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## *Coates v. Southern Maryland Electric Cooperative, Inc.*

### Utility Pole Owners Have a Duty to Refrain from Creating Unreasonable Risks to Roadway Travelers

By Brent Bolea

The Court of Appeals of Maryland held that utility pole owners have a duty to place their poles in a reasonable position so as not to expose roadway travelers to a potentially dangerous situation. *Coates v. Southern Maryland Electric Cooperative, Inc.*, 354 Md. 499, 731 A.2d 931 (1999). The court stated that although utility pole owners are not under a duty to inspect all existing poles, a factual question is raised regarding unreasonable risk if a utility pole owner knows that its pole has been involved in previous collisions. The court also found that utility pole owners must consider road and site conditions when placing poles, but that an owner's duty is presumably met when a government body mandates placement.

On August 19, 1991, George Thompson ("Thompson") lost control of his pick-up truck and hit a utility pole located approximately three feet from the edge of a winding, two-lane roadway. Passenger Mary Anne Coates was killed in the accident, and her pregnant daughter, also a passenger, sustained injuries which caused the loss of her baby. The utility pole was owned by Southern Maryland Electric Cooperative, Inc. ("SMECO"). Trial evidence showed that no government body gave SMECO precise instructions as to pole placement, and that the utility pole

had been involved in a previous collision, the details of which were unknown.

Mary Anne Coates's mother brought suit in the Circuit Court for Charles County. The court granted summary judgment for SMECO, finding that it owed no duty to the plaintiffs. The lower court determined that SMECO's only duty was to keep its poles from interfering with the "proper [ ] and reasonable use of the highway by vehicles." Prior to being heard by the Court of Special Appeals of Maryland, the Court of Appeals of Maryland reviewed the circuit court's holding.

In the first stage of its analysis, the court of appeals explored Maryland law finding that utilities have been found liable for utility pole collisions only when, "(1) the utility chose the location of the pole, free from governmental direction, and (2) the pole created a danger to persons while on the traveled portion of the road." *Coates*, 354 Md. at 514, 731 A.2d at 938. Although the court found no Maryland law imposing liability where a vehicle struck a utility pole while off the traveled portion of a road, it acknowledged that such liability had never been ruled out. *Id.* at 514, 731 A.2d at 938-39.

The court then examined various factors used by other states to decide utility pole owner liability. The court

found that some jurisdictions had based their decision in terms of the utility's duty, while others used proximate cause of the accident. *Id.* at 514-15, 731 A.2d at 939. Additional factors considered by the court were: (1) whether pole placement was directed by a government agency; (2) proximity to roadway; (3) nature and condition of roadway; (4) history of collisions; (5) driver conduct; (6) feasibility of pole relocation; and (7) cost and effectiveness of requiring pole relocation by imposing tort liability. *Id.* at 514, 731 A.2d at 939.

The court also looked at A.L.R. annotations and, therefrom, derived the general proposition that "liability depends on whether the pole is located in or so close to the traveled portion as to constitute a danger 'to anyone properly using the highway, and on whether the location of the pole is the proximate cause of the injury.'" *Id.* at 515, 731 A.2d at 939. The court also examined the Restatement Second of Torts, focusing particularly on section 368(b), which states that a utility could be liable if a person foreseeably leaves the highway in the ordinary course of travel. *Id.* at 516, 731 A.2d at 940.

In addition to its current case law analysis, the court further stated that public policy considerations play

a necessary role in determining whether a duty exists. *Id.* at 523-24, 731 A.2d at 944. Factors to consider, the court pointed out, are “convenience of administration, the extent of the burden on the utility and its capacity to bear that burden, the benefit or detriment to the community, the desire to prevent future injuries, and any moral blame associated with the placement of the pole.” *Id.*

After examining the above-mentioned sources, the court of appeals made a multi-faceted conclusion. First, that a utility has a duty not to endanger those traveling on the portion of a roadway intended for lawful travel. *Id.* Further, that a utility has presumptively complied with its duty if a pole is placed at the direction or approval of a government body. *Id.* at 525, 731 A.2d at 944. If, however, some extraordinary circumstance makes the placement obviously dangerous, a duty may be created for the utility to avoid or resist putting the pole in that location. *Id.* at 525, 731 A.2d at 944-45. The court also held that a utility may ordinarily assume that travelers will use roads in a reasonable, lawful manner, and that given a choice, a utility must place a pole in the least dangerous position, taking into account road conditions and topography. *Id.* at 525, 731 A.2d at 945. Finally, the court held that if a utility is aware that a pole has been in “frequent accidents or an accident that is not freakish and indicates a likelihood of future collisions, a question of fact is created whether the pole ‘incommodes’ or unreasonably imperils traffic on the road.” *Id.*

Applying these principles to the

instant case, the court upheld SMECO’s motion for summary judgement, concluding that it did not have a duty to anticipate and guard against Thompson’s deviation from the roadway. *Id.* at 526, 731 A.2d at 945. In so holding, the court noted the posted 35 miles per hour speed limit, the pole’s location on the opposite side of the road from where Thompson was driving, and Thompson’s history of traveling on the same road repeatedly without incident. *Id.* The court also pointed out that according to expert testimony, the pole was not awkwardly placed from Thompson’s perspective, and that anyone travelling under 52-56 miles per hour should not leave the roadway. *Id.* Finally, the court stated that SMECO’s duty was unrelated to Thompson’s negligence, and that a previous collision with the same pole was irrelevant to its holding because the nature of that incident was unknown. *Id.*

The Court of Appeals of Maryland in *Coates*, attempts to clarify utility pole liability by defining the nature of a utility pole owner’s duty to roadway travelers. The court has adopted a flexible approach toward determining liability, as it was not willing to grant utilities complete immunity, but the court also wanted to avoid imposing on them an undue burden. Its efforts, however, may create more confusion than clarity. Ultimately, the vague nature of the court’s holding may result in increased litigation, an outcome the court was trying to avoid.