

Chapter 12

**Two Important Cases Which Impacted the State
of Pennsylvania Oil and Gas Law in 2007:
*Excavation Technologies v. Columbia Gas
of Pennsylvania* –
Is a Gas Company Liable for Economic Losses
When It Marks Its Lines?
and
*Penneco v. Dominion Transmission
and Dominion Exploration and Production* –
Who Owns the Right to Drill Under Production
and Storage Leases?**

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§ 12.01. Introduction.

In 2007, two cases of great significance to the oil and gas industry were decided in Pennsylvania.² In an appeal that drew amicus briefs from the construction and energy industries, the Pennsylvania Superior Court in *Excavation Technologies, Inc. v. Columbia Gas of Pa., Inc.* held that the economic loss rule barred claims that a gas utility had negligently failed to accurately mark the location of its pipelines as required by Pennsylvania’s One Call Act.³ This en banc decision of the superior court further held that the purpose of the One Call Act was to protect utility lines and that the legislature never intended the Act to be used as the basis for negligence claims against utilities. That decision is currently on appeal to the Pennsylvania Supreme Court.

² The author was one of the lawyers representing the prevailing parties in the cases.

³ *Excavation Techs., Inc. v. Columbia Gas of Pa., Inc.* 936 A.2d 111 (Pa. Super. Ct. 2007).

In *Penneco Pipeline Corp. v. Dominion Transmission, Inc.*, the United States District Court for the Western District of Pennsylvania held that an oil and gas lease which provided that it would remain in effect so long as gas was produced or stored remained in effect even though no gas had been produced for over 50 years.⁴ The court rejected the plaintiffs' claims that there was an implied covenant to produce gas and that the failure to both produce and store gas constituted abandonment of the right to produce gas. The decision, currently on appeal to the United States Court of Appeals for the Third Circuit, reaches a contrary result to another opinion from the same court, *Jacobs v. CNG Transmission Corp.*⁵

§ 12.02. *Excavation Technologies.*

[1] — Pennsylvania's One Call Act.

Pennsylvania's One Call Act requires contractors to give notice of their intention to excavate so that they can learn the location of any underground facilities on the site before construction begins.⁶ Before designing a construction project or beginning construction, excavators and owners must call the One Call System and provide information regarding the proposed project.⁷ Within a specified time period, utilities that have facilities within the construction site are to stake or mark the approximate location of the underground lines.⁸

Utilities are required to participate in the "One Call System" and to identify the counties and municipalities in which their lines are located.⁹ Within two working days after a request from a contractor, the utility company is required to

. . . mark, stake, locate or otherwise provide the position of . . .
underground lines at the site within eighteen inches horizontally

⁴ *Penneco Pipeline Corp. v. Dominion Transmission, Inc.* 2007 WL 1847391 (W.D. Pa. June 25, 2007).

⁵ *Jacobs v. CNG Transmission Corp.*, 332 F. Supp. 759 (W.D. Pa. 2004).

⁶ *See generally* 73 Pa. Stat. Ann. §§ 176, *et. seq.*

⁷ 73 Pa. Stat. Ann. § 180.

⁸ 73 Pa. Stat. Ann. § 177(5)(i).

⁹ 73 Pa. Stat. Ann. § 177(1).