New Jersey Supreme Court Reinforces Right to Jury Trial in Civil Cases

Friday, January 25, 2013

In a decision that broadly construes the right of trial by jury in civil cases guaranteed by the New Jersey Constitution, the Supreme Court of New Jersey invalidated a provision in the Underground Facility Protection Act (UFPA) that precludes trial by jury for certain claims arising under the statute.

The Court has long recognized that New Jersey’s Constitution guarantees a jury trial right only to the extent it existed at common law when the Constitution was adopted, and that only the Legislature can confer the right to a jury trial in a cause of action that did not exist at common law. Typically, there is no right to a jury trial for purely statutory causes of action unless the statute provides such a right. In *Jersey Central Power & Light Co. v. Melcar Utilities Co.*, decided January 24, 2013, the Court held that the State Constitution guarantees the right of trial by jury for a statutory cause of action that is rooted in the common law.

The Legislature enacted the UFPA in recognition of the potential hazards posed by underground utility lines. The statute creates a “One-Call Damage Prevention System” which serves as a central repository for the receipt of notices of intent to excavate, and which forwards the notices to the appropriate utility. The UFPA requires that, within three days of receipt of such notice, an operator of an underground facility “[m]ark, stake, locate or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition.” In addition to imposing significant penalties on those who disregard
its mandates, the UFPA also imposes liability on the excavator for any negligent damage to a utility’s underground facilities. In cases where the damage claim is less than $25,000, the statute mandates a binding alternate dispute resolution process; when more than $25,000 is at issue the statute permits, but does not require, such binding arbitration.

The issue addressed by the Supreme Court in Jersey Central Power & Light Co. v. Melcar Utilities Co. is whether the statutory provision imposing liability on an excavator for negligent damage caused to a utility’s underground facilities should be treated as a statutory cause of action in which case the Legislature may withhold the right to a jury trial, or whether it should be regarded as a common law cause of action subject to the constitutional guarantee of the right to trial by jury.

Finding that the core of a cause of action under UFPA is whether the excavator failed to exercise a duty of ordinary care as established by the statute, the Supreme Court analyzed both the historical basis of the cause of action and the relief sought. The Court determined that the Legislature contemplated that principles of common law negligence would underlie this statutory cause of action. While the statute establishes the governing standard of care, the underlying cause of action is in the nature of a classic negligence action rooted in common law principles. The Court thus held that the mandatory binding arbitration provision of the statute is unconstitutional because, while the Legislature may mandate alternative dispute resolution, it must also provide a right to a trial de novo before a jury.

Businesses involved in litigation often seek to avoid trial by jury, believing that juries may be unsympathetic to business interests. The Supreme Court’s decision in Jersey Central Power & Light Co. v. Melcar Utilities Co. strongly reinforces the right to trial by jury in civil litigation.

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