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Jury Verdict Against CenturyLink

Olson and Construction Law, P.C. recently secured an important jury verdict against CenturyLink as a result of CenturyLink's negligent misrepresentation of the location of its utilities. This is a significant victory for contractors who are continually frustrated by late or inaccurate utility relocation and the effects these delays have on project budgets and timelines. It appears that this is just the second instance throughout the country that a state's courts have recognized this type of action against utility companies.

The lawsuit arose from a situation with which contractors are all-too-familiar. During the design phase of the project, CenturyLink supplied misleading information about the location of its utilities. As a result, the contractors bidding the project did not include any dollars in their bid to account for the existence of CenturyLink's facilities in the project area. When, during the course of the project, the utility information revealed itself to be inaccurate, the project work was delayed and the contractors incurred significant extra costs.

The jury verdict against CenturyLink is hugely important for contractors and establishes these important points:

Utilities have a duty to use reasonable care when they provide utility location information.

This victory against CenturyLink is very important precedent for contractors moving forward. It means that utilities can be held responsible when they carelessly provide information to engineers and/or contractors. In making this characterization, the court recognized the contractor's plight when it comes to utilities: CenturyLink serves the government (and the government's contractors) in an advisory capacity when it comes to information regarding its facility locations. In that capacity, CenturyLink is the *only* party who can supply the information and thus the only party who can weigh the significance of supplying inaccurate information. If the utility can't supply accurate information concerning its facilities, who can?

Contractors can, in fact, rely on utility location information provided in the contract documents.

In one of its rulings before trial, the court addressed a standard disclaimer which stated that the utility information provided in the contract documents is "approximate only." As contractors are well aware, these types of disclaimers are commonplace in public construction contracts. In this matter, the court acknowledged the prevalence of these disclaimers in the industry, and further indicated that contractors would be wise to continue to take these specifications seriously. However, the court also acknowledged (and the jury later confirmed) that, in reality, contractors necessarily rely on the utility information provided in the bid packets. Thus, a contractor's reliance on the contract's utility information is reasonable and justifiable.

Contractors can recover damages from utilities when a utility's negligence results in delays and extra costs.

Negligent misrepresentation occurs when a person or business (or utility) fails to use the care or skill of a reasonable person in obtaining or communicating information. By its verdict, the court and jury affirmed that a utility company is liable if it negligently supplies information that is false or misleading.