

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DEYANARA MOJICA HICHEZ, Individually) and as Personal Representative of the Estate of) RAFAEL MENA PEREZ, her husband, and as) parent and next friend of their minor children,) L.M.M., D.M.M., and D.M.M.,) Plaintiffs,) v.) DELMARVA POWER & LIGHT COMPANY,) PEPCO HOLDINGS, LLC, ASPLUNDH TREE) EXPERT CO., ASPLUNDH TREE EXPERT,) LLC, VERIZON DELAWARE, LLC, and) COMCAST OF DELMARVA, LLC,) Defendants.)	C.A. No. N19C-10-273 KMM
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Date Submitted: May 29, 2026
Date Decided: August 14, 2026

*Delmarva's Motion for Summary Judgment – **GRANTED** in part, **DENIED** in part*
*Comcast's Motion for Summary Judgment – **DENIED***

MEMORANDUM OPINION AND ORDER

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Miller, J.

I. INTRODUCTION

Rafael Mena Perez was employed by a tree trimming company that was hired by Delmarva Power & Light Company (“Delmarva”) to trim a tree around its electrical lines. The company assigned that task to Mr. Mena Perez. While he was in the tree, he was electrocuted and died.

Plaintiffs—Mr. Mena Perez’s estate and loved ones—bring claims against Delmarva, Verizon Delaware LLC (“Verizon”), and Comcast of Delmarva LLC (“Comcast”). The thrust of Plaintiffs’ claims is that Delmarva, Verizon, and Comcast failed to properly maintain their equipment surrounding the area of the tree in a safe manner and those failures caused Mr. Mena Perez’s injuries. Delmarva¹ and Comcast² each moved for summary judgment, asserting they owed no duty to Mr. Mena Perez.

Delmarva relies on common law limitations on duties of a landowner to employees of independent contractors hired to work on the property. Delmarva asserts that because Mr. Mena Perez was injured by the very risk inherent in his job (trimming branches near electrical lines), as a landowner, it owed him no duty. But, a landowner owes a duty to warn its business invitees of defective conditions on its property. While Delmarva owed no duty to warn of the defective condition of

¹ D.I. 425.

² D.I. 429.

branches near electrical lines—the very hazard Mr. Mena Perez was hired to eliminate—Plaintiffs point to other defective conditions that they argue caused Mr. Mena Perez’s injuries. Plaintiffs point to evidence in the record in support, which raises factual disputes. Accordingly, Delmarva’s Motion for Summary Judgment on this theory is ***DENIED***.

Delmarva also seeks summary judgment on Plaintiffs’ claim that Delmarva owed a non-delegable duty. Again, because of Delmarva’s landowner status and Mr. Mena Perez’s employee of an independent contractor status, Delmarva asserts that the law does not support such a duty. On this claim, Delmarva finds success. Under the legal relationship between Delmarva and Mr. Mena Perez, Plaintiffs must point to statutes or regulations that require the use of specific safety precautions while trimming trees near electrical lines. Plaintiffs have failed to do so. Accordingly, Delmarva’s Motion for Summary Judgment on this claim is ***GRANTED***.

Comcast argues that it owed no duty to Mr. Mena Perez because it is a “legal stranger” to Mr. Mena Perez. Duty is derived from the relationship between parties. In determining whether a relationship exists such that the law will impose a duty, the court must look to statutory and common law. The Delaware Code regulates cable television companies and incorporates the National Electric Safety Code (the “NESC”). The NESC requires communication cables to be maintained in a safe

manner, including the trimming of vegetation around communication lines. Among the purposes for doing so is the protection of persons during the maintenance of overhead electrical lines. Mr. Mena Perez was such a person. Accordingly, Comcast owed a duty to Mr. Mena Perez and its Motion for Summary Judgment is ***DENIED***.

II. FACTUAL BACKGROUND³

A. *The subject tree and related equipment*

The tree situated on the property located around Saulsbury Avenue and Temple Terrance in Wilmington (the “Tree”), grew into and around utility lines, which were fastened to a utility pole on the nearby sidewalk on Saulsbury Avenue (the “Sidewalk Pole”) and another in a residential backyard (the “Backyard Pole”). The utility poles are owned by Verizon. Attached to the poles, at the highest elevation, are Delmarva’s electrical conductor lines, comprised of 12kV tree wire.⁴ Below, Comcast’s and Verizon’s communication lines are attached.

Delmarva is required to maintain the vegetation around its electrical conductors. It engaged Asplundh Tree Expert, LLC (“Asplundh”) to perform such services. Part of Asplundh’s scope of work was to trim the Tree around the electrical

³ The facts are derived from the undisputed facts and exhibits submitted by the parties. Citations in the form of [Name] Rep. refer to expert reports submitted as exhibits by the parties. Citations in the form of [Name] Disclosure refer to expert disclosures submitted as exhibits by the parties. Citations in the form of [Name] Dep. refer to expert and fact witness testimony from a deposition transcript submitted as an exhibit by the parties.

⁴ The parties do not dispute that Delmarva is a landowner by virtue of its utility easement.

and communication lines on August 2, 2018.⁵ Asplundh employee Mr. Mena Perez was assigned this job.⁶

The electrical conductor lines running through the Tree created problems in the years leading up to the August 2018 incident. Specifically, a homeowner called Delmarva “two or three times” “[s]o that they could trim” the Tree, after she witnessed arcing and “sparks flying [onto her] roof” as a result of the electrical lines coming into contact with the Tree.⁷ On one occasion, the arcing was so severe that two branches caught on fire.⁸ In response to the calls, Delmarva “came out [to trim] twice[.]”⁹

Verizon’s and Comcast’s lines were passing through and contacting the Tree.¹⁰

B. *The incident*

On August 2, 2018, Mr. Mena Perez was a climber, *i.e.*, his task was to climb into the Tree and trim its branches. To get a sense of the job, he and his co-workers looked at the Tree, the area surrounding it, and discussed with their superiors what

⁵ D.I. 423, Ex. A (“Floyd Rep.”) at 13. Tree wire is the term used for electrical conductors that have a factory installed extruded plastic covering. The purpose of the covering is to reduce service outages, it does not provide sufficient insulation to make a conductor safe to touch. *Id.* at 7.

⁶ D.I. 421, Ex. A (“Webber Rep.”) at 8; D.I. 483 (Compendium of Deposition Transcripts Volume IV, part 2 (“Bellafore-Dougherty Dep.”)) at 19–20 (describing the location of the Tree in her backyard).

⁷ Bellafore-Dougherty Dep. at 28, 43, 50.

⁸ *Id.* at 50–51.

⁹ *Id.* at 46–47.

¹⁰ D.I. 422, Ex. A (“Orosz Rep.”) at 17.

needed to be done.¹¹ The crew concluded that the Tree “was a regular tree, just like the ones [Asplundh] did every day,”¹² and the surrounding area did not present any greater danger than what the crew typically experienced.¹³ Thereafter, Mr. Mena Perez climbed into the tree and began to trim. When a climber is in the tree, Asplundh has another employee on the ground (a “spotter”) to observe the climber and keep him safe.¹⁴

Roughly 30 to 40 minutes after he started, Mr. Mena Perez requested that his spotter go to a truck—approximately 50 to 100 feet away from the Tree—to retrieve him water.¹⁵ The spotter obliged and headed toward the truck.¹⁶ Upon arriving at the truck, the spotter heard Mr. Mena Perez scream twice,¹⁷ and rushed back to the Tree, finding Mr. Mena Perez hanging in his harness, unresponsive.¹⁸ The spotter alerted other crew members, who quickly arrived on the scene.¹⁹ The crew lowered

¹¹ D.I. 483 (Compendium of Deposition Transcripts Volume IV, part 1 (“Pena Dep.”)) at 41–44, 86.

¹² *Id.* at 86.

¹³ *Id.*

¹⁴ D.I. 482 (Compendium of Deposition Transcripts Volume III, part 2 (“Mendoza Figueroa Dep.”)) at 44–49.

¹⁵ Pena Dep. at 45.

¹⁶ *Id.*

¹⁷ *Id.* at 45–49

¹⁸ *Id.* at 50; Mendoza Figueroa Dep. at 53.

¹⁹ Pena Dep. at 55.

Mr. Mena Perez out of the Tree.²⁰ EMS arrived and transported him to a local hospital,²¹ where he was later pronounced dead.²²

An autopsy revealed that electrocution, through contact with Delmarva's electrical lines, caused his death.²³ Mr. Mena Perez had electrical burns on both hands, the upper part of both legs, and the lower part of his left leg.²⁴ The electrical current path indicates that the current flowed through his heart, "causing ventricular fibrillation and ultimately cardiac arrest and death."²⁵

C. *Summary of Plaintiffs' experts' relevant opinions*

Plaintiffs proffer expert reports and testimony from James Orosz, H. Landis Floyd, Joseph Loferski, and Mark Webber, among others. These experts' opinions relate to the condition of the Tree, the utility lines, and poles.²⁶

1. *James Orosz*

James Orosz, an electrical engineer, states that "[i]t is known ... that vegetation in contact with [electrical] lines can conduct fatal levels of electrical current."²⁷ He explains that it is not the electrical voltage but the electrical current

²⁰ *Id.* at 56–57.

²¹ *Id.* at 56–58.

²² D.I. 419, Ex. A ("Arden Rep.") at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Various experts also offer opinion as to Verizon. Because it did not file a motion for summary judgment, the Court focuses on the opinions relating to Delmarva and Comcast.

²⁷ D.I. 422, Ex. A ("Orosz Rep.") at 5.

that causes a person to be electrically shocked.²⁸ Mr. Orosz noted that Mr. Mena Perez had injuries to both hands and both legs, indicating that the electrical current flowed through his body and exited through his legs.²⁹ Mr. Orosz opines that Mr. Mena Perez “made indirect contact” with Delmarva’s electrical line.³⁰ Mr. Orosz further opines that a cause of that indirect contact was Delmarva’s failure to inspect and maintain its electrical lines. Orosz relies on various regulations in support.

Based on his review of historical photographs of the area, including of the Tree and relevant electrical and communication lines, Mr. Orosz concludes that Delmarva failed to inspect and perform necessary vegetation management on the Tree for at least six years, which caused Mr. Mena Perez’s electrocution.³¹

Mr. Orosz opines that Comcast similarly failed to adequately maintain the vegetation around the communication lines, which caused Mr. Mena Perez’s electrocution.

Finally, Mr. Orosz opines that the Sidewalk Pole had been in place since 1953 and it had not been properly or timely inspected in the decades prior to the incident.³² The top of the pole was cracked and “had rotting” at its base.³³ The Sidewalk Pole had significant bend toward its top, and because of this defect, the Delmarva line

²⁸ *Id.* at 7.

²⁹ *Id.* at 5.

³⁰ D.I. 422, Ex. D (“Orosz Dep.”) at 18.

³¹ Orosz Rep. at 11.

³² D.I. 422, Ex. B (“Orosz Disclosure”) at 60.

³³ *Id.*

“attached to the pole was not stable, was more likely to move, sag, and sway[.]”³⁴

The Sidewalk Pole was defective and in need of replacement prior to the incident on August 2, 2018.

2. H. Landis Floyd

Mr. Floyd is an electrical engineer with over 45 years of experience in occupational electrical safety management.³⁵ He opines that the utility poles were in a damaged and rotted condition.³⁶ Mr. Floyd further opines that the condition of the Sidewalk Pole (including the detachment of the top part of the pole) and the attachment of Delmarva’s line to that pole, allowed for greater movement and sway of the line, creating an even greater likelihood that Delmarva’s line would come in to contact with the Tree.³⁷

Mr. Floyd further opines on the extent of contact between the Tree and Delmarva’s line. He notes that the evidence shows that the plastic covering on Delmarva’s line had been damaged³⁸ “due to arcing and abrasion[,] indicating [that Delmarva’s line] had [made] multiple contacts with the [T]ree.”³⁹ Mr. Floyd opines this created “a hazardous, life-threatening condition [] that allowed electric current

³⁴ *Id.*

³⁵ Floyd Rep. at 1, 7.

³⁶ The Sidewalk Pole was installed in 1953 and the Backyard Pole was installed in 1951. D.I. 423, Ex. C (“Floyd Rebuttal Disclosure”) at 6.

³⁷ Floyd Disclosure at 50; Floyd Rebuttal Disclosure at 6.

³⁸ Floyd Rep. at 12.

³⁹ *Id.* Delmarva’s line “had been in contact with tree limbs[.]” *Id.* at 15.

to travel through the [T]ree to earth[,]” presenting a shock hazard to any person in contact with the Tree.⁴⁰

As to Comcast, Mr. Floyd opines that “[h]ad ... Comcast taken prior actions to prevent” the hazardous conditions as a result of the conditions of the utility poles and Tree—such as replacing the pole or removing the Tree—“the tree limbs would not have been in contact with [Delmarva’s electrical line] and the incident that resulted in [Mr.] Mena Perez’s death would not have occurred.”⁴¹

3. *Joseph Loferski*

Joseph Loferski is an expert in wood science and wood engineering. Mr. Loferski opines that on August 2, 2018, the Sidewalk Pole was “old, severely weakened, fractured and decayed in the upper zone and rotted with missing wood at the highly stressed bottom of the pole.”⁴² Utility poles act as cantilever beams, with the stress on the pole focused on the bottom.⁴³

Mr. Loferski opines that the Backyard Pole was “old, severely weakened, and decayed, and in need of replacement.”⁴⁴

⁴⁰ *Id.* at 13.

⁴¹ *Id.* at 17–18.

⁴² D.I. 420, Ex. A (“Loferski Disclosure”) at 30.

⁴³ *Id.* at 31.

⁴⁴ *Id.* at 32.

4. *Mark Webber*

Mark Webber is a Master Arborist, a Certified Utility Arborist Specialist, and is tree risk assessment certified.⁴⁵ Mr. Webber opines that Delmarva and Comcast failed to adequately manage vegetation surrounding their lines.⁴⁶ That failure, he continues, exposed Mr. Mena Perez to an unnecessary electrical hazard.⁴⁷

Mr. Webber inspected the Tree during a site visit⁴⁸ and reviewed 21 aerial and street-view photographs of the Tree and the area surrounding it.⁴⁹ The photographs span over a decade, from September 2005 through March 2019.⁵⁰ Mr. Webber opines “that the [T]ree was not actively managed by the defendants Comcast, ... [and] Delmarva ... for 18-years prior to [Mr. Mena Perez’s] injuries and this is the cause of his injuries.”⁵¹

Mr. Webber additionally opines that his “inspection found the [T]ree in a highly deteriorated condition” and that it “contained severely decayed regions” amounting to an “imminent risk [of] failure onto [electrical lines], people, and property.”⁵²

⁴⁵ Webber Rep. at 7.

⁴⁶ *Id.* at 54.

⁴⁷ *Id.* at 3.

⁴⁸ *Id.* at 40.

⁴⁹ *Id.* at 11–30.

⁵⁰ *Id.*

⁵¹ *Id.* at 58.

⁵² *Id.* at 40.

III. THE PARTIES CONTENTIONS

Delmarva does not dispute its obligation to maintain vegetation around its electrical lines. It contends that because it hired Asplundh to perform tree trimming services and Mr. Mena Perez was injured and died from the very risk of performing that work, Plaintiffs cannot recover and thus, it is entitled to summary judgment on Count II.

Delmarva also moves for summary judgment on Count VI, which asserts that Delmarva owed Mr. Mena Perez a non-delegable duty. Delmarva contends that this is so because Delmarva owed no duty to Mr. Mena Perez as he does not fall within the protections of Section 409 of the Restatement (Second) of Torts.

Plaintiffs respond that, unlike the asbestos cases Delmarva relies on, Mr. Mena Perez did not create the hazard that injured him. Further, Delmarva knew this electrical line created a hazard by repeatedly coming into contact with the Tree and for years Delmarva failed to properly inspect the poles and the wires or warn Mr. Mena Perez of the dangers, thus, creating issues of fact, precluding summary judgment.

Comcast contends that it owed no legal duty to Mr. Mena Perez and its equipment did not cause Mr. Mena Perez's injuries. Therefore, it is entitled to judgment as a matter of law.

Plaintiffs respond that the Delaware Code imposes a legal duty on Comcast, *via* its franchise, to comply with the NESC, which requires Comcast to engage in vegetation management. Because it did not do so, Plaintiffs contend they have raised factual disputes, making summary judgment impermissible.

IV. SUMMARY JUDGMENT STANDARD

A motion for summary judgment may only be granted when no genuine issue of material facts exists, and the moving party is entitled to judgment as a matter of law.⁵³ The motion will be denied “if there is a material fact in dispute or if it seems desirable to inquire into the facts to clarify the application of the law to the circumstances.”⁵⁴ The moving party bears the initial burden of showing the absence of a genuine issue of material fact.⁵⁵ If that burden is met, “the burden shifts to [the] non-moving party to demonstrate that there are material issues of fact.”⁵⁶ The court must view the facts and evidence, and draw all reasonable inferences thereof, in the light most favorable to the non-moving party.⁵⁷

⁵³ Super. Ct. Civ. R. 56(c); *see, e.g., Jiggy Puzzles, LLC v. Steelhead Acquisition EE, Inc.*, 2026 WL 465112, at *4 (Del. Super. Feb. 18, 2026).

⁵⁴ *Radulski v. Liberty Mut. Fire Ins. Co.*, 2020 WL 8676027, at *3 (Del. Super. Oct. 28, 2020) (cleaned up).

⁵⁵ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁵⁶ *Id.* at 681.

⁵⁷ *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

V. ANALYSIS

“In order to be held liable in negligence, a defendant must have been under a legal obligation—a duty—to protect the plaintiff from the risk of harm which caused his injuries.”⁵⁸ Pressing different legal theories, both Delmarva and Comcast argue that they were under no such obligation to Mr. Mena Perez. And with no duty owed, Plaintiffs’ claims against them cannot survive, they contend. The Court addresses each in turn.

A. *Delmarva’s motion*

Delmarva’s motion relies, in large part, on the relationship between Delmarva, Asplundh, and Mr. Mena Perez. The record shows that Delmarva hired Asplundh to perform vegetation management on the Tree. There is no dispute that Asplundh was an independent contractor and it employed Mr. Mena Perez. In asserting that a duty exists, Plaintiffs first rely on Section 343 of the Restatement (Second) of Torts—referred to as the safe workplace doctrine. Delaware has adopted Section 343,⁵⁹ which states:

A possessor of land is subject to liability for physical harm caused by his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will discover or realize the

⁵⁸ *Fritz v. Yeager*, 790 A.2d 469, 471 (Del. 2002) (citing *Bryant v. Delmarva Power & Light Co.*, 1995 WL 653987, *2 (Del. Super. 1995)).

⁵⁹ *DiOssi v. Maroney*, 548 A.2d 1361, 1366 (Del. 1988).

danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.⁶⁰

Outside of a Section 343 analysis, Plaintiffs bring Count VI (non-delegable duty) against Delmarva and point to a number of statutes and regulations they say require Delmarva to maintain the safety of others and its equipment. Plaintiffs argue that Delmarva's failure to comply with the statutes and regulations supports their theory of liability. Delmarva argues that the claim cannot survive even if the Court finds a duty based on Section 343.

Under either of Plaintiffs' theories, Delaware common law has limited the liability of landowners when employees of independent contractors are hired to work on the landowner's property. Delmarva invokes those limitations here.

1. *Delmarva owed a duty to keep its premises safe and to warn of defective conditions.*

Delmarva's argument can be distilled down to one simple theory: Mr. Mena Perez's injuries were the result of the very work he was hired to perform. In general, "an owner or general contractor does not have a duty to protect an independent contractor's employees from the hazards of completing the contract."⁶¹ But, Delaware has long recognized that employees of independent contractors, as business invitees, are owed a duty by landowners to have the premises on which they

⁶⁰ Restatement (Second) of Torts § 343.

⁶¹ *In re Asbestos Litig. (Wenke)*, 2007 WL 1651964, at *6 (Del. Super. May 31, 2007) (internal quotation marks and citation omitted).

work kept in a reasonably safe condition and to be warned of latent defects of which the landowner knows or has reason to know.⁶²

It logically follows then, that “the possessor of land has no duty to warn an independent contractor of ordinary dangers incident to the type of work in which he is engaged and performing on the property.”⁶³ “This limitation is based on the reality that ‘the contractor possesses superior knowledge of the dangers inherent in the work’ it was hired to perform.”⁶⁴ Indeed, Delaware courts have routinely dismissed cases in which an independent contractor and landowner were equally knowledgeable of the defective conditions existing on the property because, the independent contractor was hired to rectify the condition⁶⁵ or where, by the nature of their work, the independent contractor created the defective condition.⁶⁶

But it is also true that “a possessor of land may still be liable for breaching its duty to independent contractors as business invitees, provided that the possessor and subcontractor are: (1) not equally knowledgeable of the hazardous condition ...; and

⁶² *Seeney v. Dover Country Club Apartments, Inc.*, 318 A.2d 619, 622 (Del. Super. 1974) (first citing *Fahey v. Sayer*, 106 A.2d 513 (Del. 1954), and then citing *Vorous v. Cochran*, 249 A.2d 746, 747 (Del. Super. 1969)).

⁶³ *Vorous*, 249 A.2d at 747 (citing *White v. United States*, 97 F.Supp. 12, 14 (N.D. Cal. S.D. 1951)).

⁶⁴ *Ramsey v. Georgia S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255, 1275 (Del. 2018) (quoting *Wenke*, 2007 WL 1651964, at *6).

⁶⁵ *Vorous*, 249 A.2d at 747.

⁶⁶ *Wooleyhan II*, 2006 WL 1214980, at *3 (Del. Apr. 12, 2006) (TABLE); *Seeney*, 318 A.2d at 619; see also *O'Connor v. Diamond State Tel. Co.*, 503 A.2d 661 (Del. Super. 1985). That reasoning is further supported by the general proposition that “if a danger is so apparent that the invitee can reasonably be expected to notice and protect against, the condition itself constitutes an adequate warning.” *Niblett v. Pennsylvania R.R. Co.*, 158 A.2d 580, 582 (Del. Super. 1960).

(2) the subcontractor or its employees did not create the hazardous condition.”⁶⁷ Provided that “the independent contractor employee is ‘injured as a result of the work (and negligence) of others including, arguably, the landowner[.]’”⁶⁸

Delmarva’s argument relies on the jurisprudential developments of asbestos litigation in Delaware. To differentiate between types of plaintiffs, the Delaware Supreme Court in *In re Asbestos Litigation (Wooleyhan II)*⁶⁹ separated them into two groups—later known as Group A and Group B plaintiffs. The distinction drawn between the two groups depended upon the nature of the work they performed on the landowner’s premises.⁷⁰ Group A consisted of “employees of independent contractors who did not work directly with asbestos (such as painters or other tradesmen), but allege[d] they were exposed to asbestos on the defendants’ premises while working along side of other contractors who were working directly with asbestos”⁷¹ Group B plaintiffs were “employees of independent contractors who worked directly with asbestos while on the defendants’ premises, such as asbestos installers or asbestos insulators”⁷²

The *Wooleyhan II* court declined to extend Section 343 liability to landowners in the Group B context. In the court’s words:

⁶⁷ *Harford Mut. Ins. Co. v. Weiner*, 2014 WL 4247724, at *5 (Del. Super. July 15, 2014).

⁶⁸ *Ramsey*, 189 A.3d at 1275 (quoting *Wenke*, 2007 WL 1651964, at *10).

⁶⁹ 2006 WL 1214980 (Del. 2006) (TABLE).

⁷⁰ *Id.* at *1.

⁷¹ *Wenke*, 2007 WL 1651964, at *1 (identifying Group A plaintiffs).

⁷² *Id.* (identifying Group B plaintiffs).

If the independent contractor, through its work, *causes the condition* that might otherwise give rise to landowner liability under § 343 of the Restatement, employees of that independent contractor have no basis to claim that the landowner is liable for injuries resulting from that condition. In short, to extend landowner liability under § 343 for conditions *caused by* the independent contractor whose employees seek recovery for their injuries from the landowner, finds no support in the law of Delaware or the policies underlying § 343. Accordingly, the employees of an independent contractor may not invoke § 343 of the Restatement to establish landowner liability for injuries caused by conditions created by their independent contractor-employer.⁷³

As to Group A plaintiffs, the *Wooleyhan II* court recognized that Section 343 “offered a viable basis upon which a landowner could be held liable to the employee of an independent contractor for failing to provide a safe work place[.]”⁷⁴ Taking the classifications of Group A and Group B plaintiffs together, to proceed under Section 343, the employee of an independent contractor must be injured by the negligence of “others,” but employees working for the same independent contractor are not “others” and thus cannot seek recovery against the landowner on that basis.

As succinctly stated by then-Judge Slights “*Wooleyhan II* adopted Section 343 in the asbestos context....”⁷⁵ Thus, *Wooleyhan II* and its Group A and Group B framework is an acknowledgment of what the Delaware common law already makes clear: a landowner is not liable for the injuries of an employee of an independent contractor resulting from a defective condition on the landowner’s property if the

⁷³ *Wooleyhan II*, 2006 WL 1214980, at *3 (emphasis added).

⁷⁴ *In re Asbestos Litig. (Helm)*, 2007 WL 1651968, at * 17 (Del. Super. May 31, 2007).

⁷⁵ *Id.* at *18.

independent contractor was knowledgeable of the defective condition or if the independent contractor (including through its employees) caused the defective condition. *Wooleyhan II*, and its progeny, provide helpful guidance here.

a. *Plaintiffs may pursue the claim that Delmarva negligently maintained its premises.*

Delmarva argues that Mr. Mena Perez is a Group B plaintiff, thus he cannot assert a claim under Section 343. As an initial matter, Delmarva contends that Mr. Mena Perez must be a Group B plaintiff because he was not injured by employees of another independent contractor like Group A plaintiffs in *Wooleyhan II*. But as subsequent decisions have made clear, the inquiry does not turn on whether the employees of independent contractors were injured by other independent contractors; the gating question is whether the employee-plaintiff was injured by a defective condition created by his employer. A later asbestos case, *In re Asbestos Litigation (Rath)*, highlights that difference.⁷⁶

In *Rath*, plaintiff was a career union carpenter. For nearly thirty years, he was repeatedly hired by the same independent contractor to erect and disassemble scaffolding in chemical and energy facilities throughout Delaware.⁷⁷ That independent contractor also hired other employees with whom plaintiff worked. Among those other employees were those whose work necessarily involved

⁷⁶ *In re Asbestos Litig. (Rath)*, 2019 WL 1772493 (Del. Super. Apr. 18, 2019).

⁷⁷ *Id.* at *1.

asbestos.⁷⁸ Plaintiff brought suit against the chemical and energy facilities; defendants moved for summary judgment on the basis that they did not owe a duty.⁷⁹ The *Rath* court agreed with defendants, reasoning that the independent contractor that employed plaintiff also employed all other independent contractors that worked alongside him, including other tradesmen whose work involved asbestos.⁸⁰ Thus, plaintiff's claims "fail[ed] because he allege[ed] exposure as a *result of his own employer's work with asbestos[,]*" not the negligence of others, such as the landowner.⁸¹

The *Rath* court then proceeded to analyze plaintiff's allegations of defendants' negligence in maintaining their facilities, outside the work performed by his employer. Plaintiff alleged that defendants failed to maintain pipe covering and insulation, exposing him to asbestos.⁸² The court found the argument without merit, not because defendants could not be held liable for their own negligence, but because plaintiff failed to produce facts that he was exposed to asbestos through the pipe covering and insulation.⁸³

Outside of the asbestos context, but still within the confines of Section 343, Delaware caselaw makes clear what *Rath* suggests—a landowner negligently

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at *10.

⁸¹ *Id.* (emphasis added).

⁸² *Id.*

⁸³ *Id.* at *10–11.

maintaining its property or failing to warn of defective conditions is a viable path to Section 343 liability for employees of independent contractors.⁸⁴ That is, merely because Mr. Mena Perez was not injured by the work of a different independent contractor does not defeat Plaintiffs' claim as Plaintiffs assert that Delmarva itself was negligent. To support that allegation, Plaintiffs point to Delmarva's knowledge that the Tree had previously contacted its electrical lines causing sparks and arcing, its failure to conduct vegetation management of the Tree, its failure to inspect the poles holding its lines, and a failure to inspect the lines themselves. Doing so, according to Plaintiffs, would have revealed the defective conditions that later caused Mr. Mena Perez's injuries. Evidence of those defective conditions, unlike in *Rath*, is supported by photographs, testimony, and expert opinions.⁸⁵

b. Mr. Mena Perez's injuries did not solely result from the dangers inherent in his work.

Delmarva's primary contention is that Mr. Mena Perez's injuries were a result of the work he was hired to perform. As discussed, the duties owed to independent contractors, as business invitees, "are not imposed upon the possessor of land where the contractor and the possessor are equally knowledgeable of the defective

⁸⁴ See *Harford Mut. Ins. Co.*, 2014 WL 4247724, at *5; see also *Morris v. Hitchens*, 1993 WL 138690, at *2–3 (Del. Super. Mar. 18, 1993).

⁸⁵ Delmarva also points to *Urena v. Capano Homes, Inc.*, 901 A.2d 145 (Del. Super. 2006). That case has no application here because it did not involve allegations of the landowner negligently maintaining its premises or failing to warn its business invitees of defective conditions.

conditions existing on the property[.]”⁸⁶ And, as a result of their superior knowledge of the dangers inherent in their work, independent contractor employees have no cause of action under Section 343 if they are injured by the very hazards of the work they were contracted to perform.⁸⁷

Delmarva argues that it hired Asplundh because of its expertise in trimming trees surrounding power lines. Asplundh, through this expertise, understands then that there is an inherent danger in its work given its proximity to electrical lines—electrocution. Plaintiffs do not contest Delmarva’s characterization of Asplundh as an expert in vegetation management around electrical lines, instead they argue that Asplundh’s expertise does not absolve Delmarva of its duty to warn of other latent defects about which Delmarva knew or should have known. Put another way, Plaintiffs point to other defects beyond just the overgrowth of the Tree (the defect Asplundh was hired to rectify) that they argue constituted hazardous defective conditions. This differs from what the *Wooleyhan II* court confronted. There, Group B plaintiffs could not pursue recovery because they worked “directly with asbestos”—asbestos exposure was the nature of their job.

Vorous v. Cochran provides further guidance. In *Vorous*, landowners hired a tree surgeon to “trim and top” two trees that were decayed and damaged. While

⁸⁶ *Seeney*, 318 A.2d at 623.

⁸⁷ *Ramsey*, 189 A.3d at 1275; *Vorous*, 249 A.2d at 747.

climbing one of the trees, the tree surgeon put a support rope around one of its dead limbs, the limb snapped causing the tree surgeon to fall and sustain injuries. The tree surgeon brought a claim against the landowners, asserting they breached their duty to keep him safe from defective conditions on their property. The court disagreed. Reasoning that “the independent contractor’s agreement to remove or repair the defective condition precludes his recovery from the possessor for injuries sustained as a result of the defective condition on the theory that he assumed the risk by virtue of his employment contract.”⁸⁸ And because the landowners “hired the [tree surgeon] for the express purpose of removing the decayed or dead appendages of two trees on their property, which constituted a dangerous condition ... [t]he [tree surgeon] was thus adequately warned of the defective condition.”⁸⁹

The principle underlying both *Vorous* and Group B plaintiff’s claims in *Wooleyhan II* is that the independent contractor who undertakes to work with a defective condition on a landowner’s property, who is injured by that same defective condition, cannot hold a landowner liable for that injury. That makes sense given an independent contractor’s expertise, which a landowner can expect the independent contractor to utilize to safely encounter or maneuver around the defective condition. But that logic does not apply where an independent contractor,

⁸⁸ *Vorous*, 249 A.2d at 747.

⁸⁹ *Id.*

who undertook to remedy a defective condition, is injured by other defective conditions of which the landowner failed to notify the independent contractor. A landowner cannot escape liability based on a theory of independent contractor omniscience. And one who is not knowledgeable about a defective condition cannot be expected to utilize his expertise to safely encounter it.

Here, Asplundh was hired to trim overgrowth of the Tree near electrical lines. Asplundh was undoubtedly aware of that defective condition and the risks it posed. But nothing in the record suggests that Asplundh/Mr. Mena Perez was aware of the numerous other conditions Plaintiffs argue were a cause of Mr. Mena Perez's injuries. While Delmarva stresses that electrical shock is a danger inherent in the work of vegetation management near electrical lines, Delmarva's argument ignores the rationale behind the limitation on liability: "that 'the contractor possesses superior knowledge of the *dangers inherent in the work*' it was hired to perform."⁹⁰ Asplundh workers, including Mr. Mena Perez, knew that it was going to confront and rectify tree overgrowth around electrical lines. That is the work they were hired to perform. That work, however, does not necessarily mean confrontation with defective electrical lines or defective utility poles creating hazardous conditions in the same manner that asbestos exposure is inherent in the work of an asbestos insulator or removing dead tree limbs is inherent in the work of a tree surgeon.

⁹⁰ *Ramsey*, 189 A.3d at 1275 (quoting *Wenke*, 2007 WL 1651964, at *6) (emphasis added).

If Delmarva informed Asplundh of these defects before Mr. Mena Perez began his work, Delmarva's argument that it is entitled to rely on Asplundh's expertise may have merit and that might require the result Delmarva seeks. But Delmarva did not inform Asplundh of those defects and the evidence in the record supports a finding that those defects caused Mr. Mena Perez's injuries.⁹¹

2. *Plaintiffs' reliance upon statutes and regulations does not support a non-delegable duty claim.*

Turning next to Delmarva's attack on Count VI, which relies on a number of statutes and regulations to assert that Delmarva's failure to comply with them supports liability. Plaintiffs argue that these statutes and regulations form the basis of a non-delegable duty. The Court, as explained above, has already found a duty at law exists as to Delmarva. And as Delmarva recognizes, "the litany of statutes,

⁹¹ In its reply brief Delmarva raises for the first time the argument that even if Mr. Mena Perez is a Group A plaintiff, Plaintiffs' claim independently fails under a test adopted in *Helm*—a Delaware asbestos litigation case, relying on a California asbestos litigation case, *Kinsman v. Unocal Corporation*, 123 P.3d 931 (Cal. 2005). That test triggers six distinct inquiries, Delmarva points to three:

"Did the independent contractor, or should it have known, that the particular materials on the premises that allegedly cause the plaintiff's injury contained asbestos; If so, was the independent contractor aware at the time, or should it have been aware at the time, of the dangers of asbestos; and did the facility owner know, or should it have known, that the independent contractor was unaware of, or could not have reasonably learned about, the hazard posed by asbestos containing materials."

Helm, 2007 WL 1651968, at *18–19 (cleaned up). As shown by the language of that test, it concerns the defective condition of asbestos. Delmarva replaces asbestos with "energized line" in its argument. As the *Helm* court made clear, this test is used "in the asbestos context"—this is not an asbestos case. In any event, Delmarva's argument misses the mark. The defective condition is not an energized line, it is the condition of that line in combination with other defective conditions on the property on which Plaintiffs rely.

regulations, and standards cited [by ...] Plaintiffs' ... might inform the standard of care if a duty were found to exist[.]” Still, Delmarva argues that Count VI cannot survive its motion because of Mr. Mena Perez’s status as an employee of an independent contractor.

Count VI implicates Section 409 of the Restatement (Second) of Torts and its related exceptions.⁹² Section 409 states, in part: “the employer of an independent contractor is not liable for the physical harm caused to another by an act or omission of the contractor or his servants.”⁹³ Section 424, an exception to Section 409’s general prohibition against landowner liability to harms caused during the work of its hired independent contractors, imposes liability for statutory and regulatory non-delegable duties. It provides:

One who by statute or by administrative regulation is under a duty to provide specified *safeguards or precautions for the safety of others* is subject to liability to the others for whose protection the duty is imposed for harm caused by the failure of a contractor employed by him to provide such safeguards or precautions.⁹⁴

A Comment to Section 424 adds:

The rule stated in this Section applies whenever a statute or administrative regulation imposes a duty upon one doing particular work to provide *safeguard or precautions for the safety of others*. In

⁹² Restatement (Second) of Torts § 409 (“Except as stated in §§ 410–429, the employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his servants.”).

⁹³ Restatement (Second) of Torts § 409.

⁹⁴ Restatement (Second) of Torts § 424 (emphasis added).

such a case the employer cannot delegate his duty to provide such safeguards or precautions to an independent contractor.⁹⁵

Delmarva argues that Mr. Mena Perez, as an employee of an independent contractor, does not qualify as “others” and thus, Plaintiffs cannot invoke Section 424’s statutory and regulatory duties. Delaware decisions have consistently held that the term “another” as found in Section 409 and “others,” as they are used in the exceptions to Section 409, does not include employees of the independent contractor.⁹⁶ Rather, the exceptions to Section 409 “provide[] a remedy for harm caused to *third persons* by contractors or their employees.”⁹⁷ The Court, however, need not decide whether those decisions extend to Section 424 because, the statutes and regulations Plaintiffs rely upon do not “impose a duty upon one doing particular work to provide safeguards or precautions for the safety of others.” As discussed below, these statutes and regulations simply do not include specific safeguards and precautions for one engaged in vegetation management while trimming trees around electrical lines.⁹⁸

⁹⁵ Restatement (Second) of Torts § 424 cmt. a (emphasis added). The Restatement further provides an example, such as, a statute that mandates “an excavation site shall be lighted at night[.]” Restatement (Second) of Torts § 424 cmt. b.

⁹⁶ *In re Asbestos Litig. (Roca)*, 2002 WL 31007993, at *2 (Del. Super. Sept. 3, 2002); *Urena*, 901 A.2d at 154.

⁹⁷ *Roca*, 2002 WL 31007993, at *2 (emphasis added).

⁹⁸ *See Romer v. Mobil Exploration and Producing N. Am., Inc.*, 939 F.2d 307, 309 (5th Cir. 1991) (Finding Section 424 inapplicable to claims brought under Mineral Management Service regulations because they “were not created solely to provide safeguards or precautions for the safety of others”).

Plaintiffs first rely on Title 26 of the Delaware Administrative Code, Section 3007. Paragraph 3.1 of that section states: “Each EDC shall install, operate and maintain its delivery facilities in conformity with the requirements of [the NESC.]”⁹⁹ Under paragraph 5.1: “Each EDC shall have an inspection and maintenance program designed to maintain delivery facilities performance at an acceptable level. The program shall be based on industry codes, national electric industry practices, manufacturer’s recommendations, sound engineering judgement, NESC Rule 214 guidance, and past experience.”¹⁰⁰ Paragraph 5.2 requires “[E]ach EDC [to] inspect all right-of-way vegetation at least once every four (4) years and trim or maintain as necessary[.]”¹⁰¹ But those obligations to maintain its equipment and perform vegetation management under the Delaware Administrative Code do not discuss “safeguards or precautions” to be utilized while the work of maintaining equipment or managing vegetation is underway.

Plaintiffs next rely on their experts’ opinions. For example, Plaintiffs’ expert H. Landis Floyd opines that the National Fire Protection Association “emphasizes de-energization of electrical lines when performing work on or near uninsulated or unguarded conductors.”¹⁰² But that language does not contain a requirement that

⁹⁹ 26 *Del. Admin. C.* § 3007.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² D.I. 504 at 3.

one performing vegetation management must do so. He further opines that “[Delmarva] should have required Asplundh to use an insulated bucket truck, live line insulated tools, and voltage rated protective equipment to perform tree trimming tasks but did not.”¹⁰³ Mr. Floyd, however, points to no regulation or statute that requires such use.

Additionally, Plaintiffs point to several regulations found within OSHA and the American National Standards Institute. While those regulations impose requirements designed to protect the safety of workers, there is no indication that they impose a regulatory non-delegable duty enforceable against a landowner who hired an independent contractor.¹⁰⁴

This is not to say that the statutes and regulations are not relevant in this case. Indeed, statutes and regulations, such as those relied upon by Plaintiffs, may be used to establish a defendant’s negligence. Accordingly, the Court’s ruling on Count VI is limited to the finding that the statutes and regulations relied upon do not explicitly direct the use of specified safeguards and precautions in the performance of vegetation management.

¹⁰³ *Id.* at 4.

¹⁰⁴ *See Toll Bros., Inc. v. Considine*, 706 A.2d 493, 497 (Del. 1998) (“[T]he OSHA statute itself includes a disclaimer that federal regulations, standing alone, do not enlarge state common law rights, duties or liabilities[.]”) (cleaned up); *see also Abbate v. Warner*, 2012 WL 1413524, at *2 (Del. Super. Jan. 19, 2012) (“The ANSI standard certainly is not a legislative enactment or regulation[.]”).

Because Count VI asserts a claim based on non-delegable duties that do not exist, Delmarva's Motion for Summary Judgment on this count is GRANTED. However, as to all other claims against Delmarva, Delmarva had a duty to keep the premises safe and warn its business invitees of defective conditions on its property. Accordingly, as to Plaintiffs' other claims, Delmarva's Motion for Summary Judgment is DENIED.

B. *Comcast's motion*

Comcast's motion stresses the relationship between itself and Mr. Mena Perez, or rather, the lack thereof. Comcast's argument is based on it and Mr. Mena Perez being "legal strangers" and without a legally cognizable relationship between them, Comcast owed no duty to him. Comcast further argues that its equipment did not cause Mr. Mena Perez's injuries, so there can be no claim that Comcast failed to maintain its equipment.¹⁰⁵

Under Delaware law, "duty derives from the relationship between the parties and the foreseeable risk of harm that is implicated by the relationship."¹⁰⁶ Thus, the court must determine "whether 'such a relationship exists between the parties that the community will impose a legal obligation upon one for the benefit of the

¹⁰⁵ D.I. 429 at 7; D.I. 522 at 1.

¹⁰⁶ *Kuczynski v. McLaughlin*, 835 A.2d 150, 155 (Del. Super. 2003).

other....”¹⁰⁷ When making that determination, the court must “study the relationship between the parties and then [] determine, based upon statutory and/or common law principles, whether the relationship is of a nature or character that the law will impose a duty upon one party to act for the benefit of another.”¹⁰⁸

Comcast argues that it did not owe Mr. Mena Perez a duty because “Comcast did not employ, train, equip, supervise or otherwise interact with [Mr. Mena Perez].” Nor did Comcast contract with Asplundh to perform vegetation management or own the utility poles. Finally, Comcast asserts that its relationship with Mr. Mena Perez is further attenuated by the fact that its easement did not extend beyond its own equipment.

Plaintiffs rely on Title 26 of the Delaware Code, chapter 1, subchapter VI titled “Regulation of Cable Television Systems.” Specifically, 26 *Del. C.* §§ 601 and 604. Section 601 requires cable television operators to first be granted a franchise by the Public Service Commission.¹⁰⁹ The terms of a franchise are set forth in Section 604 and lists requirements for a franchisee. Section 604(11) states “a requirement that the franchisee install and maintain all cables, wires, fixtures and other equipment or facilities in accordance with the [NESC]”¹¹⁰

¹⁰⁷ *Naidu v. Laird*, 539 A.2d 1064, 1070 (Del. 1988) (quoting W. Keeton, D. Dobbs, R. Keeton, D. Owen, *Prosser & Keeton on Torts* § 37, at 236 (5th ed. 1984)).

¹⁰⁸ *Higgins v. Walls*, 901 A.2d 122, 136 (Del. Super. 2005).

¹⁰⁹ 26 *Del. C.* § 601.

¹¹⁰ 26 *Del. C.* § 604(11).

NESC Rule 200 states that “[t]he purpose...of this Code is the practical *safeguarding of persons* during the installation, operation, or *maintenance* of overhead supply and communication lines and their associated equipment.”¹¹¹ NESC Rule 218, titled “Vegetation Management” states that “[v]egetation management should be performed around supply and communication lines as experience has shown to be necessary. Vegetation that may damage ungrounded supply conductors should be pruned or removed.”¹¹²

As a cable television provider, Comcast is a franchisee under Delaware law. And, as Comcast recognizes, the NESC standards apply to it.¹¹³ While Comcast is correct that the NESC does not carry the force of law, the Delaware Code obviously does. Section 604(11) is clear, Comcast must maintain all cables, wires, fixtures and other equipment or facilities in accordance with the NESC. And the NESC requires Comcast to maintain the vegetation surrounding its cables, for the purpose of “safeguarding of persons” while they are conducting “maintenance of overhead supply and communication lines.” Mr. Mena Perez was such a person, thus Comcast’s argument that it was a legal stranger to Mr. Mena Perez fails to win it summary judgment. It owed a duty to him.

¹¹¹ NESC R. 200.

¹¹² NESC R. 218.

¹¹³ D.I. 503, Ex. C ¶ 6 (Comcast admitting the NESC applies to it).

Comcast’s arguments to the contrary are unavailing. Comcast first points to *Delaware Electric Cooperative, Inc. v. Duphily*¹¹⁴ for the proposition that the Delaware Supreme Court has confirmed that cable television companies are regulated by the Public Service Commission, “but [are] not a ‘public utility[.]’” under Delaware Code Title 26, Section 102(2)(4).¹¹⁵ But *Delaware Electric* goes on to state what this ruling has already recognized, that cable television companies like Comcast are regulated under 26 *Del. C.* §§ 601 and 604.¹¹⁶

In its reply, Comcast acknowledges that Section 601 requires it, through its franchise, to maintain its equipment in accordance with the NESC, but asserts that this obviously only means “overhead clearance and attachment guidelines, not vegetation management.”¹¹⁷ But there is no basis to limit the applicability of the NESC, as Comcast urges the Court to adopt. Indeed, Rule 218 directly addresses vegetation management.

Comcast next points to 26 Delaware Administrative Code Section 3007, in which the Delaware Public Service Commission sets forth reliability standards for EDCs. Among those reliability standards is a requirement for EDCs to “inspect all right-of-way vegetation at least once every four years and trim or maintain as

¹¹⁴ 703 A.2d 1202, 1209 (Del. 1997).

¹¹⁵ *Id.* at 1209 n.8.

¹¹⁶ *Id.*

¹¹⁷ D.I. 522 at 3.

necessary[.]”¹¹⁸ Comcast acknowledges that Delaware regulations require EDCs to perform vegetation management, but notes that it is not an EDC. Comcast argues that because the Delaware Public Service Commission did not adopt regulations requiring cable companies to perform vegetation management, it has no duty to do so.

Comcast is correct that it is not an EDC. But simply because EDCs are also required to engage in vegetation management does not relieve Comcast from the duties imposed by the Delaware Code and the NESC makes clear: “vegetation management should be done around...communication cables.”

Comcast’s final argument is that the NESC does not specifically identify what entity should perform vegetation management, suggesting that without a specific identification, only EDCs have such a duty. But as explained, Sections 601 and 604 regulate cable television companies and set out the requirements for franchisees. Section 604(11) mandates communication companies—as franchisees—to comply with the NESC. Thus, the alleged gap caused by the absence of a specific identification of which entity is tasked with performing vegetation management is filled because the requirement to comply with the NESC appears in the Delaware Code’s “Regulation of Cable Television Systems.”

¹¹⁸ 26 *Del. Admin. C.* § 3007–5.0.

In Sum, because the Delaware Code's regulation of cable television systems requires compliance with the NESC, which requires vegetation management of cable communication lines for the protection of those performing maintenance on overhead supply lines, Comcast owed a duty to Mr. Mena Perez.

That Mr. Mena Perez was not injured by the Comcast communication lines does not entitle it to summary judgment. Plaintiffs' theory is that had Comcast complied with its duty to maintain the vegetation around its communication lines, the Tree would not have been in the condition it was on August 2, 2018. Disputes of material fact preclude summary judgment.

Comcast's Motion for Summary Judgment is DENIED.

VI. CONCLUSION

Delmarva moves for summary judgment, arguing that as a matter of law Plaintiffs' claim cannot survive because it hired Asplundh to trim the Tree around Delmarva's electrical lines. While the nature of the relationship between Delmarva and Mr. Mena Perez (through Asplundh) insulates Delmarva from some of Plaintiffs' theories of liability, it does not preclude Plaintiffs' theories based on other defective conditions.

Delmarva also moves for summary judgment as a matter of law that it did not owe Mr. Mena Perez a non-delegable duty. Because Plaintiffs do not rely on any statute or regulation specifically requiring actions for the safety of workers trimming

trees near an electrical line, Delmarva's motion must be granted. Accordingly, Delmarva's Motion for Summary Judgment is GRANTED in part and DENIED in part.

Comcast similarly moves for summary judgment as a matter of law, asserting it owed Mr. Mena Perez no legal duty. The Delaware Code, however, imposes a duty on cable companies, like Comcast, to maintain their lines in accordance with the NSEC, which specifically requires vegetation management. Accordingly, Comcast's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

/s/Kathleen M. Miller
Kathleen M. Miller, Judge