

PA One Call System: Economic Loss Rule Bars Excavator From Suing Utility Company for Negligence in Marking Underground Lines

Case Synopsis

In the recent case of Excavation Technologies, Inc. v. Columbia Gas Company of Pennsylvania, 936 A.2d 111 (Pa. Super. 2007), Excavation Technologies, Inc. (“ETI”), an excavation contractor from Ohio, sued Columbia Gas Company of Pennsylvania for allegedly mismarking several gas lines, and even failing to mark certain gas lines, pursuant to a One Call System request. ETI asserted a claim against Columbia Gas for negligent misrepresentation for failing to comply with its obligations under the One Call Act. ETI did not seek any damages for physical injury or property damage as a result of hitting the mismarked gas lines on eleven different occasions. ETI only sought damages for 47 hours of downtime for its manpower and equipment. Facing the issue for the first time, the Pennsylvania Superior Court held that an excavator could not recover purely economic losses from a utility company that allegedly mismarked gas lines.

Economic Loss Rule

Under Pennsylvania law, the “economic loss rule” prohibits a cause of action for negligence that resulted purely in economic losses with no accompanying physical injury or property damage. Adams v. Copper Beach Townhome Cmtys., L.P., 816 A.2d 301, 305 (Pa. Super. 2003). In other words, without some physical harm or impact to a plaintiff’s person or property, a plaintiff cannot recover against a defendant for negligence. Excavation Technologies, Inc., 936 A.2d at 115 n. 7.

Exception to the Economic Loss Rule

An exception to the economic loss rule is found in Section 552 of the Restatement (Second) of Torts titled, “Information Negligently Supplied for the Guidance of Others”. Section 552(1), which was adopted by the Pennsylvania Supreme Court in Bilt-Rite Contractors, Inc. v. Architectural Studio, 581 Pa. 454, 866 A.2d 270 (2005), provides that:

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary benefit, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Restatement (Second) of Torts § 552(1) (1977).

Under Section 552, one can recover purely economic losses as a result of his justifiable reliance on information negligently supplied by another, even if

there is no accompanying physical injury or property damage.

To Whom Does Section 552 Apply?

In Bilt-Rite, the Supreme Court held that Section 552 was applicable to “architects and other design professionals”, meaning that they could be liable under Section 552 to the person or persons for whose benefit and guidance they intend to supply information (i.e., contractors and subcontractors). One of the main reasons that Section 552 applies to “architects and other design professionals” is because they supply information (i.e., drawings and specifications) in their professional capacities as part of their business, and are compensated for supplying such information. In other words, “architects and other design professionals” are in the business of supplying information, and, therefore, clearly fall under Section 552(1). Excavation Technologies, Inc., 936 A.2d at 115.

Does Section 552 Apply to “Facility Owners” Under the One Call Act?

Under the One Call Act, the public utility that owns or operates a line is a “Facility Owner”. 73 P.S. § 176. As a “Facility Owner”, Columbia Gas is obligated under the One Call Act to respond to a request from an excavator and provide information concerning the location of its lines. See, 73 P.S. § 177(5). However, according to the Superior Court, despite such a statutory duty, Columbia Gas is in the business of supplying gas to its customers, not information for the guidance of excavators. Excavation Technologies, Inc., 936 A.2d at 116. Columbia Gas does not receive payment for supplying information to excavators when it responds under the One Call Act. Accordingly, the Superior Court found that Columbia Gas does not provide information for pecuniary gain when its responds under the One Call Act. Id. at 116-117. On that basis the Superior Court concluded that Section 552(1) did not apply to Columbia Gas, therefore the economic loss rule barred ETI’s cause of action for negligence.

It is important to keep in mind that the One Call Act does not effect any civil remedies for property damage or personal injuries that may result from the negligence of a “Facility owner” in locating and marking its lines.

Recovery Against Project Owner?

The One Call Act provides an excavator with a limited right of recovery against the “Project owner” when there is insufficient information from the “Facility owner” to safely excavate. In such a case, an excavator is required to employ “prudent techniques” to ascertain the precise location of the line, which could include “hand-dug test holes”. See, 73 P.S. §

180(4). The “Project owner” is required to pay for the costs of utilizing such techniques. Id. Whether an excavator would have an additional remedy or remedies against the “Project owner” for purely economic losses resulting from hitting underground lines depends on the language of the contract between the excavator and the “Project owner” and the particular circumstances of the case.

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