring.

Chapter 110.3 of NFPA 70E provides full language to understand your responsibilities as either a contract employer or a host employer. This is important information that should be assessed with your entire safety team at regular intervals to make sure you are fully adhering to the standard.

When working with third-party contractors, it is critical to use an overabundance of caution. As seen above, and underscored by the jury's verdict in the Qualcomm case, the employers – both the host and the contractor – shoulder the considerable majority of the safety burden as compared to the employee performing the actual work.

Understanding the Impact of FR Apparel in Protecting Employees

Electrical employee safety is a system of checks and balances. The NFPA standard outlines both preventative and mitigating measures to ensure the safety and livelihood of those working with electrical systems and equipment.

The Qualcomm incident, we think, does a good job of emphasizing the impact of FR personal protective equipment (PPE) as a safety hazard mitigation tool. While nothing is ever certain, it can be assumed that the lingering clothing-burn caused by arc flash ignition compounded the severity of the contractor's injuries. It seems that if he had been wearing appropriate guaranteed flame resistant arc-rated FR garments, his clothing would have self-extinguished after the arc flash, which could have substantially reduced his burn injuries.

When created with reputedly branded FR fabric, FR apparel helps to mitigate and reduce injury in the event of an arc flash. FR fabrics are engineered to self-extinguish once a thermal source is removed, so garments do not continue to burn post-exposure. This then allows for an employee to quickly remove his or herself from the hazard, without having to deal with post-flash clothing fires.

An arc-rated flame resistant (AR/FR) apparel program comes in many different forms and should be tailored to the specific electrical hazards employees face. Arc-rated fabrics are tested in accordance with F1506 protocol to determine arc rating, and NFPA 70E outlines the necessary arc ratings FR apparel should have when working around various electrical hazards.

A Case Study Review

Applying Takeaways (continued)

AR/FR fabric forms the foundation of an AR/FR garment, so it is necessary to build your program on a solid base – in this instance, a reliable fabric specification.

Understanding the Impact of Task-based vs. Daily Wear Arc-Rated Flame Resistant (AR/FR) Apparel
One final takeaway, which can be drawn from the Qualcomm case, is the importance of daily wear AR/FR apparel. We infer that, because the injured contractor was able to leave his PPE at home, it was likely task-based PPE. Task-based PPE is just as it sounds – the PPE is only worn for a certain task or in certain situations.

While in theory task-based AR/FR clothing programs seem like a cost-effective solution, the reality is it relies too much upon the user. The user must bring and wear AR/FR clothing - typically a coverall - at the correct time, and often, they can be subject to incorrect risk assessments or human nature. Many times, task-based AR/FR clothing, for whatever reason, is not utilized when a situation requires it most.

With daily wear AR/FR clothing programs, the burden on the user is lessened considerably,

as the AR/FR garments - typically a shirt and pants - are worn throughout the day as their standard “uniform.” When AR/FR clothing is worn during the entire workday, employees are more likely to be protected from unforeseen hazards. Comfort is a key component of a daily wear AR/FR clothing program. With numerous FR fabrics on the market, it is important to specify which FR fabric is used to make your AR/FR clothing.

There are some AR/FR fabrics offering a similar look and feel to everyday street clothing. Westex® brand FR fabrics are designed with both the wearer’s protection and comfort in mind, and have been specified for decades by end users globally.

Ready to Discuss Your FR Program?

Westex by Milliken can be a helpful resource as you walk through the review, creation, and implementation steps to create a well-rounded FR program, designed to protect those who come into contact with electrical hazards. Our knowledgeable team of experts can help educate you and your leadership on what an FR program means. To learn more, visit Westex.com

The information in this Case Study represents our analysis of the Qualcomm case. It is not intended to substitute for any testing that may be unique and necessary for your facility for you to determine the suitability of our products for your particular purpose. Because we cannot anticipate all variations in end-user conditions, Westex, Inc. makes no warranties and assumes no liability whatsoever in connection with any use of this information. All sales are exclusively subject to our standard terms of sale posted at www.milliken.com/terms (all additional/different terms are rejected) unless explicitly agreed otherwise in a signed writing.

While we have made every attempt to ensure that the information contained in this Case Study has been obtained from reliable sources, Westex is not responsible for any errors or omissions, or for the results obtained from the use of this information. All information in this Case Study is provided “as is”, with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance, merchantability and fitness for a particular purpose.

In no event will Westex and/or its related entities, or the partners, agents or employees thereof be liable to you or anyone else for any decision made or action taken in reliance on the information in this Case Study or for any consequential, special or similar damages, even if advised of the possibility of such damages. The information contained in the Site is general information and should not be construed as legal advice to be applied to any specific factual situation.