

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) C.A. No. N19C-10-273 KMM
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.)

Date Submitted: May 29, 2026

Date Decided: August 19, 2026

*Delmarva's Motion to Exclude the Expert Opinions of Mark Webber – **DENIED***

*Delmarva's Motion to Exclude the Expert Opinions of James Orosz – **DENIED***

*Delmarva's Motion to Exclude the Expert Opinions of H. Landis Floyd – **DENIED***

*Delmarva's Motion to Exclude the Expert Opinions of Joseph Loferski – **DENIED***

*Comcast's Motion to Exclude the Expert Opinions of Mark Webber – **DENIED***

*Comcast's Motion to Exclude Expert Opinions of James Orosz – **DENIED***

*Comcast's Motion to Exclude the Expert Opinions of H. Landis Floyd – **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 Mr. Mena Perez 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.

Delmarva moves to exclude four of Plaintiffs’ experts. As to each, Delmarva argues that the opinion is not based on sufficient facts and data, and therefore are inadmissible. An expert’s opinion must rely on a sufficient and accurate factual foundation for it to be proffered to the fact-finder. If an expert bases his opinion on an erroneous factual foundation or his opinion is fundamentally unsupported by the facts, it is inadmissible. After review, the Court finds that the experts’ opinions are based on, and supported by, a sufficient factual foundation. Delmarva also raises a series of objections to the experts on various other grounds, none of which require exclusion. Accordingly, Delmarva’s motions are ***DENIED***.

Comcast moves to exclude three of Plaintiffs' experts on its premise that it owed no legal duty to Mr. Mena Perez and therefore, the experts' opinions are irrelevant and inadmissible. The Court has already determined that Comcast owed a legal duty to Mr. Mena Perez.¹ Accordingly, Comcast's motions are DENIED.

II. FACTUAL BACKGROUND²

A. *The subject tree and related equipment*

The tree situated on the property located around Saulsbury Avenue and Temple Terrace 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 poles are owned by Verizon. Attached to the poles, at the highest elevation, are Delmarva's electrical conductor lines, comprised of 12kV tree wire.³ Below, Comcast's and Verizon's communication lines are attached.

Delmarva is required to maintain the vegetation around its electrical conductors.⁴ It engaged Asplundh Tree Expert, LLC ("Asplundh") to perform such

¹ 2026 WL 2364458 (Del. Super. Aug. 14, 2026).

² 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.

³ 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. D.I. 423, Ex. A ("Floyd Rep.") at 7.

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

services. Part of Asplundh's scope of work was to trim the Tree around the electrical 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 making contact with 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 Floyd Rep. at 13.

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 [T]ree, 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. *The Challenged Experts*

Plaintiffs' theory of the case is essentially that the defendants failed to inspect and properly maintain the vegetation around the electrical and communication lines, failed to inspect and maintain the utility poles, and Delmarva failed to inspect and maintain its electrical lines. As a result of the condition of the Tree, and the deteriorating and leaning utility poles, the electrical lines had more sag and were more prone to sway. While Mr. Mena Perez was in the Tree, a gust of wind blew the electrical lines into the Tree, electrifying it, causing the electrical current to run through Mr. Mena Perez, killing him. Plaintiffs offer several experts to support their theory, including James Orosz, H. Landis Floyd, Mark Webber, and Joseph Loferski

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.*

(together the “Challenged Experts”). These experts’ opinions relate to the condition of the Tree, the utility lines, and the poles.

1. *James Orosz*

James Orosz is an electrical engineer, and a member of the Institute of Electrical and Electronics Engineers and the National Fire Protection Association (“NFPA”). Mr. Orosz states that “[i]t is known ... that vegetation in contact with [electrical] lines can conduct fatal levels of electrical current.”²⁶ He explains that it is not the electrical voltage, but the electrical current that causes a person to be electrically shocked.²⁷ 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.²⁸ Mr. Orosz opines that Mr. Mena Perez “made indirect contact” with Delmarva’s electrical line.²⁹ That is, the Tree “made contact with the primary power line, that electrical current flowed through the [T]ree, through Mr. Mena [Perez and then] back into the [T]ree[.]”³⁰ In coming to this opinion, Mr.

²⁶ D.I. 422, Ex. A (“Orosz Rep.”) at 5.

²⁷ *Id.* at 7.

²⁸ *Id.* at 5.

²⁹ D.I. 422, Ex. D (“Orosz Dep.”) at 18.

³⁰ *Id.* at 19.

Orosz reasons that if Mr. Mena Perez had made direct contact with the electrical line, his physical injuries would have been much more severe.³¹

Mr. Orosz further opines that a cause of that indirect contact was Delmarva's failure to inspect and maintain its electrical lines. Mr. Orosz relies on Section 3007 of the Delaware Administrative Code,³² which sets reliability standards for Electrical Distribution Companies ("EDCs"), such as Delmarva. Section 3007-3.1 states: "Each EDC shall install, operate and maintain its delivery facilities in conformity with the requirements of the National Electrical Safety Code ("NESC") and the operating policies and standards of" other organizations.³³

Section 3007-5.1 states: "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, manufacture's recommendations, sound engineering judgment, NESC Rule 214 guidance, and past experience."³⁴

Section 3007-5.2 states:

As a maintenance minimum, each EDC shall inspect all right-of-way vegetation at least once every four (4) years and trim or maintain as necessary, according priority to circuits that have had significant numbers of vegetation-related outages, while not unduly delaying the trimming of other circuits that inspections indicate currently need

³¹ Orosz Rep. at 5.

³² *Id.* at 8; 26 *Del. Admin. C.* § 3007.

³³ 26 *Del. Admin. C.* § 3007-3.1.

³⁴ 26 *Del. Admin. C.* § 3007-5.1.

trimming. Vegetation management practices should be applied at least once every four (4) years except where growth or other assessments deem it unnecessary.³⁵

NESC Rule 214, titled “Inspection and tests of lines and equipment” states, in pertinent part: “Lines and equipment shall be inspected at such intervals as experience has been shown to be necessary.”³⁶

NESC Rule 218, titled “Vegetation management” states, in pertinent part: “Vegetation management should be performed around supply and communication lines as experience has been shown to be necessary. Vegetation that may damage ungrounded supply conductors should be pruned or removed.”³⁷

Based on his review of historical photographs of the area, including of the Tree and relevant electrical and communication lines, three inspections of the area from 2019 to 2022, deposition transcripts and discovery responses, and the code and rules identified above, 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.³⁸ By the time Mr. Mena Perez was assigned to trim the Tree, it was “engulfing” Delmarva’s electrical lines.³⁹ That produced the hazardous condition of allowing Delmarva’s energized electrical line and the Tree

³⁵ 26 *Del. Admin. C.* § 3007–5.1.

³⁶ NESC Rule 214 (A)(2).

³⁷ NESC Rule 218 (A)(1).

³⁸ Orosz Rep. at 11.

³⁹ *Id.*

to come in contact through an external force, such as wind or the weight of Mr. Mena Perez, sending electrical current into the Tree and then through Mr. Mena Perez.

Mr. Orosz opines that Comcast similarly failed to adequately maintain the vegetation of the Tree, which caused Mr. Mena Perez's electrocution.⁴⁰ Mr. Orosz explains that the NESC also applies to communication companies like Comcast.⁴¹ He opines that Comcast should have recognized the hazardous conditions caused by its lack of vegetation management and removed the Tree.⁴² Had it done so, Mr. Orosz continues, Mr. Mena Perez would not have been in the Tree and thus, would not have been electrocuted.⁴³

Finally, Mr. Orosz notes that the Sidewalk Pole had been in place since 1953 and opines that it had not been properly or timely inspected in the decades prior to the incident.⁴⁴ The top of the pole was cracked and "had rotting" at its base.⁴⁵ The Sidewalk Pole had significant bend toward its top, and because of this defect, the Delmarva line "attached to the pole was not stable, was more likely to move, sag, and sway[.]"⁴⁶ He concludes that the Sidewalk Pole was defective and in need of replacement prior to the incident on August 2, 2018.

⁴⁰ The experts also offered opinions as to Verizon. Because Verizon did not timely file a motion to exclude the experts, the Court focuses only on the opinions relating to Delmarva and Comcast.

⁴¹ Orosz Rep. at 18 (Sections 214 and 218 apply to Comcast and Verizon).

⁴² *Id.*

⁴³ *Id.* at 17; Orosz Dep. at 45–46.

⁴⁴ D.I. 422, Ex. B ("Orosz Disclosure") at 60.

⁴⁵ *Id.*

⁴⁶ *Id.*

2. *H. Landis Floyd*

Mr. Floyd is an electrical engineer with over 45 years of experience in occupational electrical safety management.⁴⁷ He conducted three site inspections of the incident area and reviewed numerous photographs.⁴⁸ Mr. Floyd opines that the utility poles were in a damaged and rotted condition.⁴⁹ Similar to Mr. Orosz, Mr. Floyd 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 contact with the Tree.⁵⁰

Mr. Floyd further opines on the extent of contact between the Tree and Delmarva's lines. He notes that the evidence shows that the plastic covering on Delmarva's line had been damaged⁵¹ "due to arcing and abrasion[,] indicating [that Delmarva's line] had [made] multiple contacts with the [T]ree."⁵² Mr. Floyd continues, that created "a hazardous, life-threatening condition [] that allowed electric current to travel through the [T]ree to earth[,] presenting a shock hazard to any person in contact with the Tree."⁵³

⁴⁷ Floyd Rep. at 1, 7.

⁴⁸ *Id.* at 7, 11–12, 17.

⁴⁹ 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.

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

⁵¹ Floyd Rep. at 12.

⁵² *Id.* Delmarva's line "had been in contact with [T]ree limbs[.]" *Id.* at 15.

⁵³ *Id.* at 15.

As to Comcast, Mr. Floyd opines that it was required to engage in vegetation management, but failed to do so.⁵⁴ He further opines “[h]ad ... Comcast taken prior actions to prevent the hazardous condition”—such as removing the Tree—“the [T]ree 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.”⁵⁵

3. *Mark Webber*

Mark Webber is a Master Arborist, a Certified Utility Arborist Specialist, and is tree risk assessment certified.⁵⁶ Mr. Webber opines that Delmarva and Comcast failed to adequately manage vegetation surrounding their lines.⁵⁷ That failure, he continues, exposed Mr. Mena Perez to an unnecessary electrical hazard.⁵⁸

Mr. Webber inspected the Tree during a site visit⁵⁹ and reviewed 21 aerial and street-view photographs of the Tree and the area surrounding it.⁶⁰ The photographs span over a decade, from September 2005 through March 2019.⁶¹ Mr. Webber opines “that the ... [T]ree was not actively managed by the defendants ... for 18-years prior to [Mr. Mena Perez’s] injuries and this is the cause of his injuries.”⁶²

⁵⁴ D.I. 480, Compendium of Deposition Transcripts Volume I, Floyd Rebuttal Disclosure at 2.

⁵⁵ Floyd Rep. at 17–18.

⁵⁶ Webber Rep. at 7.

⁵⁷ *Id.* at 54.

⁵⁸ *Id.* at 3.

⁵⁹ *Id.* at 40.

⁶⁰ *Id.* at 11–30.

⁶¹ *Id.*

⁶² *Id.* at 58.

Mr. Webber further opines that had Delmarva and Comcast managed the Tree’s “growth away from the [electrical lines] prior to the incident, [Mr. Mena Perez] would have been afforded a minimal approachable distance” (“MAD”) and thus, could have kept himself from exposure to the electrical lines.⁶³ Mr. Webber explains the importance of the MAD—the closest distance a worker should come to an energized electrical conductor or utility system—in the work of vegetation management near electrical lines.⁶⁴ Mfr. Webber continues that defendants’ failure to conduct sufficient vegetation management in the years prior to the incident resulted in the lack of minimum space between the energized electrical lines and the Tree, leaving no space for Mr. Mena Perez.⁶⁵

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.”⁶⁶

4. *Joseph Loferski*

Joseph Loferski is an expert in wood science and wood engineering, having over 45 years of experience in the area. From review of photos and deposition

⁶³ *Id.*

⁶⁴ *Id.*, Annex A at 8.

⁶⁵ *Id.* at 58.

⁶⁶ *Id.* at 40.

testimony, Mr. Loferski concludes that the Sidewalk Pole showed “extreme bend/deflection[,]” indicating that the pole was weakened and at least partially broken.⁶⁷ Another close-up photo of the portion of the pole in the sidewalk, reflected “extensive deterioration and weathering of the wood pole surface[.]” and “a ruler inserted into the pole approximately 2.5 inches deep at the base/groundline[.]” indicating that the bottom of the pole was damaged.⁶⁸ Mr. Loferski reasons that because the bottom of the pole is “a highly stressed zone, the condition of the wood in that zone is critical to the safety of the pole in terms of strength and stiffness.”⁶⁹ Additional photos show “a rough, brash fracture” at the top of the pole, with a “bolt hole ... in the fracture zone further weakening the pole.”⁷⁰ Further, the photos show “the pole had been attacked by brown rot decay fungi, further reducing the strength of the pole.”⁷¹ Another photo showed the circumference of the pole.⁷²

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.”⁷³ Utility poles act as cantilever

⁶⁷ D.I. 480 (Compendium of Deposition Transcripts Volume I, part 4 (“Loferski Disclosure”)) at 22-23.

⁶⁸ *Id.* at 23-24, 26.

⁶⁹ *Id.* at 24, 26.

⁷⁰ *Id.* at 25.

⁷¹ *Id.*

⁷² *Id.* at 26.

⁷³ *Id.* at 30.

beams, with the stress on the pole focused at the bottom.⁷⁴ Utility poles are chemically treated to preserve the wood. The treatment penetrates “an inch or two into the pole around the circumference[]” so damage at the groundline deeper than this penetration, leaves the “untreated wood in the interior of the pole” exposed and subject to decay.⁷⁵ The Sidewalk Pole was replaced after this incident, but only a portion of the pole was preserved as evidence.⁷⁶ Because this bottom portion of the pole was not preserved, Mr. Loferski was unable to conduct standard tests to determine the extent of deterioration.⁷⁷

The Backyard pole was approximately 67 years old. Deposition testimony revealed that the pole had been inspected about four months after the incident “and was determined to be in need of replacement.”⁷⁸ The Backyard Pole was replaced in 2024, but not preserved as evidence.⁷⁹ Mr. Loferski opines that the Backyard Pole was “old, severely weakened, and decayed, and in need of replacement.”⁸⁰

⁷⁴ *Id.* at 31.

⁷⁵ *Id.* at 29.

⁷⁶ *Id.* at 30.

⁷⁷ *Id.* at 31-32.

⁷⁸ *Id.* at 29.

⁷⁹ *Id.* at 32.

⁸⁰ *Id.*

III. THE PARTIES' CONTENTIONS

Delmarva contends that the Challenged Experts must be excluded because their opinions are not supported by sufficient facts and they do not fit the facts of the case, thereby failing to satisfy *Daubert's* standards.

Plaintiffs respond that their experts are not required to know all of the facts Delmarva recites. They argue that the Challenged Experts' opinions are based on sufficient facts and those facts are applied with sufficient methodology to be admissible.

Comcast contends it has no duty to maintain vegetation and accordingly, the Challenged Experts' opinions are irrelevant and therefore, must be excluded.

Plaintiffs contend that they have established that Comcast, in fact, has a duty to maintain vegetation and their experts have established that Comcast failed to satisfy that duty. Accordingly, there is no basis to exclude the opinions.

IV. THE DAUBERT STANDARD

Delaware Rules of Evidence ("DRE") 702 governs the admissibility of expert testimony. Rule 702 states that:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;

- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.⁸¹

Delaware has adopted *Daubert* as the “correct interpretation of [DRE] 702.”⁸² “[U]nder *Daubert*, in order for expert testimony to be admissible, the trial judge must act as a gatekeeper and determine that the evidence is both (1) reliable and (2) relevant.”⁸³ An expert opinion is relevant “if it assists the fact finder in ‘understand[ing] the evidence or ... determin[ing] a fact in issue.’”⁸⁴ An opinion is reliable if it is based on technical or specialized knowledge “which requires the testimony to be grounded in reliable methods and procedures and ‘supported by appropriate validation – i.e., ‘good grounds,’ based on what is known.’”⁸⁵

Trial judges are required to “vigorously exercise their gatekeeping function.”⁸⁶ “‘The party seeking to introduce the expert testimony bears the burden of establishing its admissibility by a preponderance of the evidence.’”⁸⁷

⁸¹ DRE 702.

⁸² *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1144 (Del. 2025) (quoting *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 522 (Del. 1999)).

⁸³ *Zantac*, 342 A.3d at 1143–44 (cleaned up).

⁸⁴ *State ex rel. French v. Card Compliant, LLC*, 2018 WL 4151288, at *1 (Del. Super. Aug. 29, 2018) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993)).

⁸⁵ *Reybold Construction Gp. v. Delmarva Power & Light Co.*, 2025 WL 836784, at *4 (Del. Super. Mar. 3, 2025) (quoting *State ex rel. French*, 2018 WL 4151288, at *1 (citation omitted)).

⁸⁶ *Zantac*, 342 A.3d at 1145 (citing Fed. R. Evid. 702).

⁸⁷ *Id.* at 1144 (quoting *Bowen v. E.I. Dupont de Nemours & Co.*, 906 A.2d 787, 795 (Del. 2006)).

Delmarva and Comcast move to exclude the expert opinions of Mark Webber, James Orosz, and H. Landis Floyd. Delmarva also moves to exclude the expert opinions of Joseph Loferski. Delmarva asserts a plethora of arguments, contending that all or parts of the Challenged Experts' opinions must be excluded. The Court addresses each of those arguments first and then turns to Comcast.

V. ANALYSIS

A. *Delmarva's factual foundation argument*

As to each Challenged Expert, Delmarva argues that he lacks a sufficient understanding of the factual circumstances, rendering the opinions inadmissible. An expert's opinion will be excluded if it is not "based upon an understanding of the fundamental facts of the case[.]"⁸⁸ The Court analyzes below the factual foundation of each Challenged Expert to ensure his testimony is reliable—helpful to the jury—but a party's disagreement with the factual foundation of an expert's opinion does not, alone, render the opinion unreliable.⁸⁹

Perry v. Berkley is instructive.⁹⁰ In *Perry*, plaintiff sought recovery for injuries she sustained as a result of a car accident.⁹¹ Plaintiff proffered a medical expert on the cause and permanency of her injuries.⁹² The expert opined that Perry

⁸⁸ *Perry v. Berkley*, 996 A.2d 1262, 1271 (Del. 2010).

⁸⁹ Delmarva has a different theory, supported by its experts, of how the accident occurred.

⁹⁰ 996 A.2d 1262 (Del. 2010).

⁹¹ *Id.* at 1264.

⁹² *Id.* at 1265.

sustained permanent injuries to her lumbar spine, solely related to the accident.⁹³

The expert, however, had no knowledge of plaintiff's prior complaints, medical imaging, and over two years of treatment relating to her lumbar spine prior to the accident. The medical expert was not informed of, and did not ask about, plaintiff's preexisting conditions. Defendant moved to exclude the expert due to his lack of factual foundation. Plaintiff argued that this lack of knowledge went to weight, not admissibility.⁹⁴

The Delaware Supreme Court "recognize[d] that, as a general rule, the factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility, and it is for the opposing party to challenge the factual basis of the expert opinion on cross-examination." But where the expert's opinion was not based on "the fundamental facts of the case," the opinion would "provide no assistance to the jury" and must be excluded.⁹⁵

Noting that this was an "unusual case," the Supreme Court found that Perry's case did not fall within the general rule because her expert's "opinion [was] based upon a *completely incorrect* case specific factual predicate."⁹⁶ Reasoning that plaintiff's "prior medical history was pivotal to the issue of whether the car accident

⁹³ *Id.*

⁹⁴ *Id.* at 1270.

⁹⁵ *Id.* at 1271.

⁹⁶ *Id.* ("If an expert bases an opinion on an erroneous factual foundation, the inaccurate premises invalidate the conclusion even if the expert's methods are generally valid.") (emphasis in original) (citation omitted).

caused her back injuries[.]” and the expert “rendered a causation opinion without an accurate factual predicate[.]” the expert’s testimony was properly excluded.⁹⁷

1. *Delmarva’s factual foundation arguments as to Mr. Webber.*

Delmarva contends that Mr. Webber “does not know any of the factual circumstances and conditions existing at the time of the accident that are needed to form a competent opinion as to the proximate cause of Mr. Mena Perez’s injury[.]”⁹⁸ It argues that Mr. Webber does not know “Mr. Mena Perez’s height and location in the [T]ree ..., the position and posture of his body ..., the tools he was using at the time and how he was using them ..., whether the [T]ree was electrified/energized ..., and, most importantly, how he was injured”⁹⁹

Plaintiffs respond that there were no eyewitnesses to the incident, so no one knows exactly how and where Mr. Mena Perez was positioned in the Tree.¹⁰⁰ But Mr. Webber’s opinions are still admissible because they were based on the facts of the case and he is establishing “more likely than not” what occurred, which is within the realm of acceptable expert testimony.

⁹⁷ *Id.*

⁹⁸ D.I. 421 at 3.

⁹⁹ *Id.* at 3–4. Delmarva argues that Mr. Webber conceded that he “*was never asked to investigate the proximate cause of Mr. Mena Perez’s injury.*” *Id.* at 4 (emphasis in original). *Id.* The Court reviewed Mr. Webber’s deposition testimony cited by Delmarva, in addition to other portions of his deposition and his expert reports and disclosures. When this testimony is put into context, it is clear to the Court that Mr. Webber was not conceding that he has no opinion on proximate cause, but rather, he was referring to Mr. Mena Perez’s placement and activity in the Tree at the time of the injury.

¹⁰⁰ D.I. 494 at 3.

Mr. Webber was offered to address vegetation management.¹⁰¹ He opines that the Tree was “incompatible vegetation” and it “should not have been” there.¹⁰² He further opines that Delmarva had a duty to manage the vegetation around its lines, but failed to do so.¹⁰³ And, this failure “exposed [Mr. Mena Perez] to an unnecessary electrical hazard and this is a cause of his injuries.”¹⁰⁴

The Court is satisfied that Mr. Webber understands the fundamental facts of the case and that his opinions are based on “sufficient facts or data.” He reviewed 19 years of aerial and street view photographs of the Tree and its surrounding area, conducted site visits, and reviewed witnesses’ testimony, among other things. He is offering his opinions on what “more likely than not” occurred, which is permissible expert testimony.¹⁰⁵ Unlike the expert in *Perry*, this case falls within the general

¹⁰¹ Webber Dep. at 34 (“My purpose was vegetation conditions.... That [has] been kind of the focus of my investigation. It was [not] to...say where he was at, what he was doing, and what he should have been doing.”).

¹⁰² *Id.* at 19.

¹⁰³ Delmarva argued that because Mr. Webber cannot point to a statute or regulation specifying a specific length a tree must be trimmed, he is unable to state a standard of care. The lack of a statute or regulation with specific trimming measurements, however, does not make Mr. Webber’s testimony inadmissible. By his testimony, he is establishing the standard of care, just as a doctor would in a medical negligence case, for example. *See Roberts v. Delmarva Power & Light Co.*, 2 A.3d 131, 137 (Del. Super. 2009) (“Experts can establish standards of care, from which the trier of fact determines whether a duty has been breached.”). Delmarva attempted to distinguish the medical negligence cases based on those cases being highly regulated. This is a distinction without a difference. While the medical negligence statute mandates that a medical expert testifying as to the applicable standard of care be familiar with “the degree of skill ordinarily employed in the field of medicine on which he or she will testify,” there is nothing in the statute requiring that the expert rely on a specific written standard in order to testify. *See* 18 Del. C. § 6854.

¹⁰⁴ Webber Rep. at 58.

¹⁰⁵ *See Laugelle v. Bell Helicopter Textron, Inc.*, 2014 WL 5038142, at *2 n.28 (Del. Super. Oct. 6, 2014) (citing *Desert Falcon–Special Mar. Enter. v. E. Coast Terminal Co.*, 2004 WL 5612966, at *2 (S.D. Ga. Jan. 5, 2004) (“... with accident re-constructionists ... reliability is found by looking

rule and Delmarva’s “challenge [to] the factual basis [for Mr. Webber’s] opinion [is for] cross-examination[;]”¹⁰⁶ exclusion is not warranted.

2. *Delmarva’s factual foundation arguments as to Mr. Orosz.*

Delmarva argues that Mr. Orosz does “not know how, when or where the [T]ree and power line came into contact, how or where Mr. Mena Perez contacted the energized part(s) of the [T]ree, what Mr. Mena Perez was doing at the time and what, if anything, he was holding when he was electrocuted.”¹⁰⁷ Nor does he know “what specific part of the [T]ree, or which limb, if any, contacted the power line at the time of the incident ..., or whether it was a cut branch or one still attached to the [T]ree”¹⁰⁸ Delmarva also points out that Mr. Orosz “believes wind blew the [T]ree into the power line ... but he does not know the speed or direction of the wind”¹⁰⁹ Nor is he able to identify or date “what visible mark(s) ... on the power line resulted from the incident.”¹¹⁰

Plaintiffs, again, respond that Mr. Orosz’s opinions are admissible because he is establishing “more likely than not” what occurred, which is within the realm of acceptable expert testimony.

‘at the physical and factual information available, appl[ying] standard engineering principles to this information, and determin[ing] the most probable sequence of events.’”)).

¹⁰⁶ *Perry*, 996 A.2d at 1271.

¹⁰⁷ D.I. 422 at 4.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Mr. Orosz opines that Mr. Mena Perez made indirect contact with Delmarva's electrical lines. That opinion is based on the location and severity of Mr. Mena Perez's physical injuries and the flow of the electricity through his body. Mr. Orosz further opines that Delmarva failed to adequately inspect and maintain its lines and adequately manage the vegetation surrounding its lines. For support, Mr. Orosz points to worn tree wire as evidence of significant contact with the Tree and years of photographs of the Tree. Tying the injuries and the condition of the wires and lack of vegetation management together, Mr. Orosz opines that a gust a wind coupled with sag in Delmarva's line—exacerbated by the broken and rotted poles—caused Delmarva's line to touch the Tree and trigger the electrocution. For further support, Mr. Orosz points to the fact that the branches had previously contacted Delmarva's line, there were gusts of winds, and the deteriorated condition of the poles themselves.

The Court finds that Mr. Orosz's opinions are based on sufficient facts and factual understanding. Mr. Orosz reviewed Mr. Mena Perez's injuries, the conditions of Delmarva's line and the poles that supported it, and the area surrounding it to come to his conclusions. As with Mr. Webber, Delmarva's challenge to Mr. Orosz's factual basis is for cross-examination.¹¹¹

¹¹¹ *Perry*, 996 A.2d at 1271.

3. *Delmarva's factual foundation arguments as to Mr. Floyd.*

Delmarva's factual foundation arguments as to Mr. Floyd largely restate the arguments made against Messrs. Orosz and Webber and adds that "Mr. Floyd cannot explain how the 'hazardous conditions' he identifies ... are in any way connected to how Mr. Mena Perez was injured[]"¹¹² because of his lack of knowledge.¹¹³

Mr. Floyd opines that the electrical line's constant contact with the Tree created a hazardous condition to any person in contact with the Tree, as contact with Delmarva's electrical line allowed electrical current to travel through the Tree. And that electrical current passing through the Tree presents a life-threatening shock hazard that Delmarva should have rectified but instead allowed to persist, ultimately causing the electrocution of Mr. Mena Perez.

For that opinion he relies on the prior testimony of Delmarva's lines coming into contact with the Tree, causing arcing. And that, in response, Delmarva had come to the scene. Mr. Floyd further based his opinion on numerous photos, including those of the Verizon utility poles, Delmarva's line, and the Tree.¹¹⁴ That review led Mr. Floyd to conclude on a "but for" basis that had Delmarva rectified the hazardous condition (the contact between its power line and the Tree) before Mr. Mena Perez was assigned to trim the Tree, the hazardous condition that allowed

¹¹² D.I. 423 at 6.

¹¹³ *Id.*

¹¹⁴ Floyd Rep. at 11.

electrical current to pass through the Tree would not have existed and thus, Mr. Mena Perez would not have been electrocuted.¹¹⁵ Mr. Floyd’s factual foundation is neither erroneous nor is it fundamentally unsupported by the facts.

B. *Delmarva’s “fit” argument*

1. *Mr. Orosz and Mr. Floyd*

As an offshoot of its factual foundation arguments, Delmarva argues that Mr. Orosz’ and Mr. Floyd’s opinions are inadmissible because they do not “fit.” In other words, Delmarva argues that these Challenged Experts’ opinions lack of foundational facts precluded them from utilizing reliable methodology.¹¹⁶ Delmarva also asserts that, to the extent the experts did consider any facts, they are irrelevant or unconnected to the opinions they ultimately delivered and therefore, must be excluded under DRE 702.¹¹⁷

The “fit” requirement is a relevancy requirement, meaning that the expert’s testimony must be helpful to the jury.¹¹⁸ “[T]he Court must evaluate whether there is ‘an adequate ‘fit’ between the [underlying] data and the opinion[s] proffered.’”¹¹⁹

¹¹⁵ *Id.* at 13.

¹¹⁶ D.I. 421 at 7; D.I. 422 at 8; D.I. 423 at 8.

¹¹⁷ D.I. 421 at 7; D.I. 422 at 8; D.I. 423 at 8.

¹¹⁸ *Hopkins v. Astrazenca Pharm. LP*, 2010 WL 1267219, at *8 (Del. Super. Mar. 31, 2010).

¹¹⁹ *Laugelle*, 2014 WL 5038142, at *2 (quoting *Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir.1998)).

As noted above, “only if the expert opinion is so fundamentally unsupported that it can offer no assistance to the jury must such testimony be excluded.”¹²⁰

The Court has already determined that the Challenged Experts utilized sufficient facts and data. Thus, there is no need to reiterate the factual foundation on which the experts base their opinions. It is sufficient to say that the facts relied on did not lead to flawed methodology.

As to Delmarva’s unconnected argument, Delmarva seemingly again asserts that the experts do not have sufficient facts to support their opinions, this time under a different lens. For example, it argues that Mr. Orosz’s and Mr. Floyd’s opinions on the defective condition of the utility poles are unconnected from the facts they considered. Delmarva asserts that the experts’ failure to take measurements of the poles or perform certain tests on the poles preclude them from offering an opinion on the condition of the poles—in essence, Delmarva contends that those facts are a mandatory prerequisite to offering an opinion on the condition of the utility poles.¹²¹

Delmarva makes the same argument based on these experts’ inability to say how far back the Tree was trimmed in 2014, when the electrical lines last came into

¹²⁰ *Id.* (citing *Perry*, 996 A.2d at 1271).

¹²¹ For example, Delmarva argues that Mr. Orosz did not perform structural integrity tests or strength tests on the poles. D.I. 422 at 7-8.

contact with the Tree, or how long the hazardous condition existed other than to say, “several years.”¹²²

Both experts reviewed photographs of the poles and the Tree. Those photographs, according to the experts, show a damaged and rotted pole. And beyond review of photographs, both experts—on multiple occasions—visited the incident area where they performed further inspections. The experts also reviewed other evidence, including electrical wires. Delmarva may take issue with the experts not taking certain measurements or conducting certain tests,¹²³ but a review of photographs of the evidence coupled with site inspections does not lead the Court to conclude that the opinions the experts offer are unconnected to the facts they reviewed.

2. *Mr. Loferski*

Delmarva argues that Mr. Loferski’s opinions do not fit the case because he did not (i) take any measurements, (ii) test the poles structural integrity, or (iii) determine the strength of the poles at the time of the incident, the species of the

¹²² *Id.*; D.I. 423 at 7-8.

¹²³ As noted, evidence was not preserved. This includes part of the Sidewalk Pole that was removed in 2018 and the top of the pole, which were not preserved. Additional parts of the Sidewalk Pole were removed between 2022 and 2024, including the base of the pole, but were not preserved. Further, the Backyard Pole was removed in 2024 but it was not preserved. The parties spar over spoliation of evidence in the various motions, but those issues have not been properly presented to the Court. Finally, there were some branches that may not have been preserved. As the Court advised the parties at oral argument, spoliation issues will need to be fully briefed by a date to be set by the Court.

poles, the stress on the bottom of the poles, the length of the poles, or the groundline radius.¹²⁴ Delmarva contends that Mr. Loferski's opinions rest entirely on the fact that one pole was replaced and the other was tagged for removal after the incident.¹²⁵ Finally, Delmarva contends that Mr. Loferski's opinions are within the ken of an average juror and therefore, not ripe for expert testimony.

Plaintiffs respond that Mr. Loferski is well-qualified to offer the opinions based on his 45 years of experience in wood science and a number of well-recognized publications that have "become his general knowledge."¹²⁶ Plaintiffs argue that Mr. Loferski would have liked to conduct more tests, such as those identified by Delmarva, but he was unable to do so because the defendants did not preserve the evidence. Even without these tests, Plaintiffs continue, Mr. Loferski was able to apply a reliable application of principles and methods to analyze photographs of the poles.

As with the other Challenged Experts, simply because certain testing was not performed or certain facts are not known, does not mean that the opinion is necessarily inadmissible. It is also true that an expert's opinion is not subject to a less rigorous *Daubert* review simply because some evidence may not be available.

¹²⁴ D.I. 420 at 4-5.

¹²⁵ Delmarva contends that this evidence is not admissible under DRE 407 as a subsequent remedial measure. The Court does not reach this issue in connection with the pending motions. Rather, it is more suitable to disposition through a motion *in limine*.

¹²⁶ D.I. 488.

The Court’s gatekeeping function remains the same. The question here is whether based on the available facts is there “‘an adequate ‘fit’ between the [underlying] data and the opinion[s] proffered.’”¹²⁷ The Court finds that there is. Mr. Loferski reviewed photographs of the utility poles, documents, and depositions. He has a sufficient understanding of the factual foundation to support his opinions. To those facts, he has applied his expertise in wood science to reach his conclusions. Mr. Loferski’s opinions are not “so fundamentally unsupported that it can offer no assistance to the jury” such that the testimony must be excluded.¹²⁸

The Court also finds that Mr. Loferski’s opinions are not based on the poles being replace. Further, the Court finds that the opinions offered by Mr. Loferski are not within the ken of a reasonable juror.

C. *Delmarva’s additional arguments*

Beyond its facts and data and its “fit” arguments, Delmarva asserts a number of arguments that parts of each of the Challenged Experts’ testimony should be excluded.

1. *Delmarva’s additional Mr. Webber arguments.*

Delmarva argues that Mr. Webber should be precluded from testifying that Delmarva failed to trim the Tree to create a MAD.¹²⁹ First, Delmarva contends that

¹²⁷ See *Laugelle*, 2014 WL 5038142, at *2 (quoting *Moore*, 151 F.3d at 276).

¹²⁸ *Id.* (citing *Perry*, 996 A.2d at 1271).

¹²⁹ D.I. 421 at 5–8.

Mr. Webber misapplies MAD, conflating MAD and line clearance distance.¹³⁰ That misapplication, according to Delmarva, precludes Mr. Webber from opining as to MAD.

Plaintiffs respond that Mr. Webber did not misapply MAD, rather, his opinions reflect the interplay between MAD and line clearance. Mr. Webber relies on ANSI Z133-2017, which states that “[b]ranches and other parts of trees within the minimum approach distances (MAD) which have been browned or charred by part electrical arcing or contact should be considered likely to become re-energized without warning and thus should be treated as energized. Climbing of trees in such condition should be avoided.”¹³¹ He further testified that the Tree was “riddled with burns all around it.”¹³²

Mr. Webber’s opinions as to the MAD are that “had the defendants ... managed the ... [T]ree’s growth away from [Delmarva’s lines] prior to the incident, [Mr. Mena Perez] would have been afforded [the MAD] ... and have kept himself safe from being exposed to the energized [lines].”¹³³ He testified that if Delmarva had trimmed the Tree over the years as required, “there would be a space between

¹³⁰ *Id.* MAD is the minimal approachable distance a worker or his equipment must maintain from an electrical conductor. According to Delmarva, line clearance is the distance between vegetation and electrical conductors. *Id.* Plaintiffs dispute this definition of “line clearance” as not being complete. D.I. 492 at 6. The Court need not resolve this dispute to resolve the motion.

¹³¹ D.I. 492 at 5.

¹³² Webber Dep. at 53.

¹³³ Webber Rep. at 4.

where those outer branches grow back into the utility space and where the conductor is. In this circumstance, it doesn't show that. It shows a quagmire of vegetation into that clearance zone.”¹³⁴

In the Court's view, Mr. Webber's testimony does not reflect a misapplication or misunderstanding of MAD. It is clear to the Court that Mr. Webber understands the difference between MAD and line clearance. Mr. Webber's testimony is an attempt to explain the relationship between the two. Delmarva's disagreement over the alleged interrelationship is for cross-examination; it does not require exclusion.

Second, Delmarva argues Mr. Webber's opinions improperly place, or assume, a duty on the utility company to create the MAD. But Mr. Webber's opinions do not stray from who maintains MAD. As he testified:

Q. [W]hen Delmarva hires a contractor to perform vegetation management, you are saying that [Delmarva] ha[s] an obligation to make sure that there is a minimum approach distance for the worker who's climbing the tree?

A. The worker that's in the tree, the climber in the tree needs to have a minimum approach distance from his tools or her tools and equipment and their body parts of X number of feet or inches depending on the voltage of the conductor So if the tree branches and limbs are in the conductor, and there's no minimum approachable distance beyond what you have been given, then you have to find another method by which to do the work..¹³⁵

¹³⁴ Webber Dep. at 48.

¹³⁵ *Id.* at 52.

Thus, Mr. Webber understands that it is the responsibility of the worker to maintain the MAD. But the MAD may be afforded to a worker through adequate vegetation management. That opinion does not impose a duty on Delmarva to create the MAD. Mr. Webber only opines that the MAD can be created through vegetation management. As Plaintiffs argue “Webber’s opinion is ... had Delmarva managed the vegetation adequately, there would not have been branches within the MAD and [Mr.] Mena Perez could have kept himself safe from the energized [lines].”¹³⁶ Mr. Webber opines that defendants’ failure to conduct vegetation management made it impracticable for Mr. Mena Perez to maintain the MAD.

Third, Delmarva argues that Mr. Webber cannot rely on Delmarva’s internal line clearance procedures (which refer to specific trimming distances) to establish the legal standard of care. Delmarva also asserts that this procedure is the sole basis for his opinion. Plaintiffs respond that Mr. Webber uses the internal procedures to “simulate the interplay between the line clearance of the trimming and the” MAD, not to establish the standard of care.¹³⁷

While a company’s internal procedures may be evidence of negligence, they do not set the standard of care.¹³⁸ Mr. Webber cannot rely on the internal procedures

¹³⁶ D.I. 492 at 5.

¹³⁷ *Id.* at 8.

¹³⁸ *State, to Use of Henderson, v. Clark*, 20 A.2d 127, 130 (Del. 1941) (“What usually is done may be evidence of what ought to be done, but what ought to be done is fixed by a standard of reasonable prudence.”).

to establish the standard of care, but it appears to the Court that he is not attempting to do so. Mr. Webber testified that ANSI does not establish a specific distance of pruning that is required.¹³⁹ Mr. Webber offers his opinion that Delmarva's vegetation management was insufficient, independent of the internal procedures. But, this does not mean he cannot rely on the procedures as evidence that Delmarva breached its duty.

Delmarva further argues that any testimony regarding the internal procedures should be precluded because Mr. Webber first discussed them in his deposition, which Delmarva claims is a late expert disclosure. Plaintiffs respond that Mr. Webber is not offering any new opinions, he was simply offering additional evidence to support his opinions.

Superior Court Civil Rule 26(b)(4)(A)(i) requires expert disclosures to “state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.” Parties must comply with the disclosure rules “as a precondition to the admissibility of expert testimony at trial.”¹⁴⁰ But, a party “need not provide every nuance or detail of the expert’s opinion in a pretrial

¹³⁹ Webber Dep. at 58-59.

¹⁴⁰ *Sammons v. Doctors for Emergency Services, P.A.*, 913 A.2d 519, 528 (Del. 2006).

disclosure (whether by report or interrogatory response), particularly given that our rules of procedure ... allow for expert depositions.”¹⁴¹

The Court finds that reference to Delmarva’s procedures was not a late disclosure. Mr. Webber did not change his opinions, but rather offered further support based on Delmarva’s own document.

Finally, Delmarva seeks to preclude Mr. Webber from testifying to a growth/regrowth analysis, a tree ring analysis, his finding of “embedded charcoal between wound wood,” and his reliance on any other expert. Delmarva asserts that these topics were first raised in Mr. Webber’s testimony and therefore, are late expert disclosures. Plaintiffs respond that this testimony is merely further explanation and therefore the testimony should not be precluded.

The growth/regrowth analysis appears to have been performed after Mr. Webber submitted his expert opinions but before his deposition. It is mentioned in response to defense counsel asking what he did to prepare for his deposition. It is unclear whether Mr. Webber intends to testify about this analysis in any detail other than what he mentioned in his deposition. Without a clear understanding of the analysis or the proposed testimony, the Court cannot rule on the admissibility of this

¹⁴¹ *Project Boat Holdings, LLC v. Bass Pro Gp., LLC*, 2018 WL 3814930, at *2 (Del. Ch. Aug. 10, 2018).

testimony. A ruling will have to wait until a motion *in limine* or trial. The motion on this ground is DENIED without prejudice.

The tree ring analysis was raised in response to defense counsel asking if Mr. Webber had taken any steps to compare a branch that had been preserved in a shed after the incident, to photos taken by the police. This testimony falls within information that may be learned through a deposition and is not a late disclosure. The Court also finds that the testimony regarding the embedded charcoal falls into the same category.

As to the other experts' reports, Delmarva seems to suggest that Mr. Webber was equivocal about his reliance. Mr. Webber either did or did not rely on them when he prepared his reports. If he did, he can testify that he did. If not, he cannot.

2. *Delmarva's additional Mr. Orosz arguments.*

Delmarva argues that Mr. Orosz offers an opinion on vegetation management, but he does not know how far back the Tree may have been previously trimmed and he cannot identify any applicable standard that was violated. Similarly, he does not point to a regulation that Delmarva violated with respect to his testimony on pole inspections and de-energizing the electrical lines. Therefore, he should be precluded from offering these opinions.

These arguments were addressed above. Mr. Orosz has sufficient facts to support his opinions. Simply because there is no written document setting forth an

industry standard in terms of specific trimming distance, inspection schedule, or line de-energization, does not make the testimony inadmissible. Mr. Orosz is offering his opinion on industry standard and Delmarva's breach of that standard.¹⁴²

The cases Delmarva cites in support of its argument are distinguishable. In *Goodridge v. Hyster Co.*, the expert offered opinions on the alleged defective design of a forklift that was involved in an incident causing personal injuries.¹⁴³ The expert offered opinions on the need for the forklift to have a backup camera and an audible alarm.¹⁴⁴ The expert had no training or experience as an engineer.¹⁴⁵ He never compiled any data on forklift designs and safety issues.¹⁴⁶ The extent of his "testing" was being in proximity to forklifts in operation and hearing the backup alarm.¹⁴⁷ Further, he relied on nothing more than "snippets from various safety publications" and his own article. The lower court found, and the Supreme Court affirmed, that the expert was not qualified to offer opinions on forklift design. Further, the opinions would not be helpful to the jury because the most the expert could do is identify safety articles and leave the jury "to speculate" to apply the literature to the facts. The expert was properly excluded.

¹⁴² See Orosz Dep. at 54 (the Tree "certainly was not [trimmed] to industry standards. That's what I'm saying..."). See *Roberts*, 2 A.3d at 137 ("Experts can establish standards of care, from which the trier of fact determines whether a duty has been breached.").

¹⁴³ 2002 WL 32007200 (Del. Super Oct. 4, 2002), *aff'd* 845 A.2d 498 (Del. 2004).

¹⁴⁴ *Id.* at *1.

¹⁴⁵ *Id.* at *2.

¹⁴⁶ *Id.*

¹⁴⁷ *Goodridge v. Hyster Co.*, 845 A.2d 498, 504 (Del. 2004).

In *Farrell v. University of Delaware*, plaintiff offered an expert on public ice rink management, supervision, and training of ice guards.¹⁴⁸ The expert, however, had no training or experience on those topics. His experience and training with regard to ice rinks was limited to construction and design.¹⁴⁹ Those were not at issue in the case. The expert based his opinions on conclusory statements of “custom and practice in the industry” of which he had no knowledge.¹⁵⁰ Not only was the expert not qualified to offer the proposed opinions, the court found his “rambling commentary on just about every common-sense matter in the case” would not assist the trier of fact. The expert was excluded.

In *Costalas v. Safeway, Inc.*, plaintiff offered an expert on the frequency of inspections, which he opined was every 30 minutes, based on “industry standard.”¹⁵¹ The expert relied on nothing more than a pamphlet he authored.¹⁵² Plaintiff admitted that the expert’s opinion was not based on the type of “information relied [on] by others in the field [because] that information [did] not exist.”¹⁵³ The court ruled that the expert’s opinion, based on nothing more than his “experience,” does not satisfy the rigor of Rule 702 and his testimony was excluded.

¹⁴⁸ 2009 WL 5176218 (Del. Super. Nov. 24, 2009).

¹⁴⁹ *Id.* at *2.

¹⁵⁰ *Id.* at *3.

¹⁵¹ 2007 WL 2893585, at *1 (Del. Super. Oct. 1, 2007).

¹⁵² *Id.*

¹⁵³ *Id.*

Finally, in the transcript ruling in *Harris v. Quickform Concrete Co., LLC*, the court addressed the proposed expert testimony regarding the requirement for a shut-off valve on pipelines.¹⁵⁴ The applicable regulation required the valve on pipes installed after the regulation was adopted. By the terms of the regulation, it did not apply to pipes installed before the adoption date, like the pipe at issue in the case. The expert also could not “cite to any standard policy, procedure, or recognized industry standard which would establish best practices or any standard that would establish best practices to support his position that a shut-off valve was to have been installed.” The only basis he gave for this supposed requirement was that “he had seen them installed before.”¹⁵⁵ Finding that the expert’s opinion was merely his “personal perspective” the court excluded his testimony.

Unlike in these cases, the Challenged Experts are well-qualified to offer opinions in their respective fields. Indeed, Delmarva does not challenge their credentials. Also, unlike in these cases, Messrs. Webber, Floyd, and Orosz rely on statutes and regulations to support their testimony of industry standards and Mr. Loferski relies on scientific training applied to the information that is available.

¹⁵⁴ C.A. No. 03C-10-243 (Del. Super. Mar. 30, 2007).

¹⁵⁵ *Id.*, transcript at 14.

3. *Delmarva's additional Mr. Floyd arguments.*

Similar to Mr. Webber, Delmarva argues that Mr. Floyd cannot offer opinions on vegetation management because he does not know how far back the Tree may have been trimmed in prior years. For the same reasons Mr. Webber's testimony is admissible, Mr. Floyd's is admissible.

With respect to structural integrity of the poles, Delmarva argues that the expert "has reviewed no standards regarding pole integrity" and therefore, he cannot point to a standard that has been violated. But again, Mr. Floyd is testifying to the industry standard which he is able to establish through his training and experience.¹⁵⁶

4. *Delmarva's additional Mr. Loferski arguments.*

Delmarva seeks to preclude Mr. Loferski from testifying about utility pole inspections or sag in the utility wires. At oral argument, Plaintiffs confirmed that Mr. Loferski is not offering opinions on either of these topics. Further, Mr. Loferski is not offering any opinion on the utility wires touching the Tree.

While he cannot offer an opinion on sag in the line or the wires touching the Tree, this does not mean he cannot testify to facts in the record that the line had sag and the wires had come in contact with the Tree, if those facts are indeed developed at trial.

¹⁵⁶ See Floyd Dep. at 129-32.

D. Comcast's motions

Comcast's motions to exclude the Challenged Experts largely rests on the proposition that Comcast owed no duty to Mr. Mena Perez and it had no legal duty to perform vegetation management.¹⁵⁷ In a previously issued decision, the Court ruled that Comcast owed a legal duty and it was required to engage in vegetation management by the Delaware Code *via* Comcast's franchise from the Public Service Commission.¹⁵⁸ Further, the Court found Comcast was not entitled to summary judgment based on the theory that Mr. Mena Perez was not injured by the communication lines. As noted in that opinion, Plaintiffs' theory is that had Comcast performed the required vegetation management, the Tree would not have been in the condition that existed on August 2, 2018, and Mr. Mena Perez would not have been injured. Therefore, the motions based on this ground are without merit.

Turning to the specific challenges to Mr. Orosz, Comcast argues that his opinion regarding Comcast's failure to properly inspect and maintain the vegetation around its lines must be excluded because he is unaware of any regulation requiring it to maintain vegetation, he reviewed no inspection documents, and his opinion is based on the condition of a tree other than the Tree.

¹⁵⁷ D.I. 446 (Floyd); D.I. 455 (Orosz); D.I. 464 (Webber).

¹⁵⁸ *Hichez v. Delmarva Power & Light Co.*, 2026 WL 2364458, at 11-13 (Del. Super. Aug. 14, 2026).

Plaintiffs respond that Mr. Orosz's opinions are based on Comcast's obligation under the NESC and further, he relied on Comcast's responses for request for admissions that it is subject to the NESC.

Comcast misconstrues Mr. Orosz's testimony. He did in fact rely on the NESC.¹⁵⁹ Further, his testimony regarding lack of inspection is based on his investigation of the neighborhood where the Tree is located. This investigation led Mr. Orosz to conclude that Comcast had not inspected or conducted vegetation management in the area surrounding the Tree, which included another tree that had grown "completely around the communication cables" for years.¹⁶⁰ Had Comcast inspected the area, the condition of the vegetation on August 2, 2018, would not have existed.¹⁶¹ The Court is satisfied that Mr. Orosz's opinions are based on "sufficient facts or data" and there is no basis to exclude his testimony.

Comcast's additional argument with respect to Mr. Webber relates to an exchange during his deposition. After testifying as to Comcast's duty (and failure) to maintain vegetation around the communication lines, Comcast's counsel asked the witness about a pole attachment agreement between Delmarva and Comcast, the

¹⁵⁹ Orosz Dep. at 58.

¹⁶⁰ *Id.* at 57-58.

¹⁶¹ *Id.* at 59-60.

details of which Mr. Webber was not aware.¹⁶² Then, the following exchange occurred:

Q. In your reports you state that the evidence in this case shows that the subject [T]ree was not actively managed by the defendants Comcast, Verizon, Delmarva [] for 18 years prior to the plaintiff's injuries and this is the cause of his injuries. When you say that the evidence in this case shows, what evidence do you have that the [T]ree was not actively managed by Comcast?

A. Not pruned, there's no evidence that it was ever pruned or managed.... Now, whatever the inner workings are between y'all and Delmarva, that's not my issue. My issue is talking about what the [T]ree – the body language of the [T]ree and the evidence of the [T]ree. That's where I am going with it.

Q. But you understand my question is that you are saying the evidence shows that the [T]ree was not actively managed by Comcast and that this was the cause of his injuries. So I am asking you what evidence show that this [T]ree was not managed by Comcast?

A. The photographic evidence, the [T]ree itself, the testimony, the pleadings, everything in totality that I reviewed, including the subject [T]ree, it showed no evidence of management.

Q. But you have no understanding as to what the obligations of Comcast are with respect to vegetation management, correct?

A. No, nor was it the purpose of my investigation.¹⁶³

It is the last question and answer, in isolation, on which Comcast relies. It is clear to the Court that when viewed in context, Mr. Webber was not testifying that he has no understanding that Comcast had a duty to maintain the vegetation. Rather,

¹⁶² Webber Dep. at 136-137.

¹⁶³ *Id.* at 137-39.

Mr. Webber's response was addressing whatever agreement there may have been between Comcast and Delmarva regarding vegetation management. Accordingly, Comcast's motion on this ground fails.

III. CONCLUSION

Delmarva seeks to exclude Plaintiffs' experts based on its assertion that the experts lack a sufficient factual foundation to render the opinions and that the opinions do not fit the case. Delmarva also seeks to exclude certain other portions of the opinions on various grounds. Having found that the experts rely on sufficient facts and the opinions are relevant and reliable, there is no basis to exclude the opinions. The additional grounds raised by Delmarva also do not require exclusion. Therefore, the motions are **DENIED**.

Comcast separately seeks to exclude experts based on its argument that it owed no duty to Mr. Mena Perez. Having found a duty existed, Comcast's motions are **DENIED**.

IT IS SO ORDERED.

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