

BEFORE THE PUBLIC UTILITIES COMMISSION

**In the matter of the Public Utilities
Commission Act 1990 (No. 26 of
1990), as amended**

- and -

**In the matter of the claim for
compensation by Mr. Charles
Liburd against the Guyana
Electricity Corporation.**

PRESENT-

PAMADATH J. MENON, A.A.	-	Chairman
L.J.P. WILLEMS, A.A.	-	Member
HUGH GEORGE	-	Member
CHANDRABALLI BISHESWAR	-	Member
BADRIE PERSAUD	-	Member

REPRESENTATION -

Charles Liburd – Claimant	-	Mr. C.A. Nigel Hughes
Guyana Electricity Corporation	-	Mr. Kaisree S. Chatarpaul

The above mentioned matter was heard at public hearings on the 16th, 17th and 24th June, and the 22nd and 29th July, 1998. Written arguments were submitted by Attorney-at-Law Mr. C.A. Nigel Hughes on behalf of the claimant and Attorney-at-Law Mr. Kaisree S. Chatarpaul on behalf of the Guyana Electricity Corporation (GEC).

DECISION

This claim arises from a fire that took place on 21st September, 1995, between 9:15 a.m. and 9:30 a.m. at the property located at 91-92 Duke Street, Kingston, Georgetown ("the said property").

2. At the material time Charles Liburd ("the Claimant") owned the said property and lived there with his wife and the property was being supplied with electricity by G.E.C.

3. Mr. Liburd is a retired Diplomat, who has served Guyana in various capacities and was living outside Guyana with his family up to 1992. He reconstructed the said property, which took the latter part of 1992 and the whole of 1993 and he occupied the said property with his wife in January 1994. As part of the reconstruction, the said property was completely re-wired. The contractor for the rewiring was Burchel Forde who has been examined as a witness in these proceedings. The certificate issued by the Chief Electrical Inspector after completion of the rewiring, was unfortunately destroyed in the fire and so could not be produced in these proceedings. A copy of the letter issued by the Chief Electrical Inspector confirming that he had issued a Certificate of Compliance has been marked as Exhibit VI.

4. It is also in evidence that an officer of GEC had inspected the said property after its reconstruction, and before it was occupied by Liburd and a certificate approving the electrical works was issued by GEC. Liburd was receiving from GEC electrical bills in his name for use of electricity in the said property.

Incident -

5. On the morning of 21st September, 1995, the date of the fire, Mrs. Liburd had left for the hair-dresser and later Mr. Liburd had left for his office. When Liburd left for work at about 9:15 a.m. only his maid Dorothy Cush was at the said property. There was a blackout and so there was no electricity at the said property.

6. The evidence of Dorothy Cush is that on the morning of 21st September, 1995, Dorothy Cush was working downstairs in the said property. She was in the kitchen. There was blackout. At about 9.00 or 9.30 a.m. she heard an explosion and rushed inside. She looked around in the bottom flat and saw nothing. She rushed upstairs and looked in the bedroom and saw smoke and fire coming from the air-conditioner in that room and the whole bedroom was partly in smoke. The electricity came on at the same time when the explosion occurred. She knew this because the water-pump which supplied water upstairs started functioning.

7. After the explosion the building was engulfed in flames and destroyed.

After the incident –

8. When Dorothy Cush saw the smoke and fire from the air-conditioner, she ran down the stairway and shouted downstairs through the window for the gardener. She also shouted to the next door neighbour and asked her to telephone for the fire engine, and she did so. As a result of the notification three fire tenders under the command of Chief Fire Officer Tulsi John, went to the said property and extinguished the fire. The exercise lasted up to 12:00 noon.

9. When Liburd was informed of the fire, about an hour and a half after he left home, he returned to the said property. Dorothy Cush was still there and she reported to him what happened.

10. A copy of the report dated 19th October, 1995, made by L.O. David, one of the Station Officers in the Fire and Ambulance Service to the Chief Fire Officer in connection with the fire is Exhibit I and a copy of the report dated 24th October, 1995, made by the Officer in Charge of Georgetown 'A' Division of that Service is Exhibit II.

11. The members of the Guyana Police Force inspected the said property and a copy of the report of the Officer in Charge of Crime, Brickdam Police Station, made on 10th November, 1995, is Exhibit III.

12. Desiree Seecharan, a Scientific Officer from the Government Analyst's Department visited the said property. Debris were uplifted and lodged at Brickdam Police Station. However, due to the unavailability of chemicals and equipment the debris were not examined by the Analyst's Department.

13. Joseph Selman from the Electrical Inspection Division, Kingston, Georgetown visited the scene of occurrence. He did not, after an inspection of the building, discover any tangible evidence relating to the cause of the fire.

14. According to Liburd no person from GEC came to inspect the said property. To quote from the transcript of the public hearing on 16th June, 1998, in regard to the complaint of Liburd –

“Mr. Hughes: Subsequent to the fire, was the property inspected?”

Mr. Liburd: By whom?

Mr. Hughes: By the GEC

Mr. Liburd: I invited the GEC to come and inspect the premises before I commenced repairs. I went personally to the GEC Head Office. I spoke to the Engineer-in-Charge. I told him that this thing had happened and I would like somebody to come. No one came, so I

wrote a letter asking them to come and inspect the premises before I started any clearing up of the debris and so on, in the event that they might want to offer evidence as to the state of affairs.

Still no one came and I got a letter in reply saying that they would send someone but that would not be an admission of their liability in the matter.

Mr. Hughes: So your evidence is that no one, as far as you are aware, from the GEC ever attended the premises after the fire to inspect it.

Mr. Liburd: As far as I am aware, that is the case.

Mr. Hughes: No one certainly invited you to attend when they were inspected.

Mr. Liburd: They never did, no.” (page 12).

Again during cross-examination of Liburd by GEC’s Counsel Mr Chatarpaul-

“Mr. Chatarpaul: Now, you have said in answer to a question from your Counsel that you received no response from GEC after you invited them to inspect the premises. Is that correct?

Mr. Liburd; I said I received a letter. Finally which, among other things, said that this letter – no inspection, they promised to inspect, but I should not take that as being an acceptance of liability. I think I made that pretty clear, that was the only letter I received from the GEC.

Mr. Chatarpaul: Did you get the impression, Sir, that GEC had denied your claim?

Mr. Liburd: No, no, no. They had agreed to come and inspect after my letter to them, but they never did, as far as I am aware.

Mr. Chatarpaul: You don’t get the impression that GEC denied your claim?

Mr. Liburd: No, no. The question of the claim didn’t come in at that point in time.

Mr. Chatarpaul: You said you went to GEC personally.

Mr. Liburd: I saw Mr. Singh, I think it is, the Chief Engineer, and he was the one who wrote in reply to my letter.” (pages 18 and 19 of transcript).

15. A copy of a report prepared by A.C. Mahadeo, Transmission and Distribution Engineer of GEC is Exhibit IV. The evidence given by him can be seen in the transcript of the public hearing on 24th June, 1998.

16. The evidence of Mahadeo is to the effect that on the 21st September, 1995, just before midday, he received a report of a fire in Duke Street, Kingston. He sent off an emergency crew immediately to the location and he followed later. He went to the crew to ensure "the isolation was done to the community". The transformer was working. It was de-energised.

17. Mahadeo went back a week and a half later. To quote from the transcript of the public hearing on the 24th June, 1998 (pages 6 and 7) –

“Mr. Chatarpaul: What was the purpose of your going back there?

Mr. Mahadeo: That was the time we could have gotten entry and moved around freely.

Mr. Chatarpaul: Got entry into where?

Mr. Mahadeo: We could have got full entry into the yard and move around to talk to people, and the surroundings and so forth.”

18. However, as seen from his evidence he did not discuss anything with the owner of the house, Liburd. On the other hand, Liburd spoke to him in his office in Middle Street. He says he questioned Liburd. He did not speak to Dorothy Cush. In fact he did not speak to anyone who was in the house when the fire started. He did not examine any equipment which was in the northern part of the house where the fire started.

19. To quote again from the transcript of the evidence of Mahadeo (page 8)-

“Mr. Hughes: The question remains. Did you enquire from the owner which part of the building the fire started?

Mr. Mahadeo: We did not discuss the fire.

Mr. Hughes: Your answer is No.

Mr. Mahadeo: No.

Mr. Hughes: You spoke to anyone who was in the house when the fire started?

Mr. Mahadeo: No.”

20. Mahadeo goes on to say at the same page of the transcript, that “it is not the function for us, as T & D Engineer, Sir, to enter a building. Our business finish at the meter circuit.

21 Mahadeo conceded that he did not produce a report on the cause of the fire but on the state of GEC equipment and GEC connection. To quote from page 9 of the transcript of his evidence –

“Mr. Hughes: So you just basically produced a report which said that your equipment was in order

Mr. Mahadeo: O.K. Yes.

Mr. Hughes: You are responsible for that equipment, Sir?

Mr. Mahadeo: Yes.

Mr. Hughes: So you were producing a report on what you are responsible for. Is that correct?

Mr. Mahadeo: Yes.”

22. Burchell Forde is a professional electrical contractor and employed by Liburd to design the electrical works at the building at Lots 90-91, Duke Street. A copy of the design is Exhibit V. He had inspected the electrical works in the building both at the installation period and after it was completed. The electrical works complied with the design.

23. As stated earlier a copy of the letter issued by the Chief Electrical Inspector confirming that he issued a Certificate of Compliance is Exhibit VI.

Matters for consideration -

24. The following matters arise for consideration:-

- (i) What was the cause of the fire?
- (ii) What was the extent of the damage?
- (iii) Liability of GEC.

Cause of fire –

25. The house in question was a two-storey wooden building which was about ten feet from the level of the ground. The upper flat had two bedrooms one on the eastern side and the other on the northern side. The first flat was used as a living room, kitchen and dining room. (See Exhibit I and testimony of Dorothy Cush).

26. The evidence in this case establishes that the fire started in the northern bedroom in the top floor of the building from the air conditioner which was on the northern wall of that bedroom.

27. Dorothy Cush was in the building when electricity came on, after a black out, on the morning of 21st September, 1995. She was working downstairs. She had not gone upstairs as yet. Dorothy Cush was in the kitchen when she heard the explosion. She looked around in the bottom flat. She saw nothing. She rushed upstairs and saw smoke and fire was coming from the northern bedroom where the air conditioner was, coming from the air conditioner, and the whole bedroom was partly in smoke.

28. Liburd has testified that there were two air-conditioning units in the building – one upstairs in the main bedroom and another downstairs in the dining room area. According to Liburd's evidence, the report he received was to the effect that an explosion took place in the air conditioning unit which was in the bedroom. Only a shell of this air conditioning unit was left after the fire.

29. Joseph Selman is an Electrical Inspector from the Ministry of Works and Communications. At the request of the Police Department he visited the said property on the 22nd September, 1995. According to him the fire started in the northern bedroom on the top floor. The fire was intense at the northern wall and the ceiling above. There was an air conditioner on the northern wall. To quote from Selman's evidence –

“Mr. Hughes: O.K. You found that the fire started on the northern wall. Is that correct.

Mr. Selman: Well, its alleged that the fire started at that point, and from all appearances.....

Mr. Hughes:it appeared to start there. And that is the same wall on which the air conditioning unit was in.

Mr. Selman: Yes. Sir.”

Selman also said that he could locate the cause or start of the fire to something in the vicinity of the northern wall.

30. Selman's evidence corroborates in part the evidence of Cush. The witness also deposed that he did not notice any defect in the electrical wiring of the property in question.

31. The two air conditioners in the said property were only about two years old at the time of the fire, having been purchased as new by Liburd in 1993.

32. The evidence led in this case has also established that the air conditioner exploded because of a power surge when electricity came on after the black out was over. The learned counsel for GEC contended that other buildings connected to the same transformer did not experience any damage to equipment. The following passage from the deposition of Forde, produced as an expert witness by Liburd, throws some light on this question. In answer to a question by Commissioner Mr. L.J.P. Willems he stated –

“To begin with, the power supply is usually the transformer, as far as we are concerned, and the consumer who is nearest to the transformer would receive a slightly maybe full 5% plus 5% voltage. The one who is furthest away from the transformer would most likely receive minus 5% of the declared voltage”

Forde again stated –

“There are several distribution transformers serving several customers. If you are near to the transformer that serves you, you would most likely receive the plus 5%. The gentleman who is on the same line as you but further away maybe the end of the line, he probably would receive the minus 5%.”

Commissioner Mr. Willems queried Forde –

“I was wondering whether the surge is caused by even beyond the transformer. In other words, when, say Kingston Power House comes back on, it may be over-generating to take up the extra load, and as such would feed more even primary voltage into the transformer than it would in a transformer that is several blocks away. I think the transformer would just be passing on the surge and the distance may affect it. I am just trying to get

Mr. Forde: No, but you are quite correct. Distance does play a part”.

33. Charles Sukhwa was produced as an expert witness by GEC. He was a Senior Manager in GEC. He admitted that there was a blackout in the location of the property in question on the morning of 21st September, 1995, between 7.27 hours and

9.26 hours. After much prevarication he conceded that an inductive circuit in an air conditioner must result in a surge. To quote from Sukhwa's testimony –

- “Mr. Hughes: So once the current comes back on, it makes the inductive circuit, must have a surge. Right, Mr. Sukhwa?
- Mr. Sukhwa: Yes, you would have a surge.
- Mr. Hughes: And you agree that, depending on the intensity of a surge, it can affect the capacitor and cause it to ignite.
- Mr. Sukhwa: I do not know.
- Mr. Hughes: Sir, if you get a surge that is pretty serious, it cannot cause a capacitor to ignite if it's a combustible material.
- Mr. Sukhwa: I guess it could.”

34. Mr. Sukhwa deposed that if the air conditioner in the bedroom had been switched off, there would not have been surge. But the fact that there was an explosion and fire from the surge in the air conditioner indicates that it had not been switched off. In his cross-examination Liburd testified –

“Yes, but in more likelihood than not you would have switched it off. But that's not somebody didn't forget to do that on that morning, I don't know. I wasn't there”.

35. The following portion from Liburd's re-examination is also important –

- “Mr. Hughes: Just one re-examination. Mr. Liburd, in your experience living in Guyana, have you ever received any correspondence from GEC which said that you can't leave air-conditioners or any other electrical appliances on?
- Mr. Liburd: No, No, no. I have not received anything from GEC apart from the bills.
- Mr. Hughes: Have you seen any public notice which says that you can't leave electrical appliances on in the house?
- Mr. Liburd: No.
- Mr. Hughes: Especially air conditioners?
- Mr. Liburd: No.”

36. Exhibit III report dated 10th November, 1995, prepared by the Officer-in-Charge of Crime, Brickdam Police Station, after investigating the cause of fire at the said property, stated -

“However, investigation disclosed that arson was not suspected and it appears that the fire was caused by a surge in electricity which affected an electrical appliance in the northern bedroom which was inadvertently left on.” (Para. 9).

37. Under section 26(1) of the Public Utilities Commission Act 1990 (No. 26 of 1990) GEC had a statutory obligation to make every reasonable effort to provide service to the public in all respects safe, adequate and efficient. Though this Act has been repealed by section 89 of the Public Utilities Commission Act 1999 (No. 10 of 1999), by virtue of section 90(1) of the latter Act the provisions of the former Act would apply to these proceedings.

38. In proceedings under the Public Utilities Commission Act 1990, to which GEC was a party, by order dated 23rd May 1996, this Commission held that the service provided by GEC is not efficient. This Commission also held by the same Order that –

“Having regard to all the circumstances and the evidence before us we are satisfied that very often the service provided by the GEC is not safe.”

The above decision was the result of public hearings on 5th and 12th September, 1995, 24th October, 1995 and 22nd and 30th April, 1996. The fire which caused damage to Liburd’s property was on 21st September, 1995.

39. In the light of the above discussions we hold that the damage and destruction caused to Lots 90-91 Duke Street, Kingston, and the articles inside it, belonging to Liburd, were caused by the failure of GEC to fulfill its statutory obligation under section 26 of the Public Utilities Commission Act 1990 (No. 26 of 1990).

Extent of the damage –

40. Liburd was a diplomat and engineer and lived outside Guyana for over 40 years. He had residences in East Africa and London. He returned to Guyana towards the end of 1992. By letter dated 2nd October, 1996, he forwarded to this Commission “copies of the available documents for two shipments of my personal effects from London and Nairobi, supplying information on vessels and dates of arrival in Guyana”. The letter is marked Exhibit VII. Of the two documents attached to the letter, Exhibit VII (a), is a copy of a London to Guyana Manifest issued by MPs Travel and Shipping Limited. The first item in this document relates to 53 pieces (1500 kgs) of personal effects consigned to Charles A. Liburd at Georgetown. The second document (Exhibit VII(b)) attached to Exhibit VII letter is the copy of a Bill of Lading dated 22nd December, 1993, in respect of

1571 lbs. S.T.C. Appliances and Parts in 39 packages consigned in Container No. 5CZU469554-6 to C.A. Liburd in care of the Ministry of Foreign Affairs in Georgetown. This Bill of Lading does not contain any entry as to place of receipt by carrier or name of carrier by which pre-carried, but the port of loading is given as "PT Everglades". The name of the exporter is given as C.A. Liburd, Miami, Florida. But whether these items were imported from Nairobi or the United States of America, the fact remains that Liburd imported them.

41. Pursuant to authorisation by Liburd, the Secretary of this Commission tried his best to get from the Comptroller of Customs the copies of entries relating to the import by Liburd of his personal effects. However, the Customs Department was not able to provide those documents to this Commission. They said that with the best efforts they were not able to provide copies of those documents. According to that Department, the entries had been stacked away somewhere and could not be located.

42. Along with Exhibit VIII letter dated 8th July, 1996, Liburd submitted to this Commission details of his claim (Exhibit VIII(a)). According to the claim, the reconstruction of the house destroyed by fire cost him \$8,906,353.00. He valued the articles in the house, which were destroyed by fire at \$15,210,800.00. Both amounts together made a total sum of \$24,117, 153.00. The articles destroyed included, according to Liburd, very expensive items of dress, pieces of art, etc. In assessing the truthfulness of his claim it is necessary to take into account his status in society and his style of life.

43. In his testimony Liburd said that the building in question was worth \$20million - \$22 million. The building was insured against fire for \$10 million only. The contractors estimate for the repairs, to refurbish and replace the building as it was \$12 million. However, the insurance company reduced the amount to \$8 million, out of which the insurance company paid a compensation of nearly \$4 million.

44. As regards the contents of the building, which were destroyed by fire Liburd says in his testimony –

"I find it difficult to give a value to that. Some of the things are invaluable, like my children's photographs, growing up and so on. I find it difficult to put a value on those things, but in terms of the material things I lost, I tried to list as clearly as possible the main items, and I think that came up to something in the region of \$25m, according to my claim."

45. Liburd appeared to us to be a straightforward and credible witness. We believe him.

46. Mr. Sase Narain was examined as a witness on behalf of Liburd. Mr. Narain is a member of the legal profession, is a Senior Counsel (Member of the Inner Bar) and a former Speaker of the National Assembly. He was awarded the second highest National Honour of Guyana – the Order of Roraima.

47. Mr. Narain knew Liburd for the past 25 years. He had been acquainted with his various residences both in Guyana and overseas. He was familiar with Liburd's residences in London, more particularly at 80, Eton Square. He had visited those premises on more than one occasion. He was afforded opportunity of observing the works of art that were on display in those premises. He was familiar with some of them. He had visited Lots 90-91, Duke Street, Kingston, which was destroyed by fire. He had opportunity to observe the contents of those premises and had noticed several pieces of art, particularly from East Africa. The pieces of art that Liburd had in Georgetown were the pieces he also had in Eton Square, London. According to him, Liburd was one of the few Guyanese who lived exceptionally well, both sartorially as well as in Epicurean taste. Mr. Narain also testified from his personal experience that the price of suits, shirts and shoes given by Liburd in Exhibit VIII(a) was reasonable.

48. Mr. Narain corroborates the evidence of Liburd generally as regards the contents of the house in question and their value.

49. Having considered the evidence in this case and the probative value of the same, we accept the cost of reconstruction of Lot 90-91, Kingston, Georgetown, and the value of the contents thereof destroyed by fire as given by Liburd in Exhibit VIII(a) subject to the modifications mentioned in this Order. We reduce the same by \$4 million, being the amount received by Liburd from the insurance company. GEC is liable to pay Liburd "compensation for loss or damage" under section 27(1) of the Public Utilities Commission Act (No. 26 of 1990). That would include the cost of alternate accommodation, which Liburd had to obtain because his residence was destroyed by fire, until the completion of the reconstruction of that building. Mr. Liburd claims on this account \$373,200.00 for 9 1/3 months. This was not challenged by GEC. Liburd had claimed \$175,500.00 as the cost of security. He would have had to meet this expenditure even if the building had not been destroyed by fire. So we disallow this amount.

50. We have also to take into account the possibility that Liburd had prepared the list of the contents of the property affected by the fire and set out in Exhibit VIII(a) and their value, from memory and therefore, in all good faith, he could have made mistakes which may very well be to his advantage, in regard to the details of the items in that list and their value. In view of this we reduce the value of the said articles by 25%, that is, from \$15,210,800.00 to \$11,408,100.00

51. In the light of the above discussions we hold that Liburd is entitled to receive from GEC the following amount –

Amount as claimed by Liburd	-	\$24,117,153.00
Less -		
(i) Amount received from)		
Insurance company) \$4,000,000.00	

(ii)	Cost of security	\$ 175,500.00	
(iii)	25% of the value of the articles in the building	<u>\$3,802,700.00</u>	
	Total		<u>\$7,978,200.00</u>
	Amount awarded	-	<u>\$16,138,953.00</u>

Liability of GEC –

52. Attorney-at-Law Kaisree S. Chatarpaul argued on behalf of GEC that the said corporation enjoys general immunity from legal proceedings. According to him in view of section 18 of the Electricity Act, Cap. 56:01, GEC is not liable for any loss or damage occasioned by any failure of any supply of energy howsoever caused.

53. This Commission was originally established under the Public Utilities Commission Act 1990 (No. 26 of 1990). Section 27(1) of that Act authorised this Commission to direct any public utility, including GEC, to pay to any consumer compensation for loss or damage suffered by the consumer on account of the failure of the public utility to comply with section 26 of that Act. Section 26(1) of that Act requires GEC to provide safe, adequate and efficient service. While the decision of this Commission by its Order dated 23rd May, 1996 held it was satisfied that the service provided by GEC was very often unsafe, and the evidence in this case about the cause of the fire in the house of Liburd at Duke Street, Kingston, on the 21st September, 1995, establishes that it was due to the fault of GEC, the evidence in this case does not establish that GEC did make every reasonable effort to provide safe service.

54. We, therefore, reject the contentions of Mr. Chatarpaul in this regard.

55. By virtue of the provisions of section 42 of the Electricity Sector Reform Act 1999 (No. 11 of 1999) the GEC has been converted into a public company limited by shares - the Guyana Electricity Corporation, Inc. The liability of GEC to Liburd is now the liability of the Guyana Electricity Corporation, Inc.

ORDER

56. In the light of the above discussions and findings, this Commission hereby orders Guyana Electricity Corporation, Inc. to pay Charles Liburd, the claimant in this case, before the expiry of three months from the date of this Order –

- (i) a sum of \$16,138,953.00 as compensation for loss and damage suffered by him on account of the failure of GEC to comply with section 26 of the Public Utilities Commission Act 1990 (No. 26 of 1990); and
- (ii) a further sum of \$500,000 as costs of these proceedings.

Dated at Georgetown, Guyana

this 18th day of April, 2000.



Pamadath J. Menon

PAMADATH J. MENON, A.A.

- **CHAIRMAN**

L.J.P. Willems

L.J.P. WILLEMS, A.A.

- **MEMBER**

Hugh K. George

HUGH GEORGE

- **MEMBER**

Ch. Bisheswar

CHANDRABALLI BISHESWAR

- **MEMBER**

(Out Of The Country)

BADRIE PERSAUD

- **MEMBER**