



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**U.S. AIRWAYS, INC. v. QWEST CORPORATION
and ONE CALL LOCATORS, LTD.,
dba ELM LOCATING & UTILITY SERVICES
CV-16-0027-PR**

PARTIES:

Petitioner/Plaintiff: US Airways, Inc.

Respondent/Defendants: Qwest Corporation and One Call Locators, Ltd., dba ELM
Locating & Utility Services

FACTS:

Arizona's Blue Stake Laws set out the procedures for identifying "Underground Facilities" (including utility cables) to avoid excavation mishaps. State and federal tariffs set out the terms of service of regulated utilities such as Qwest. These tariffs govern rates and liabilities between utility companies and their customers even though there are no signed contracts involved.

In this case, Defendants Qwest and its contractor ELM were asked to mark the underground facilities for a construction project on a neighboring property. Qwest and ELM did not properly mark an underground fiber optic cable at a construction site.

An excavator cut into a fiber optic cable that serviced the US Airways' data center in Tempe, resulting in a disruption of service for four hours in February 2009. The service disruption not only shut down all communications and reservations systems, but also affected 1,360 flights across the country. US Airways claimed it suffered \$2 million in economic losses. US Airways sued Qwest and ELM for negligence, requesting only economic loss damages.

The trial court determined that while Qwest was negligent, its liability was limited under Qwest's tariff because regulated utilities can limit their liability for negligence to basically the cost of the service. Also, following this court's decision in *Lips v. Scottsdale Healthcare Corp.*, 224 Ariz. 266, 229 P.3d 1008 (2010), and Restatement (Second) of Torts § 324A, the trial court that ELM had no duty to protect US Airways from purely economic loss and dismissed ELM from the suit. However, it found Qwest liable for \$586.40 under its tariff for failing to properly mark the fiber optic conduit. The court of appeals affirmed the trial court in a published opinion.

ISSUES:

(1) whether the court of appeals erred in holding that Qwest's tariff(s) limiting its liability for service interruption applies to non-customers under the circumstances presented here; and

(2) whether the court of appeals erred in holding that ELM owed no duty to US Airways.

Definitions:

Economic Loss Damages: These arise from financial harm, such as lost income or lost profits. They are different from personal injury claims, which arise when someone is hurt, or property loss claims, which arise when someone's property is damaged.

Restatements: The Restatements of the Law are treatises on legal subjects that inform judges and lawyers about general principles of common law.

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