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Case Bulletin: Tort Law

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Pennsylvania Superior Court rules that economic loss doctrine precludes suit by contractor against utility alleging cost overruns and downtime for failure to mark or improper marking of utility lines pursuant to PA One Call Act.

Excavation Technologies v. Columbia Gas of Pennsylvania
Pennsylvania Superior Court 1237 WDA 2005
Opinion Dated November 7, 2007

An *en banc* panel of the Pennsylvania Superior Court ruled that Excavation Technologies, Inc., a contractor, was precluded for seeking claims of cost overruns and downtime based on Columbia Gas Company of Pennsylvania's alleged failure in not marking or improperly marking its utility lines pursuant to the Pennsylvania One Call Act. Excavation Technologies did not suffer any physical injury or property damage and therefore the economic loss doctrine precluded its claims.

Excavation Technologies argued that its claim of negligent misrepresentation was viable under Section 552 of the Restatement (Second) of Torts, as adopted by the Pennsylvania Supreme Court in *Bilt-Rite Contractors, Inc. v. Architectural Studio*, 866 A.2d 270 (Pa. 2005). Excavation Technologies claims that it struck gas lines on eleven separate dates resulting in a claim of approximately \$75,000 consisting of downtime and its manpower and equipment as a result of no marking or improper marking of utility lines.

The majority determined that in order to establish liability under Section 552 of the Restatement (Second) of Torts a plaintiff must show, pursuant to subsection (1), that: the defendant is in the business of supplying information for the guidance of others and the information provider must have a pecuniary interest in the transaction; the information provided is false; the information was justifiably relied upon; and the defendant failed to exercise reasonable care in obtaining or communicating the information. Subsection (2) of the Restatement the Superior Court stated serves to limit the scope of such liability to those persons (a) the information provider knows exist, (b) who are contemplating a specific commercial transaction the information provider knows about, and (c) whom the information provider intends to influence in that transaction by using the provider's information.

The Superior Court determined that the Supreme Court's adoption of Section 552 was meant to draw a narrow exception to the application of the economic loss rule in the particular set of circumstances that were present in *Bilt-Rite*. The Superior Court held that the utility company under the PA One Call Act is required to supply the information, is given a limited time frame in which to provide the information, and derives no pecuniary interest from providing the location of its utility lines. Therefore, the Superior Court distinguished the position of a utility company from that of an architect, which was the defendant and the information provider in *Bilt-Rite*. The Superior Court determined that the Pennsylvania One Call Act did not provide a private cause of action and the language of the Act was different than the One Call acts in Florida and Illinois, which would permit such claims.