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Information for whom it may concern.

### **THE RESULT OF: A COURT CASE CONCERNING ESE DEVICES.**

**(THE SHORT VERSION)**

In connection with the NFPA's rejection of ESE draft standard 781, three ESE companies (Heary Bros. Lightning Protection Co., Inc., Lightning Preventor of America, Inc., and the National Lightning Protection Corp.,<sup>1</sup> of which the two first mentioned have merged) sued a lightning protection trade association and two lightning protection companies (Lightning Protection Institute, Thompson Lightning Protection Inc., and East Coast Lightning Equipment, Inc.). The lawsuit, which was initiated in 1996, contained allegations of conspiracy, false advertising and product defamation regarding the advertised improved efficiency of ESE terminals compared to conventional Franklin rods.

In October, 2003, the Federal District Court of Arizona summarily dismissed the lawsuit. The dismissal was largely based on the fact that the ESE vendors presented no admissible evidence at all to support their claims. Additionally, the Court granted a favorable ruling to a counterclaim against the ESE vendors. The ESE vendors were convicted of falsely advertising the claimed increase in efficiency of ESE rods in comparison to conventional Franklin rods.

Significantly, the verdict rejected the ESE vendor's claims that their ESE terminals' compliance with various ESE standards justified the advertised expanded zones of protection for ESE devices. The Court found that the conformance with foreign ESE standards failed to prove claimed increased zones of protection for ESE rods. The Court found that the ESE vendor's claims are not supported by tests sufficiently reliable to support those claims and are therefore in violation of American "truth-in-advertising" laws.

**THE FULL VERSION, cf. the homepage of the district court:**

<http://www.azd.uscourts.gov/azd/courttopinions.nsf/Opinions%20by%20date?OpenView>

Date 2003.10.23 - CV 96-2796 PHX ROS, Heary Bros. Lightning Protection Co., Inc., et al. vs. Lightning Protection Institute, et al.

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<sup>1</sup> The National Lightning Protection Corp. sells the well-known ESE device named Prevector from the French manufacturer Indelec, whereas Heary Bros. produce and sell their own ESE model.