



## Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP

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### **PENNSYLVANIA SUPREME COURT HOLDS UTILITY NOT LIABLE FOR IMPROPERLY MARKING PIPELINES UNDER PENNSYLVANIA'S ONE CALL ACT**

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In *Excavation Technologies, Inc. v. Columbia Gas Company*, the Pennsylvania Supreme Court recently issued a decision that stands for two important propositions: 1) A utility will not be held liable for purely economic damage suffered by an excavating company because of the utility's failure to properly mark its pipelines in response to a request under Pennsylvania's One Call system, and 2) a party that suffers purely economic loss (as opposed to property damage or personal injury) cannot recover damages in an action based solely on negligence.

Pennsylvania's One Call Act requires public utilities and others who own underground lines to, upon request, provide the position of the underground lines within 18 inches horizontally from the outside wall of the line so that an excavator may safely decide where to dig.

In the case in question, Columbia Gas improperly marked some lines and failed to mark others. As a result, an excavation company struck several gas lines, making the work more expensive and causing purely economic damages of \$74,500 to the contractor, consisting of downtime to manpower and equipment. Importantly, the contractor did not suffer any physical injury or property damage.

The Supreme Court began its analysis by noting that when the Pennsylvania Legislature drafted the One Call Act, it did not include a provision making utility companies liable for purely economic losses caused by mistakes in marking the location of underground equipment. The Court then noted that the economic loss doctrine provides that "no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage."

Furthermore, the Supreme Court held that the purpose of the One Call Act is to protect against physical harm to individuals working on construction sites and to avoid property damage to utility equipment and surrounding structures. Moreover, the Court held that excavators, not utility companies, are primarily responsible for identifying the precise location of underground material. Therefore, the excavator must employ prudent practices to determine the exact location of underground equipment, and in some cases that may require more than a reliance on the utility's marks.

Finally, the Supreme Court held that making utility companies liable for purely economic

damages would shift the burden from excavators (who the Court believes are in the best position to prevent damage to underground lines) to utility companies, who will then undoubtedly pass the costs on to their consumers. If the legislature had desired to shift the burden of economic loss from the excavator to the consumer, it would have said so plainly in the One Call Act. Since the legislature did not do so, the Court must presume it did not intend such a shift in responsibility. The Pennsylvania Supreme Court concluded by saying that it declines "to afford heightened protection to the private interest of entities who are fully capable of protecting themselves, at the public's expense."

One judge on the Supreme Court issued a separate opinion, emphasizing the shared responsibility between excavators and owners of underground lines as described in the best practices of the Common Ground Alliance (most recently revised in February, 2009). However, this judge also stated that the proper remedy for economic losses associated with improper information provided under the One Call Act is best decided by the Pennsylvania Legislature.

It remains to be seen if the Pennsylvania Legislature will choose to amend the One Call Act to give contractors a remedy for economic losses caused by inaccurate information provided under the One Call system. In the meantime, contractors, home owners and others who undertake excavation projects must understand that utilities will not be liable for purely economic loss caused by the utilities' failure to properly mark the location of its pipelines or other buried equipment.

For more information regarding this topic, please contact the author of this article or the MacDonald Illig attorney with whom you have worked.

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