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## Natural Gas Pipeline Builder Gets \$24.3 Mil. for Contract Breach

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May 9, 2014

A Delaware County jury has awarded more than \$24.3 million to a construction company that claimed an oil and gas company failed to pay it for work it did to build a natural gas pipeline system.

It is believed to be the largest verdict ever awarded under the Pennsylvania Contractor and Subcontractor Payment Act (CASPA), which was enacted in 1994 to protect contractors from having payment withheld for work they've completed.

In *Utility Line Services v. PVR Marcellus Gas Gathering*, plaintiff Utility Line Services, a builder of natural gas pipelines, said in its trial memorandum that, from late 2011 until early 2012, defendant PVR Marcellus Gas Gathering, a company that brings natural gas from the well site to market, failed to pay it more than \$16.7 million for work it performed on a pipeline project in Lycoming County.

ULS said in its memorandum that PVR partially terminated the company prior to the third phase of the pipeline project in December 2011 because the parties' contract was set to expire Dec. 31 of that year.

ULS argued in its memorandum that, in doing so, PVR ignored several access and weather problems that had excusably delayed the project.

Nevertheless, PVR asked ULS to stay on beyond Dec. 31, 2011, in order to finish the second phase of the project and ULS agreed, the plaintiff said in its memorandum.

At that time, ULS said in its memorandum, there was already a \$12 million unpaid balance due on the contract.

As that balance continued to grow, ULS alleged in its memorandum, PVR refused to pay the unpaid invoices pending "verification" of previously paid invoices that it had "questions" about.

The unpaid balance eventually grew to about \$17 million, ULS said in its memorandum.

PVR hired accounting firm ParenteBeard to analyze the previously paid invoices, despite having never raised objections to the invoices at the time they received, reviewed and paid them, ULS said in its memorandum.

ParenteBeard ultimately identified only \$11 million in "questions," despite the approximate unpaid balance of \$17 million, and never made any determination that there were actual problems with the invoices, ULS said in its memorandum.

Instead, ParenteBeard merely left it to ULS to justify the charges on the invoices, ULS said in its memorandum.

"After receiving ParenteBeard's analysis in March of 2012, ULS worked in earnest to resolve the billing dispute with PVR, but PVR refused to engage in meaningful discussions," ULS alleged in its memorandum.

ULS sent copies of its backup support for each of the disputed invoices to PVR, but PVR still refused to pay, prompting ULS to file suit in the Delaware County Court of Common Pleas, according to the plaintiff's memorandum.

In addition to its CASPA claim for the unpaid invoices in the amount of about \$16.7 million, ULS also alleged wrongful termination of the construction contract, claiming it lost about \$7.8 million when PVR terminated it before phase III of the project, according to the plaintiff's memorandum.

But PVR argued in its own pretrial memorandum that, because of ULS's "deficiencies and delays," the builder was nowhere near to finishing the work required under the parties' contract as the December 2011 termination deadline approached.

PVR said in its memorandum that it offered ULS an extension to complete the work that had been started, but ULS refused to do so, forcing PVR to hire a new contractor and incur additional expense.

PVR raised counterclaims against ULS for breaches of the parties' engineering and construction contracts, according to PVR's memorandum.

PVR said in its memorandum that it also raised a counterclaim for professional malpractice against ULS and sought reimbursement for overbilling by ULS, as well as attorney fees incurred in having to defend against ULS's "meritless" CASPA claim.

PVR said in its memorandum that it was seeking about \$21.2 million in damages.

ULS responded to PVR's counterclaims in its memorandum by arguing that it had no choice but to walk away from the project when PVR refused to pay the outstanding invoices.

"Under clear Pennsylvania law, PVR is not entitled to recover from ULS any sums spent hiring a replacement contractor," ULS said in its memorandum. "Indeed, PVR's continued failure to pay ULS for work performed under the contract constituted a material breach of the parties' contract, excusing ULS's continued performance."

Ultimately, on April 17, following a 17-day trial in Delaware County Court of Common Pleas Judge Charles B. Burr II's courtroom, an eight-member jury found that PVR did breach its contract with ULS and did violate CASPA, awarding ULS nearly \$16.5 million for the unpaid invoices, according to court documents.

In addition, court documents said, the jury found that PVR also wrongfully terminated its construction contract with ULS and awarded the plaintiff about \$7.8 million in damages.

The jury also found that ULS did not breach its contract with PVR, according to court documents.

On April 28, according to court documents, ULS filed a post-trial motion asking the court to mold the verdict against PVR to about \$39.5 million, which would include both CASPA and prejudgment interest, as well as attorney fees and costs.

Counsel for ULS, Bruce W. Ficken of Pepper Hamilton in Philadelphia, who handled the case with fellow Pepper Hamilton attorneys Richard W. Foltz Jr. and Joseph T. Imperiale, said they and their client were pleased with the result.

Counsel for PVR, Edward Seglias of Cohen Seglias Pallas Greenhall & Furman in Philadelphia, could not be reached for comment at press time.

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