Subrogation and the 2014 Polar Vortex: Recovery Opportunities and Hurdles

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"REPEAT AFTER ME: AT LEAST WE DON'T GET HURRICANES...
AT LEAST WE DON'T GET HURRICANES...AT LEAST...."

Pipe Burst Facts

- The cost of insured freeze-related losses over the past decade exceeded $4 billion
- The problem is most acute in southern states, where builders typically employ construction practices that are inadequate to protect water pipes
- Pipe diameter is not a relevant consideration

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Pipe Burst Facts

- Pipe composition -- PVC pipes have slightly better thermal performance than copper pipes
- Historically, hot water lines burst more frequently than cold water lines. The reasons for this are unclear
- Convective heat loss (a/k/a wind chill effect) has a significant impact on freezing of uninsulated pipes

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The Science of a Pipe Burst

- Water expands roughly 9% when it freezes
- In structures, this expansion increases water pressure in plumbing lines
- Typically, the expanded ice itself does not cause the pipe to burst
- It's the pressure of unfrozen water between ice and the closed faucet

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The Science of a Pipe Burst

- A simple experiment can demonstrate this phenomenon
- Take a sip from two plastic drinking water bottles
- Close the cap tightly on the first bottle
- Close the cap on the second bottle, but leave it loose

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The Science of a Pipe Burst

- Place both bottles in a frozen environment
- The first bottle will burst, but the second one will not
- The reason is water pressure, not the physical expansion of the ice

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The Science of a Pipe Burst

- Freezing generally occurs when the water is stationary, and less likely when the water is flowing

- When a faucet is running, the water flowing through the pipe is under less pressure than when the faucet is closed

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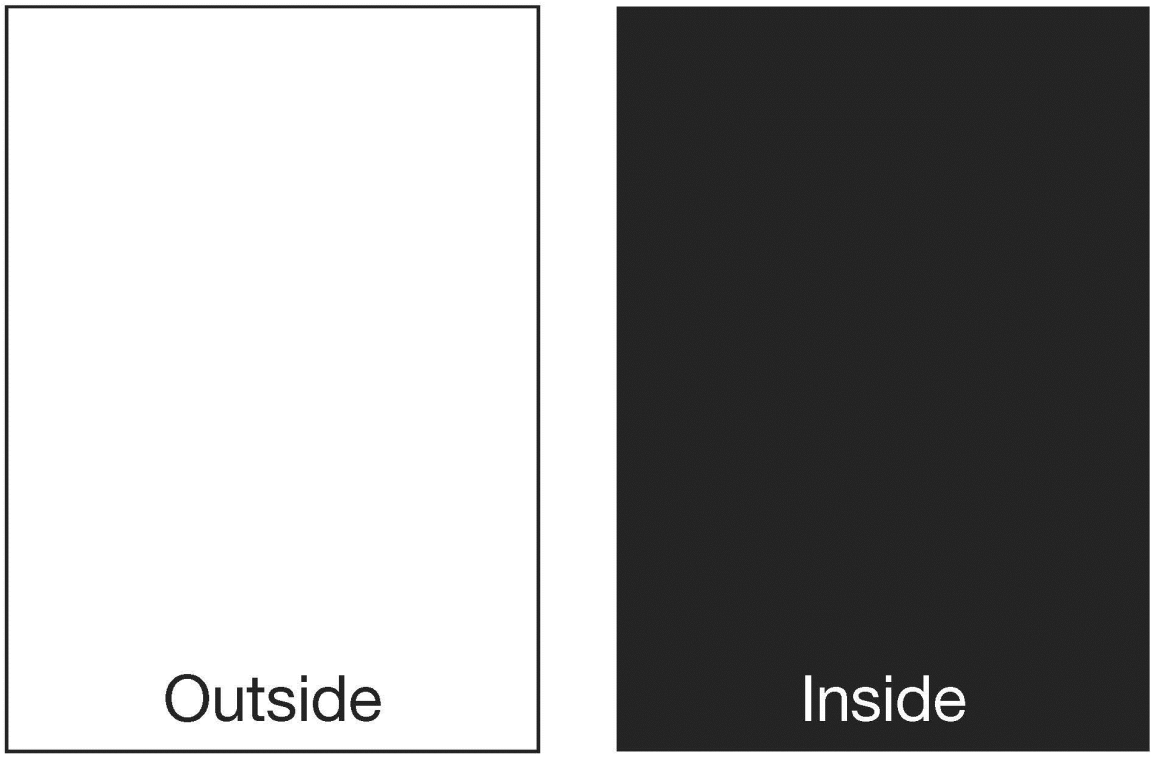

Polar Vortex 2014

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Causes of Freeze Damage

Lack of Adequate Heat

- Cost conscious property owners turn down the heat to save money
- Vacation homes and unoccupied buildings are particularly susceptible
- Some owners seal off unused rooms to save money

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Causes of Freeze Damage

Lack of Adequate Heat (cont.)

- When the climate controlled space is too cold, the unheated spaces in walls and attics are at greater risk

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Causes of Freeze Damage

Other Causes

- HVAC system malfunction
  - Thermostat/controller failure
- Extended electrical or gas utility outages
  - Beware tariff defenses
- Construction Defects
  - Statutes of repose

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Causes of Freeze Damage

Construction Defects

- Poor placement of plumbing pipes
- Governed by codes:
  - Uniform Plumbing Code §313.6:

No water, soil, or waste pipe shall be installed or permitted outside of a building or in an exterior wall unless, where necessary, adequate provision is made to protect such pipe from freezing

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Causes of Freeze Damage

Construction Defects

- Governed by Codes (cont.)

  – NFPA 13R §5.4.1 states:

  A wet pipe system shall be used where piping is installed in areas that can be maintained reliably above 40ºF (4ºC).

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Causes of Freeze Damage

Construction Defects

- If heat cannot reliably be maintained above 40ºF, a wet pipe sprinkler system may not be the right choice.
- Dry systems can also present risks of freezing
  - Improper draining of dry pipe sprinkler systems after testing
  - Improperly located low point drains

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Causes of Freeze Damage

Construction Defects

- Dry systems can also present risks of freezing (cont.)
  - Slope issues
  - Condensation
  - Annual inspections
  - Owner inspection requirements

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Causes of Freeze Damage

Construction Defects

- Improper or Inadequate Insulation
- It's all about heat transfer:
  - Absent an external factor, heat transfer always occurs from a higher temperature region to a cooler temperature region.
- Insulation merely slows the process of heat transfer

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Causes of Freeze Damage

Construction Defects

- No matter how much insulation is used, an adequate supply of heat is needed to protect pipes from freezing.
- If pipes or insulation are installed in such a way that heat cannot reach the pipes, the insulation will be worthless.
- Too often, builders install insulation between the heat source and the pipes.

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Causes of Freeze Damage

Construction Defects

- When that occurs, the insulation prevents the heat from ever reaching the pipes.
- In attics, tenting insulation over the top of pipes allows heat from the living spaces below to reach the pipes, while slowing heat transfer to the cold air above.

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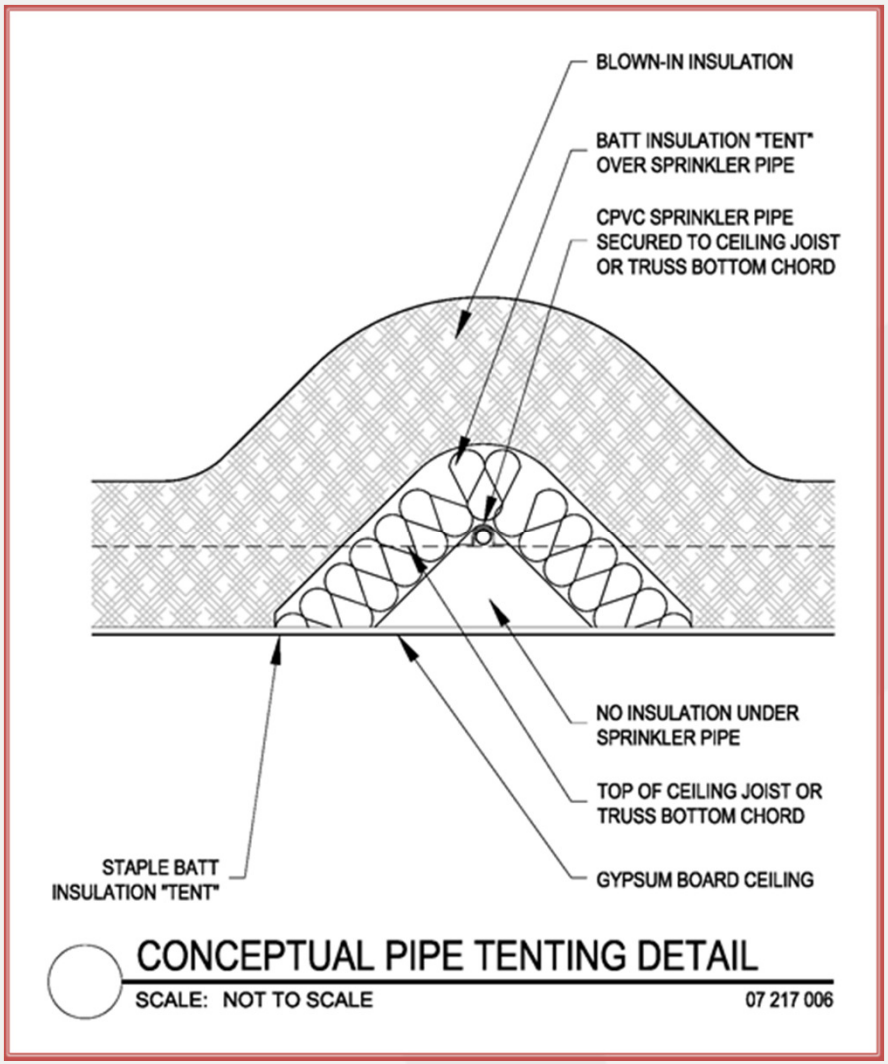

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SUBROGATION CONSIDERATIONS IN FREEZE CLAIMS

- Spoliation
- Identify and Preserve
- Consultants
- Notice
- Document the Scene
- Mold

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SUBROGATION CONSIDERATIONS in FREEZE LOSSES

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SPOLIATION

- Homeowners usually will have emergency repairs done prior to a scene examination.
- Where did the evidence go??
- Any obligation on the repair company to preserve a broken pipe or fitting?

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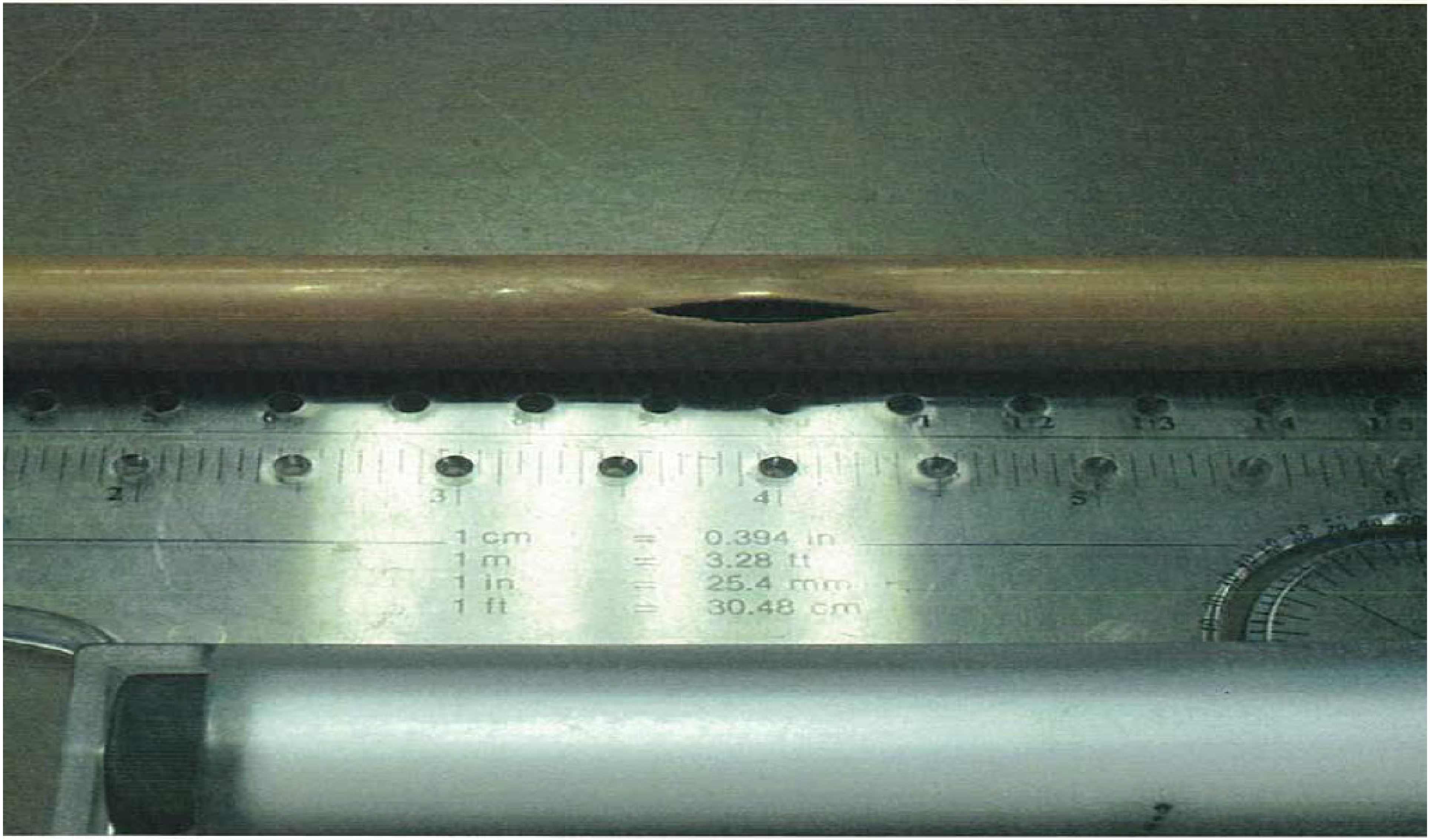
IDENTIFY AND PRESERVE



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CONSULTANTS

- Meteorologist??
- Mechanical Engineer??
- Electrical Engineer??
- Metallurgist??
- Plumbers or HVAC contractors??
- Environmental Experts??
- Subrogation Counsel??

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NOTICE

- How quickly can you identify a target party, and how soon can you put them on notice.
- Many companies have email addresses where notice can be done in minutes.
- Governmental Entity – specific notice requirements.

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DOCUMENT THE SCENE

- Photograph Photograph Photograph
- Is the broken elbow or tee missing? Are there other tees or elbows of the same type that can be secured?
- What was the house thermostat setting?
- Was there insulation around the piece that broke??

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MOLD

Power Outages

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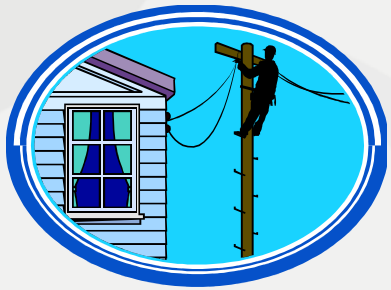
What is a Tariff?

- A set of approved regulations governing the operations and rates of a public utility.
- Primary purpose is to regulate rate charges for energy products
- Provides utility with heightened protections from liability.
- Justification is to provide lower cost of energy to consumers.



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Epic Winter 2014

The Philadelphia Inquirer
Winner of 19 Pulitzer Prizes

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POWER STRUGGLE

Outages fall below 100,000 for first time, but many face several more days.

INSIDE

▶ The towns that remain most affected. **Graphic, A19.**

▶ 5,100 utility workers try to restore electricity in the area. **A18.**

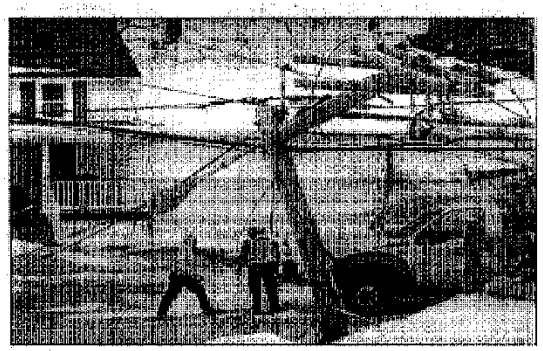
By Jonathan Lai, Mari A. Schaefer and Aubrey Whelan
INQUIRER STAFF WRITERS

The number of households throughout the region without power dipped below 100,000 Saturday evening for the first time since a devastating midweek ice storm brought down trees and branches and took out power lines throughout the Philadelphia suburbs.

Still, about one in five households in Chester County remained without electricity, and about 82,000 Peco customers overall were still without power as of 10 p.m. Saturday.

Thousands of utility workers scrambled to repair the system. In Abington — where about 3,600 were still without power at 10 p.m. Saturday — a half-dozen Peco trucks sat parked outside a residential development near Old York Road in the afternoon. At a Target down the road, locals spoke of frigid nights without heat or electricity.

See **POWER** on A19



A crew from Illinois works to restore power at Broad Street and Warren Avenue in Malvern. MICHAEL S. WIRTZ / Staff Photographer

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Tariff Limitation Language

- …but does not guarantee constant supply or adequate or uniform pressure. The Company shall not be liable in damages for failure to supply gas or for interruptions in service, and shall be relieved of its obligation to serve and may discontinue or modify service, if such failure is due to acts of God…(and every imaginable calamity)…or other causes beyond the control of the Company.

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When Can a Utility be Held Liable?

- Power outages attributed to storms: liability is limited to damages caused by the utility's willful misconduct or gross negligence.
- Overhead lines: ongoing duty to maintain in manner that will not be dangerous to persons or property.
- Equipment: must maintain and inspect in a reasonable manner.

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Does a Utility Have a Duty to Warn?

- Recommendations to:
  - Shut off water supply
  - Keep faucets dripping
  - Monitor temperature in home
- No duty to warn exists—Tariff controls

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Rationale for Limiting Liability

- Increase level of care required by utility.
- Increase rate charged to the public.
- In theory, the level of care should be commensurate with rate that public is willing to pay.

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Statute of Repose

- Statute of Repose establishes the outer-time frame in which any lawsuit may be filed, regardless of when the injured party discovers the injury.

- Statute of Repose begins to run upon a certain defined occurrence.

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Beware of Hidden Statutes of Repose

- Construction defect cases
- Product liability claims
- Warranty claims

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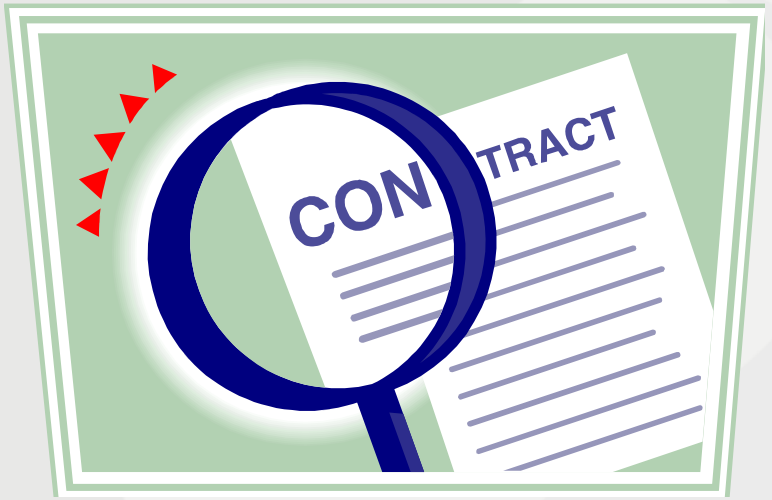
Early Notice Requirements

- Governmental entities
- Accelerated statute of limitations
- Alarm contracts



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