PIETRAGALLO
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CONSTRUCTION LEGAL EDGE

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Designing the Defense: Cyber Risk For Construction Professionals and How to Prepare for the Inevitable Breaches

Former FBI Director Robert Mueller said to a conference of security experts that "there are only two types of companies: those that have been hacked and those that will be." This is particularly poignant in light of a trio of big data breaches that have been generating headlines this year: first Target during the Christmas season of 2013 (personal data and credit card information of 12 million people stolen), then Home Depot in Spring/Summer of 2014 (information for more than 56 million credit cards was stolen in the U.S. and Canada), and most-recently Sony in November of 2014 (company emails, unreleased movie scripts and other proprietary work product, and the social security numbers and personal information of 47,000 Sony personnel and 40,000 others were stolen and released publically).

While these are big stories and big targets, construction professionals should use this as an opportunity to evaluate their risks from both external hackers and the malicious acts of disgruntled employees, and plan for their response now.

Why Should A Construction Professional Worry About Cyber Risks?

The best way to answer this question is to begin with what is at risk. In order to do that,

imagine that a disgruntled employee or a hacker practicing his craft in preparation for a bigger score has decided on you as a target and all of your digital data is compromised. Starting with first-party information (information relating to your firm and your employees), the data at risk could include payroll, proprietary design and pricing information, emails, and employee personal information.

• **Payroll Data.** The compromise and disclosure of payroll data could have an immediate impact on employee morale and productivity if compensation is uneven, and future hiring if your competitors know they can offer "a few dollars more" to top talent.

• **Proprietary Information.** The publication of your proprietary design and pricing information, and confidential bid documents will hurt your competitiveness and the "bottom line."

• **Emails.** As Sony has recently learned, the candid comments made in employee emails can harm your firm's carefully manicured client relationships if they are made public in a breach.

• **Confidential Personal Information.** If the data breach exposes employee personal information such as bank account numbers, social security numbers, and medical information obtained for insurance purposes, your firm could face regulatory penalties in addition to legal action for identity theft and the corresponding economic harms.

Potentially even more troubling is the compromise of information of third-parties stored on your system. This could include confidential bid documents, proprietary design documents, and vendor bank account numbers, just to name a few data points. The exposure of this data could cause serious economic injury to other parties that could, in turn, lead to costly litigation. And, while the perpetrators of the data breach may be overseas or "judgment proof," your firm could face liability for unreasonable or negligent data security practices. Theories of liability in a third-party cyber liability case could include:

- Failure to adequately secure external-facing networks;
- Failure to encrypt or secure sensitive third-party data;
- Negligence in the maintenance of networks and databases with known security vulnerabilities; and,
- Failure to restrict third-party access and/or employ network intrusion countermeasures.

A plaintiff in such a data breach case could potentially seek damages for the quantifiable economic harm it suffered, if any, as well as damages for reputational harm caused by any publicity surrounding the breach. The plaintiff could also pursue damages for the cost of security countermeasures it has incurred, and damages for loss of competitiveness in the market should the breach include any proprietary design or pricing information. Even a successful defense of such a claim will be costly given the costs associated with cyber security experts,

attorneys' fees, and the loss of productivity for key personnel for the time spent in their participation in litigation.

Risk Mitigation

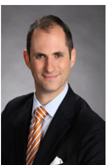
In light of former Director Mueller's apt comment that all firms will be victimized by data breaches at some point, no one can afford to ignore the risk. Thankfully, there are affirmative steps you can take to mitigate the potential harms.

Secure your data now. Although no network defense is invulnerable from internal and external threats, there are steps that can be taken to minimize your risks. Third-party consultants can provide security audits to detect vulnerabilities and assist you with your efforts to secure your data. Routine security audits and documented efforts to enhance data security will also be very helpful evidence should your firm find itself defending data breach litigation.

Consider cyber risk insurance. Industry analysts estimate that only between 25% and 30% of U.S. companies carry insurance policies protecting them from cyber risks. It is a common, but thankfully diminishing, belief that the risks associated with data breaches are covered by standard general liability policies; they are not. Considering the potential exposure for a data breach, especially in the context of confidential third-party information, an adequate cyber liability policy could be the difference between profitability planning and bankruptcy planning.

Respond quickly. Upon detection of a breach, you must act quickly to notify the affected parties and minimize the theft of funds, the financial damage to credit worthiness, and the harm to the reputations of those involved. You should consider using a team of cyber security consultants to assist you with "plugging the leak," attorneys to evaluate the potential liability and help you mitigate it, and public relations professionals to minimize harm to your firm's reputation.

In the end, you may not be able to prevent an eventual data breach, but you can minimize the harm to your firm, your clients, your employees, and your vendors if you design a good defense.



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Safety First For Workers - Security First For Data

All construction companies protect their workers. Few protect their data.
The costs in injury, productivity and litigation from an unsafe work environment are well-known and foremost in the minds and practices of management and workers alike. Safety is planned into every

project. Safety training is part of every job description. Yet accidents still happen.

Data may not be your most valuable asset, but it runs a close second. Employee records, financials, construction drawings, customer records, business plans, intellectual property – all of your business critical information – is as fragile and vulnerable as the physical wellbeing of your workers. Just like a physical injury, recovery from a data injury – from loss, theft or corruption – can be very costly in terms of lost productivity, lost revenue, damaged reputation and litigation.

Viewed in this context information security takes on a new aspect. No longer solely the domain of the IT department, information security, like worker safety, becomes the responsibility and the mission of senior management.

"Data security just wasn't high enough in our mission statement."
Frank Blake, former CEO, Home Depot
Quoted in The Wall Street Journal, Nov. 6, 2014,
after hackers compromised 56 million credit cards
and 53 million customer email addresses

According to a Ponemon Institute study of IT and IT Security professionals published in 2014, 68% of respondents reported having experienced a breach or incident within the last two years, and 46% said another incident is imminent and could happen within the next six months.

Despite the prevalence of the incidents and threats, the study reported that only 51% of legal departments and only 20% of executive management in those companies surveyed received frequent briefings on cyber threats to their organizations. Legal and executive management are even less involved in the incident response process, with legal being involved 45% of the time and executive management only 14% of the time.

Consequently, the most important information security action you can take is to find out the security status of your IT infrastructure and network. This is an inexpensive process and can be completed with a report and recommendations within two to four weeks. Internal IT departments and security software vendors can certainly conduct an information security assessment for your company, however an independent third party will provide the combination of security expertise and objectivity you may require.

The security assessment should be comprehensive, delivering an acute understanding of the state of information security within your business, uncovering sources of risk and encouraging the proactive management of your environment. Because risk does not only exist outside your company, your assessment must consider both internal and external holes in network security,

as well as policy and permissions. Your risk assessment should include:

Network Security Risk Review
A summary report ranking relative security health on a scale of 1 to 10.

External Vulnerabilities Scan Detail Report
Identifies security holes and warnings across your entire network. There are 65,535 "ports," or access points, for your network that your computers can use to interact with external networks. That also means there are 65,535 points of potential vulnerability to outside intrusions.

Outbound Security Report
Highlights deviations from industry standards, a wireless network security survey, and an internet content accessibility review.

Security Policy Assessment Report
Provides details on local and domain-wide security policies.

Share Permission Report
A detailed list of which users and groups have access to which files at what level.

User Permission Report
Identifies all shared computers and files to which they have access.

User Behavior Analysis Report
Organizes successful and failed login attempts by user.

Login Failures by Computer Report
Organizes successful and failed login attempts by computer.

Login History by Computer Report
Identifies users who have succeeded in logging into another machine.

Information security has joined worker safety as a mission critical requirement for protecting today's successful construction professionals. The reputation, litigation and financial costs of accidental or malicious loss, theft or corruption of digital assets are so high that companies can be forced into bankruptcy. This is the domain of top management, yet executives are most often not even part of the discussion.

Our suggestion: Add information security to your mission statement and have experienced professionals conduct a network security audit so you know where you are vulnerable, and you can take action.

DEAN GENGE IS PRESIDENT OF ASCENT DATA LLC, PITTSBURGH, PA.

CGL Coverage For Construction Defects? - Yes or No Often Depends on a Border Crossing

As we have previously written in prior additions of CLE, Pennsylvania joins those jurisdictions that hold that commercial general liability insurance policies issued to contractors do not insure against defective construction claims because such claims are not based on "occurrences." Recently, the United States District Court for the Eastern District of Pennsylvania reaffirmed Pennsylvania's treatment of occurrence based liability polices in construction defect claims. *State Farm Fire and Casualty Company v. McDermott*, 2014 WL 5285335 (Oct. 14, 2014). In *McDermott*, a contractor who allegedly improperly installed windows and doors in approximately 300 homes in Bucks County, Pennsylvania thereby permitting water intrusion to become an on-going and recurring issue for the homes and causing the homes to suffer ancillary damage apart from the improperly installed windows and doors. Despite the civil action against the contractor containing claims of negligence, the Court held, in accordance with prior Pennsylvania case law, that the contractor's "alleged failure to live up to contractual obligations cannot be seen as an accident or some unforeseeable event" and therefore the contractor's insurer owed no coverage for the claims.

Just across the state line in West Virginia, the same claim would have been treated very differently. In *Cherrington v. Erie Insurance Property and Casualty Company*, 231 W.Va. 470 (June 18, 2013), the Supreme Court of West Virginia considered a nearly identical fact pattern in which a homeowner discovered after construction of a new home that the home was suffering from water seeping through the roof and chimney, a sagging support beam, cracks in the drywalls throughout the house as a result of the sagging support beam, and ancillary damage as a result of the water seepage into the home. When considering whether the commercial general liability policy issued to the contractor covered the ensuing defective construction claims, the Court held that construction defects can constitute an occurrence unless the claim damages or injuries are "deliberate, intentional, expected, desired or foreseen."

The split in authority between Pennsylvania and West Virginia exposes both owners and

contractors to potential liabilities of which they may not be aware when crossing the border. Ohio joins with Pennsylvania in holding that commercial general liability policies do not insure against construction defects; thus, contractors who work in the Northern Panhandle area of West Virginia are subject to wildly different rules on projects that may be only a few minutes' drive away from each other. This split in authority exists over and over again in the United States. For instance, North Carolina, South Carolina and Virginia join with Ohio and Pennsylvania in holding that construction defects do not constitute occurrences, but Georgia, Florida and Tennessee hold that construction defects do constitute occurrences. Alabama holds that construction defects do not constitute occurrences, but Mississippi holds that they do.

Owners and contractors in states where commercial general liability insurance will not indemnify parties for construction defects should consider other risk management tools including supplementing an insurance program with builders risk insurance, professional liability insurance, or performance bonds and/or warranty bonds which would provide a source of funds to correct construction defects should they arise. Owners or up-stream contractors should require such bonds or insurance policies in written contracts with their down-stream contractors or be prepared to accept the risks that construction defects may be found to exist but without a source of funds other than the responsible contractors own bank account to repair or replace as needed the defective work. While a performance bond or supplemental insurance may not be preferred on every job due to the increased costs of purchasing such a bond or supplemental insurance, contractors and owners should be aware of the law in the jurisdiction where the work is occurring so that if necessary, this increased cost can be factored into the cost of the project and thus potentially save both the owner and the contractor from significant liability later.

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Construction Professionals Beware: As the Commonwealth Crumbles, Statutory Caps on Damages Remain Strong

Pennsylvania recently received unwelcomed attention when *60 Minutes* aired a report entitled, "Falling Apart: America's Neglected Infrastructure" (November 23, 2014). In the *60 Minutes* report, correspondent Steve Kroft interviewed past president of the American Society of Civil Engineers, Andy Herrmann while viewing bridges in the city of Pittsburgh, Pennsylvania. During the segment, Mr. Herrmann pointed out a bridge over I-376 where, rather than replace the crumbling bridge, the Pennsylvania Department of Transportation built a structure under it "to catch any of the falling concrete so it wouldn't hit traffic underneath it." In fact, of the

more than 4,000 highway and railroad bridges in the metropolitan Pittsburgh area, approximately twenty percent of them are believed to be structurally deficient. At the other end of the state, there are fifteen structurally deficient highway bridges on one twenty-two mile stretch of I-95 running through the city of Philadelphia. Regardless of the financial constraints facing the state, there can be little question that this badly-needed critical infrastructure work will be done, and private construction professionals will be involved.

It is also not very difficult to imagine the kinds of property damage and bodily injury claims that may be looming in the not-too-distant future. These claims will arise not only as a result of crumbling bridges and dilapidated highways, but also in the context of active remediation and repair projects. It is against this backdrop that the Supreme Court of Pennsylvania recently affirmed the constitutionality of the statutory limits on the tort liability of Pennsylvania governmental entities in *Zauflik v. Pennsbury School District*, No. 1 MAP 2014 (Nov. 19, 2014). Although the *Zauflik* decision is unlikely to be a surprise to anyone, it should serve as a reminder to any contractor or design professional involved in work with the Commonwealth of Pennsylvania: the cash-strapped Commonwealth will not be the "deep pocket" a plaintiff will be looking to in any litigation arising out of the project.

Statutory "Caps" for the Commonwealth and Local Agencies

Pennsylvania's General Assembly long ago acted to limit the liability faced by state agencies and political subdivisions such as municipalities. Generally, Commonwealth agencies such as the Pennsylvania Department of Transportation ("PennDOT") are immune from civil suit, so-called "sovereign immunity." Pursuant to the Sovereign Immunity Act, the Commonwealth has waived its immunity to suit in certain circumstances. The exceptions relevant to the construction industry include the "dangerous condition" of Commonwealth property including highways and sidewalks, potholes "and other dangerous conditions," and vehicle liability. Although Pennsylvania's agencies may be sued in circumstances involving these exceptions, they will nonetheless enjoy a $250,000 per plaintiff, per occurrence limitation ($1,000,000 aggregate) of potential damages in civil cases. In the personal injury context, the types of damages recoverable are also limited to lost earnings and earning capacity, pain and suffering, and medical expenses. A plaintiff may also recover delay damages from the Commonwealth, limited to those calculated based upon the statutory cap.

The Political Subdivision Tort Claims Act (the "Tort Claims Act") provides a similar shield from civil liability to municipalities and other local governmental agencies. The Tort Claims Acts also provides exceptions to the political subdivisions' immunity for liability stemming from local agency real property, utility service facilities, streets, sidewalks, and vehicles. The Tort Claims Act limits the damages recoverable against local agencies to $500,000 per occurrence (aggregate) and damages relating to lost earnings and earning capacity, pain

and suffering, medical expenses, loss of consortium and support, and property losses. A plaintiff may recover delay damages against municipal entities calculated against the cap.

The *Zauflik* Decision

Ashley Zauflik, a high school student, was seriously injured when a Pennsbury School District school bus crashed into twenty students standing on a sidewalk. Her injuries were tragic, including a crushed pelvis and the amputation of her leg above the knee. She retained a prominent plaintiffs' personal injury law firm to handle her suit against the School District, and a Bucks County jury awarded her more than $14 million to cover her past and future medical expenses, and her pain and suffering. However, the trial court molded the verdict to $502,661.63; the statutory maximum recovery under the Tort Claims Act, plus $2,661.63 in delay damages calculated against the cap. The trial court reasoned that the Tort Claims Act cap applied because the municipality operated its own school buses. The Commonwealth Court affirmed the molding of the verdict on appeal.

The Supreme Court of Pennsylvania was asked to decide whether the cap on damages mandated by the Tort Claims Act was constitutional. Zauflik's attorneys argued that the cap violated equal protection principles and a host of other constitutional protections. Zauflik argued, essentially, that the cap denied her the equal protection of law by eviscerating her ability to recover damages simply because the Pennsbury School District decided to run its buses itself instead of contracting with a private vendor like almost every other school district. She argued that this outcome was especially unfair given the fact that the local agency had an $11 million policy of insurance in place to cover this sort of liability. Zauflik was joined by two amici ("friends of the court") who filed briefs in support of her arguments: the Pennsylvania Association for Justice and the American Association for Justice.

Pennsbury School District opposed the appeal. It primarily argued that the statutory cap was a matter best addressed to, and already decided by, the legislature. Under constitutional law principles, the General Assembly was to address matters of public policy, not the courts. Furthermore, Pennsbury School District argued that the existence of its insurance policy was irrelevant for purposes of applying the statutory cap. The School District was joined by ten amici including the Commonwealth of Pennsylvania, the City of Philadelphia, the City of Pittsburgh, and Allegheny County. The Commonwealth and the cities further argued that elimination of the cap would unacceptably strain their already-slim resources. Other amici – including SEPTA and the Turnpike Commission – pointed out that verdicts such as the *Zauflik* verdict would exceed "the total annual revenue for most transit authorities in Pennsylvania."

After a lengthy analysis of the historical context of the Tort Claims Act and its decisions relating to governmental immunity, the Supreme Court of Pennsylvania held that the statutory cap

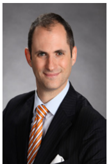
was constitutional. Although the Court agreed that the facts of the case were truly tragic, it wrote that the matter was better addressed to the legislature as a matter of public policy.

The Impact

Despite the efforts of one of the most prominent personal injury law firms in Pennsylvania, the support from national organizations, and tragic facts, Ashley Zauflik was not able to overcome the statutory cap. Since the Supreme Court's reasoning is no less applicable to the Sovereign Immunity Act, that statute's cap is likely safe from challenge as well.

Furthermore, it is important to note that the Pennsbury School District had insurance that could have come into play had the cap not applied. Even when the governmental entity has a "deep pocket," it cannot be factored into the recovery.

For construction professionals dealing with state and local agencies, the *Zauflik* case is a reminder that, if something goes tragically wrong on your project, the governmental entity will not be the "big target." In a time when crumbling infrastructure will almost certainly lead to more projects with state and local entities, construction professionals are advised to approach each project with an eye on the potential risks, and the certainty that the governmental entity will be only a limited player if there should be litigation.



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Can I Recover Damages From a Utility For Mismarking Underground Facilities?

Before performing excavation work excavation contractors must call the One Call System to allow underground facility owners of pipelines and cables, typically utility companies, to mark the locations of those lines around the work sites pursuant to the Underground Utility Line Protection Act, 73 P.S. § 176 *et seq*. (also known as the "One Call Act"). The One Call Act established a non-profit organization that operates the toll free number. Under the Act, an excavator must call no later than 3 days and no earlier than 10 days prior to digging. The utility is notified of the request and is required to mark the location of its lines in the designated area of work. The facility owner, no later than one business day prior to the scheduled work, must mark the location of its lines in the designated work area. Under the statute the excavator must use due care in performing its work, including hand digging test holes in order to fully ascertain the location of the underground lines. The Act provides for the excavator to pay damages to the utility, as well as potential fines if it fails to use due car

or violates the terms of the Act. It also provides for proportional reduction of the utility's damages if the utility was also at fault.

An excavator who complies with the Act and is not otherwise negligent is not liable to the facility owner for damages. But what about extra expense incurred by the excavator in dealing with the aftermath of damaging an underground pipeline or cable? Can a contractor recover damages from the utility? As with many legal questions, the answer is yes and no. At least mostly no. A utility can be liable for property damage suffered by others caused by its negligent marking of its lines. *Cipriani v. Sun Pipe Line Co.*, 574 A.2d 706 (Pa. Super. 1990). The utility however, is not liable to the contractor for its economic damages suffered as a result of the utility's mismarking of its lines.

In *Excavation Technologies, Inc. v. Columbia Gas*, 985 A.2d, 840 (Pa. 2009), the Supreme Court of Pennsylvania held that where an excavating contractor did not suffer any physical or property damage as a result of its striking the utility's lines, it was not entitled to recover for economic damages such as delay and extra expense. The court ruled that the Legislature did not intend such a remedy in the One Call Act because it did not provide for private causes of action for economic damages. In addition, the court noted that the Legislature presumably was aware of Pennsylvania's economic loss doctrine at the time it passed the Act. The economic loss doctrine prohibits recovery in negligence actions for injuries which are solely economic.

Excavation Technologies argued that the economic doctrine did not apply to it based on the Supreme Court's ruling in *Bilt-Rite Contractors, Inc. v. Architectural Studio*, 866 A.2d 270 (Pa. 2005), which recognized an exception to the economic loss doctrine in a case of a contractor against a design professional. The contractor sued the architect for negligent misrepresentation in the design documents prepared by the architect. The court found that the architect was subject to liability under Section 552 the Restatement (Second) of Torts in its capacity of a professional supplying information for pecuniary gain when that information is to be relied upon by others. No contractual remedies were available to the contractor because it had no contractual privity with the architect.

The court held that, unlike the architect in *Bilt-Rite*, Columbia Gas did not perform the utility marking for pecuniary gain, provided information on a very short notice, without remuneration and was not otherwise involved in the project. In addition, the court noted that the excavator was still required by the act to identify the precise location of the facilities while digging where the utility provides insufficient information and remains ultimately responsible for breaches. The court reasoned that the excavator is in the best position to employ prudent techniques on the job site and that to expose utilities to the contractor's economic damages would result in those costs being passed on to the consumer. The court

stated that it declined "to afford heightened protection to the private interests of entities who are fully capable of protecting themselves, at the public's expense."

Because of the potential exposure of the contractor for damages and fines, and the inability to recover its own costs, the excavating contractor should make a second One Call request and/or conduct hand digging tests as called for in the act prior to conducting excavation if the markings are in any way unclear or in doubt.

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Pennsylvania Public Utility Can Use Eminent Domain to Build Gas Pipeline on Private Property

On November 7, 2014, Lycoming County Common Pleas judge Richard Gray ruled that a public utility company could use its eminent domain power to construct and maintain a pipeline to supply natural gas to a private power plant. The owners of the property, Curtis and Terri Lauchle, argued that the construction easement requested by UGI Penn Natural Gas, Inc. ("UGI PNG"), a natural gas distribution company based in Pennsylvania, was invalid under Pennsylvania's Property Rights Protection Act, 26 Pa.C.S.A. § 204(a) ("PRPA"), because the purpose of the taking was to use the property to benefit a private business. The court disagreed, determining that as a public utility regulated by the Pennsylvania Public Utility Commission, UGI PNG falls within PRPA's public utility exemption, which permits public utilities to "use the eminent domain power to provide public services in tandem with benefits to a private enterprise." *In re Condemnation of Temporary Construction Easement Across Lands of Curtis R. Lauchle and Terri L. Lauchle by UGI Penn Natural Gas for Public Purposes*, Docket No. 14-02, 219 (Nov. 7, 2014); 26 Pa.C.S.A. § 204(b)(2)(i).

In late August, UGI PNG sought a 1.732 acre temporary construction easement on the Lauchle's property pursuant to 15 Pa. C.S.A. 1511(g)(2). UGI PNG sought the easement to gain access to the land owned by the Lauchles to construct an underground pipeline intended to provide natural gas to a new power plant being built by Panda Power Funds. On September 9, 2014, Mr. and Mrs. Lauchle filed an Answer and Action in Equity, challenging the condemnation on the grounds of (1) an inadequate bond, (2) taking more than is required for the purpose intended, and (3) condemning for a private enterprise as opposed to a public use.

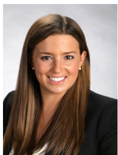
The eminent domain power permits government entities to take privately owned property and convert it for public use, subject to reasonable compensation. This power finds operation in the Fifth Amendment to the United States Constitution, applied to the

states through the Fourteenth Amendment, which prohibits the government from taking private property "for public use, without just compensation." U.S. Const. amend. V. Pennsylvania's constitution has a takings clause that parallels the Fifth Amendment. Pa. Const. art. 1, 10. ("[N]or shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.").

In *Kelo v. City of New London*, the U.S. Supreme Court ruled that private economic development can be a public use under the Fifth Amendment to the U.S. Constitution. Following *Kelo*, the use of eminent domain to transfer land from one private owner to another private owner to further economic development was permissible, so long as the transaction created a measurable economic benefit to the public. The PRPA, which was enacted largely in response to the Court's decision in Kelo, expressly prohibits the exercise of eminent domain "to take private property in order to use it for private enterprise." The law does, however, provide a carve out for regulated public utilities that use the eminent domain power to take private property if the land will be used to provide the public with a tangible benefit. 26 Pa.C.S. § 204(b)(2)(i). The public utility exception to the PRPA was recently analyzed by the Pennsylvania Supreme Court, who unanimously concluded that the PRPA could not be relied on by a water authority for purposes of eminent domain if the proposed taking served to benefit a private enterprise. *Reading Area Water Auth. v. Schuylkill River Greenway Ass'n*, 100 A.3d 572, 583 (Pa. 2014) (water authority may not condemn a utility easement over privately-owned land for the sole purpose of providing a private developer sewage and drainage facilities for a proposed residential housing development).

Judge Gray emphasized that UGI PNG, unlike the Reading Area Water Authority, is a public utility exempt from the PRPA. The opinion goes on to note that UGI PNG was the "sole owner of the easements and the operator of the pipeline" and that the private power plant the proposed pipeline seeks to service will not "own, operate or control the condemned property in any way." The court concluded by acknowledging the public benefit associated with the proposed pipeline, remarking that the power plant "will use the natural gas it receives from the pipeline operated by UGI PNG to generate enough energy to power approximately 1 million homes."

The decision preserves the power of regulated public utilities in Pennsylvania to use eminent domain to seize land for purposes that may benefit private enterprise. Practically speaking, it is now clear that companies who obtain public utility status from the Pennsylvania Public Utility Commission are able to condemn private land if an impacted landowner refuses to negotiate a right-of-way easement.



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