

CSST Industry Takes Two Punches to the Chin

The City Council of Lubbock, Texas recently imposed a city-wide ban on the installation of first-generation corrugated stainless steel tubing (CSST) products in new homes and commercial construction. This ban stems from the death of Brennen Teel in August 2012, and marks the first instance of a city banning future installations of first-generation CSST.

Brennen Teel was killed after lightning struck near a home he was visiting, and the resulting power surge created holes in the CSST within the home that caused a violent explosion. His estate sued the CSST manufacturer, Titeflex, alleging that lightning-induced failure of the tubing caused the fatal explosion and fire.

The Lubbock City Council initially sought to adopt a code provision that would allow the installation of CSST if it could withstand 85 coulombs of energy. Titeflex is the only manufacturer that claims its CSST can withstand this amount of electrical energy. In response, one of the other leading CSST manufacturers sought to block the passage of this code provision, presumably because it would effectively ban the use of its own CSST product in Lubbock but would allow for Titeflex's product. This result would be particularly troublesome given that the Lubbock ordinance could be used as a model elsewhere.

In a City Council meeting that took place on May 12, 2016, general counsel for the dissenting manufacturer gave a presentation that included the opinions of two experts retained from Texas Tech University. These experts conducted extensive testing on the Titeflex product and told the City Council that the Titeflex product was not capable of withstanding energy at the 85 coulomb level.

In making his presentation, James Dickens, Ph.D., P.E., made statements regarding the safety level of first-generation (yellow jacketed) CSST. Millions of linear feet of this first-generation CSST, manufactured by all the CSST manufacturers, have been installed throughout the country. Dr. Dickens testified that yellow jacketed CSST was only capable of withstanding .1 coulombs of energy, which Dr. Dickens candidly described as "awful." To illustrate just how dangerous yellow jacketed CSST is, Dr. Dickens described his own fear of CSST-related fires, and told the City Council that he instructs his family, which includes two young children, to leave their home during lightning storms because it is equipped with yellow jacketed CSST. Dr. Dickens emphatically stated: **"This is a defective product, there is no question about it."** After this presentation, the City Council imposed its prospective ban on all first-generation CSST.

The testimony provided by Dr. Dickens may be considered admissions against interest, because he appeared at the City Council meeting on behalf of the manufacturer, which could render it admissible in court as an exception to the rule against hearsay. Such statements will most certainly enhance the value of first-generation CSST cases, as these words will echo through courtrooms around the country. It will be difficult to sidestep this disastrous representation, as the meeting was preserved on videotape, and remained available [online](#) as of this writing.

In a related matter, Cozen O'Connor attorneys Mark Utke (Philadelphia) and Anthony Morrone (Chicago) recently secured a verdict in excess of \$1.4 million against CSST manufacturer Ward Manufacturing (WardFlex) in the Federal District Court of Florida. The case involved a Tampa, Fla., residence, in which CSST was used to transport propane gas to a fireplace, that was struck by lightning in 2011 and burned to the ground with very little evidence that could be salvaged from the scene.

Sifting through the rubble, a single line of CSST was found with a perforation that appeared to be caused from electrical arcing. The tubing was heavily corroded and physically damaged from the



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collapse of the structure. Lab tests by our experts confirmed that the perforation was caused by high voltage electricity associated with lightning. Ward Manufacturing vigorously contested this finding and argued that the hole was caused by fire attack unrelated to lightning. As the electrical wiring at the loss scene was too damaged to analyze, causation was the primary issue in the case. Ward selected this as the first case it would take to trial, as the evidence from the loss scene was in such poor condition and it appeared that the home sustained a direct lightning strike. Prior to trial, Ward made a nominal settlement offer, but it was clear that the company was pulling out all stops to defend the case.

The jury returned a verdict finding that Ward's CSST product was defective and unreasonably dangerous, that Ward was negligent for not testing the product for lightning resistance before placing it in the market, and finding Ward negligent for failing to issue a post-sale warning of the hazards it was aware of after the sale of the product. The jury award represents 100 percent of the replacement cost damages for the home, its contents and the automobiles in the garage.

This is only the second successful verdict in the country against a CSST manufacturer. Mark Utke obtained the first, also in excess of \$1 million, in *Tincher v Omegaflex*.

Cozen O'Connor stands ready to assist with any questions you may have regarding issues discussed in this Alert.