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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

COURT OF COMMON PLEAS NONJURY

CHANDLER CONSTRUCTION SERVICES, )  
INC., )  
PLAINTIFF, )  
VS. )  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. D/B/A AT&T SOUTH CAROLINA, )  
DEFENDANT. )

TRANSCRIPT  
OF  
RECORD

2020-CP-10-2430

**RECEIVED**  
**Oct 25 2022**  
**SC Court of Appeals**

January 28<sup>th</sup>, 2022

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, Judge.

A P P E A R A N C E S:

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Transcribed by Pamela E. Green, from  
webEx recording only

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1 P R O C E E D I N G S

2  
3 THE COURT: I think we have everything that y'all've  
4 submitted by email. So, I'll be referring to that and  
5 looking at that while I'm listening to you-all.

6 Obviously nonjury trial this morning. We are being  
7 recorded by webEx in lieu of a court reporter, and that is  
8 gonna be the, the future method in a couple weeks here and  
9 the sole method of Common Pleas Nonjury terms coming up  
10 here.

11 You can request transcripts from Court Administration  
12 in Columbia the same way or similarly to how you would have  
13 through a court reporter. We have -- I understand this was  
14 slated for a half day. So we'll -- you'll have me till noon  
15 today. We have some other things scheduled on the calendar.

16 So, just for your planning purposes, make sure you try  
17 to fit in your trial here in the next two and a half hours  
18 or so. We'll take a break midway through for five or ten  
19 minutes for everybody's comfort and we'll push through after  
20 that.

21 I'm happy to hear opening remarks if the attorneys  
22 wish. Otherwise we can waive those obviously understanding  
23 I've read, you know, some pretrial briefs that have been  
24 submitted and you can jump right into your testimony of your  
25 witnesses. I'll leave that up to, to the attorneys.

1           But with that, I, I would ask the attorneys to state  
2 their names and the parties they represent and we'll get  
3 started. Take it away.

4           MR. BRUORTON: Thanks, Judge.

5           Chip Bruorton here this morning along with Elizabeth  
6 Nicholson. We represent Chandler Construction Company. The  
7 way we've got us kind of set up is we're all in the same  
8 room. So with us is Matt Bares with Chandler Construction  
9 as well as Shane Brinkley with Chandler Construction.  
10 Obviously I'll pass on to, to others to introduce  
11 themselves.

12           I would like to make just a brief opening just to kind  
13 of give you a little background about what's going on.

14           THE COURT: Okay. We'll come back to you for that and  
15 who's here for the other side?

16           MR. BUTLER: Good morning, Your Honor. Jeff Butler for  
17 the plaintiffs. I mean -- excuse me.

18           THE COURT: Good morning.

19           MR. BUTLER: For the defendant, BellSouth.

20           THE COURT: Okay.

21           MR. BUTLER: Mr. Andrew Connor is also present.

22           Your Honor, our witnesses are located at different,  
23 different areas, different locations.

24           THE COURT: Okay.

25           MR. BUTLER: Mr. Charles Sanders, who is another

1 attorney in my office, called me and said he's running late  
2 but he will join us.

3 THE COURT: Very good.

4 MR. BUTLER: Michael Hines, Michael Hines and Kelly  
5 Crews. Mr. Hines is from United, United States  
6 Infrastructure Company. He will be testifying and Ms. Kelly  
7 Crews from BellSouth will be testifying. And we will make a  
8 brief opening statement when appropriate.

9 THE COURT: All right. Well, Mr. Bruorton, I'll be  
10 happen to hear from you briefly and we'll come back to  
11 Mr. Butler after that. I'm gonna hit mute when I'm not the  
12 active speaker and that just helps cut down on background  
13 noise.

14 So, happy to hear from you, sir.

15 MR. BRUORTON: Thank you, ma'am.

16 Thank you, Your Honor.

17 Again, like I said, I represent Chandler Construction  
18 Company. Chandler is a private owned construction company  
19 based in Ninety-Six, South Carolina. Also has an office  
20 here in Charleston. They've been in business for a very  
21 long time specializing in underground utility work.

22 So this case really has two parts. We filed a  
23 declaratory judgment action on behalf of Chandler  
24 Construction. AT&T counterclaimed for damage to one of  
25 their underground facilities and this case is not about the

1 \$9,400 invoice for damages.

2 It, it -- this case is about statutory compliance and  
3 regulations being ignored which put excavators like Chandler  
4 Construction, their employees, and the public at risk of  
5 harm, significant injury, or, or even death depending on  
6 what the utility is that's under the ground. Fortunately,  
7 in this case, we're just dealing with a single underground  
8 data cable, not an electrical conduit, or a gas line or  
9 anything like that.

10 So, why did Chandler bring this declaratory judgment  
11 action?

12 They knew, because they got an invoice from AT&T, that  
13 AT&T was gonna seek damages from them for damage to a  
14 facility in an area where they were working. Chandler  
15 believes that it fully complied with the Underground  
16 Facility Damage Prevention Act which we're gonna talk a lot  
17 about today. Yet it still gets blamed for damages to this  
18 underground facility.

19 We believe that we can show that AT&T did not fully  
20 comply with the act. Yet they fully expect the excavator to  
21 pay for damages alleged to have been caused to their  
22 facility.

23 So, the act itself, the Underground Facility Damage  
24 Prevention Act, is codified at Title 58 Chapter 36. And one  
25 of our witness -- witnesses, Matt Bares with Chandler

1 Construction, was instrumental in the writing of that  
2 statute and he'll testify about how he was involved and how  
3 it came about.

4 But it sets forth some obligations and responsibilities  
5 of an operator, which would be AT&T, and an excavator, which  
6 would be Chandler Construction, when it comes to an  
7 excavation work project.

8 It -- the process is simple. It's the Call Before You  
9 Dig Statute. So, before you're gonna excavate anything, you  
10 call South Carolina 811 to get a locate. That's how it's  
11 all started. You get somebody to come locate where their  
12 underground utilities are. You call in the locate. You  
13 verify the facilities. You plan the excavation to avoid  
14 damage or minimum -- minimize interference with the  
15 underground facilities and then you excavate accordingly  
16 within the parameters of what the act establishes.

17 You'll hear from Mr. Bares that this was really a, a --  
18 they wanted it to be called the safety act because it --  
19 it's really to protect those that are digging around these  
20 facilities and the public that's in the immediate area.

21 So, what we plan to put before you today is how  
22 Chandler fully complied with the act, how AT&T did not fully  
23 comply with the act, that there's no evidence that Chandler  
24 Construction actually caused damage to this underground  
25 facility. Yet Chandler's being presented with a bill from

1 AT&T.

2 The only evidence that AT&T has to suggest that  
3 Chandler damaged its utilities is that Chandler's name is on  
4 the locate ticket for calling in a locate. That's the only  
5 reason they knew they were involved.

6 So, this claim is based on the fact that we believe the  
7 underground facility was improperly identified through the  
8 locate process, that AT&T failed to provide Chandler with  
9 any further information besides the pavement markings that  
10 would of assisted Chandler to identify and thereby avoid any  
11 damage to marked facilities, which is a requirement of the  
12 act, and that Chandler Construction can't be or shouldn't be  
13 held liable for damage to an underground facility when it  
14 fully complies with the act and the operator fails to.

15 And this, this claim is, is necessary because it's the  
16 contractor who conforms with the statute that always gets  
17 stuck with the bill because their name's on the locate. And  
18 we need the Court's assistance in this matter to hopefully  
19 prevent this situation from continuing to occur.

20 So, through our declaratory judgment action, what we're  
21 asking from the Court is that you find that Chandler  
22 Construction fully complied with the Underground Facilities  
23 Prevention Act, that AT&T did not fully comply with the act,  
24 and that because AT&T failed to comply with the act, it can  
25 not hold Chandler Construction liable for the damages to its

1 underground facilities.

2 So that's our case in a nutshell and we look forward to  
3 putting it up quickly and being out of here by noon.

4 THE COURT: Okay. All right. Thank you so much.  
5 Mr. Butler, happy to hear from you.

6 MR. BUTLER: Thank you, Your Honor. Good morning.  
7 Can you, can you hear me all right?

8 THE COURT: I can hear you just fine, yes, sir.

9 MR. BUTLER: Your Honor, I'm not comfortable with  
10 technology. So I apologize in advance.

11 Your Honor, in this case, BellSouth maintains that it  
12 is properly and fully complied with the, the statutes  
13 regarding the marking of the surface.

14 In the trial, you might hear a lot of expressions that  
15 perhaps are not technically accurate. You'll hear  
16 excavator. You'll hear provider, operators. They made  
17 it -- they all might mean the same thing.

18 Basically AT&T is the, is the utility provider. The  
19 defendant in this case will be an excavator. We're talking  
20 about underground cables which may also be referred to as  
21 conduit. But I think you get the idea. We're talking about  
22 cable lines that were buried. Excavation was taking place  
23 in the area. The cable line was damaged.

24 The evidence will show that BellSouth, through its  
25 locator service, USIC, the United States Infrastructure

1 Corporation, properly marked the area prior to excavation  
2 beginning. You'll see photographic evidence showing the  
3 location of the lines and symbols indicating the, the --  
4 what should of been the width of the property there.

5 The excavator, had they exercised the proper diligence,  
6 would of located the cable, should of known where it was,  
7 and should of been able to avoid any potential damage to it.

8 In cases like this, Your Honor, there's no witnesses to  
9 the excavation generally. A lot of this is the, you know,  
10 the, the, the damage to the cable is discovered after the  
11 fact. Sometimes long after the excavator has left.

12 In this case I believe the evidence will show that the,  
13 the damage was in the area being excavated by the defendant  
14 and that they were the only people out there doing  
15 excavation work at the time. We don't have a smoking gun.  
16 We don't have a, a video of them damaging the, the cable.  
17 But be that as it may, they filed the lawsuit in response to  
18 a demand letter for reimbursement.

19 We didn't file the lawsuit. We're defending ourselves  
20 from the declaratory judgment action based on the fact that  
21 we have fully complied with the statute.

22 THE COURT: All right. I appreciate that.

23 Mr. Bruorton, and you call your first witness.

24 MS. NICHOLSON: Your Honor, this is Elizabeth Nicholson  
25 for Chandler, how would you like us---

1 THE COURT: Good morning.

2 MS. NICHOLSON: Those would be -- how would you like us  
3 to do exhibits?

4 You want me to share my screen or --?

5 THE COURT: You can. You can do that or if -- they've  
6 been premarked.

7 Is that -- that's correct?

8 Is that right?

9 MS. NICHOLSON: It is. I don't have the ability to  
10 share the screen without --.

11 THE COURT: My law clerk will give that to you here  
12 shortly.

13 MS. NICHOLSON: Great.

14 Plaintiff calls Shane Brinkley as our first witness and  
15 we're gonna put the witness at the end of the table and zoom  
16 in to make it a little easier for everyone to see.

17 THE COURT: Okay.

18 All right. Mr. Brinkley, if you could raise your  
19 right-hand for me?

20 SHANE BRINKLEY, being first duly  
21 sworn, testified as follows:

22 THE COURT: All right. You can lower your hand. State  
23 your full name for the record and spell your last.

24 THE WITNESS: Gregory Shane Brinkley. B-R-I-N-K-L-E-Y.

25 THE COURT: Thank you so much.

1 All right. Ms. Nicholson, your witness.

2 DIRECT EXAMINATION

3 BY MS. NICHOLSON:

4 Q. Mr. Brinkley, how long have you been employed by  
5 Chandler Construction?

6 A. Twenty-four years.

7 Q. And what's your job title at Chandler Construction?

8 A. Project manager.

9 Q. And what are your responsibilities as a project manager  
10 with Chandler Construction?

11 A. Safety, production, and quality.

12 Q. Can you explain those a little bit more for me?

13 So, what is your responsibility as it re -- relates to  
14 safety?

15 A. Prevent the guys from injuring their self or cutting  
16 into utilities, gas lines, cables, power.

17 Q. And with regard to production, what's your  
18 responsibility?

19 A. Installing utilities.

20 Q. So, what I understand, you're at job sites ensuring the  
21 safety and the production and the quality and assurance of  
22 those projects, correct?

23 A. That's correct.

24 Q. Now, let's talk a little bit about the excavation  
25 that's the subject of this lawsuit that occurred in March --

Shane Brinkley - Direct examination  
By Ms. Nicholson

1 on March 13<sup>th</sup>, 2020, on McMillan Avenue.

2 were you present during that excavation?

3 A. Yes.

4 Q. And what was your -- Chandler Construction doing at  
5 that McMillan Avenue job site?

6 A. Installing a 12-inch waterline.

7 Q. And what was your role during that excavation?

8 A. Production and safety. Avoiding conflict.

9 Q. And is it part of your job to plan the excavation?

10 A. Correct.

11 Q. And to oversee the excavation?

12 A. Yes.

13 Q. And with regard to excavations, does Chandler  
14 Constructions have any policies or guidelines about what is  
15 to be done before beginning an excavation at a site?

16 A. Yeah, we call in the locates, ensure positive response,  
17 pothole the utilities, plan the excavation.

18 Q. Let's start at the beginning so we can all understand  
19 what calling in a locate means.

20 Can you explain that for us?

21 A. The 811 locate ticket. You call in.

22 Q. So you call in to 811 and then what do you get in  
23 response to that call in?

24 A. You get the positive response. You get locate marks on  
25 the ground after you get positive response to identify the

1 utilities.

2 Q. And what is a positive response?

3 A. It would be the locator checking a box saying yes, he's  
4 located his utility.

5 Q. And do you do that call, call in or does someone you  
6 work with do it?

7 A. My assistant --

8 Q. Oh.

9 A. -- Sam Kraebber.

10 Q. Sam Kraebber.

11 And for the McMillan Avenue project, did Mr. Kraebber  
12 call in the locate and ensure that everything had been  
13 marked?

14 A. Yes.

15 Q. And before you started the excavation, did you follow  
16 that policy of confirming the positive response?

17 A. Yes.

18 Q. And after you ensure that the locate's been called in,  
19 how do you, as the project manager, check to see if  
20 facilities have been marked?

21 A. Visual photographs, walk through.

22 MR. BRUORTON: Speak up a little bit if you can.

23 THE WITNESS: Okay.

24 Q. Okay. Did you confirm that those facilities at  
25 McMillan Avenue had been marked visually and through the

1 locate?

2 A. Yes.

3 Q. And based on these conversations with your staff, and  
4 your visual investigation of the markings, were you -- did  
5 you believe that you were able to proceed with the work  
6 safely?

7 A. Yes.

8 Q. And when you arrived at the excavation site, did you  
9 observe any pavement markings?

10 A. Yes.

11 MS. NICHOLSON: I'm gonna share my screen.

12 Sorry, Victoria, could you allow me to share again?

13 THE COURT: which one do you want to share, the Rosen  
14 Hagood or your individual one?

15 MS. NICHOLSON: You could -- how about Chip?

16 Chip can --.

17 THE COURT: Okay. We'll assign Chip that role.

18 Okay.

19 MS. NICHOLSON: Thank you.

20 MR. BRUORTON: Yeah. That may have been a bad idea.

21 Hang on one second.

22 THE COURT: Yesterday it worked. There was some just a  
23 little, for some reason, like a delay and when you would  
24 pull it up on your screen then we could see it. So that  
25 could just be it.

Shane Brinkley - Direct examination  
By Ms. Nicholson

1 MR. BRUORTON: Let's see. I'm gonna stop---

2 THE COURT: We can switch it.

3 MR. BRUORTON: ---stop sharing.

4 MS. NICHOLSON: How about---

5 MR. BRUORTON: I got it. I got it now. There we go.

6 Q. Plaintiff's Exhibit 1, this first, first picture, Mr.  
7 Brinkley, did you take this photo?

8 A. Yes.

9 Q. And why did you take this photo?

10 A. Doc -- documenting where the utility had been marked.

11 Q. And is documenting the utilities prior to excavation,  
12 is that a Chandler policy?

13 A. Yes.

14 Q. And what does this show us -- photo show?

15 A. A duct bank marked in the middle of McMillan Avenue.

16 Q. I know you can't point on it on the screen but are we  
17 talking about the pavement markings, the orange pavement  
18 markings, there on the road?

19 A. Yes, the two orange lines with the diamond in the  
20 center.

21 Q. And are these the markings that you observed the day  
22 the excavation took place?

23 A. Yes.

24 Q. And what do these markings tell you about the  
25 underground facility that's located in that area?

1 A. That there is a duct bank in that area right there.

2 Q. And what are you looking for when you see duct bank  
3 markings on the pavement?

4 A. A concrete structure or a bundle of conduits that's  
5 been directionally drilled in the ground and encased.

6 Q. And do these markings give you any information about  
7 the dimensions of the facility?

8 A. Yes. The two lines on the outside are suppose to  
9 represent the size.

10 Q. And does the color of the marking have any specific  
11 meaning?

12 A. Communication of some sort.

13 Q. And did AT&T or the operator of this utility provide  
14 you any additional information beyond these markings  
15 regarding the underground facility?

16 A. Absolutely not.

17 Q. And after you observed, visually observed these  
18 markings, how did you proceed at the site?

19 A. Removed the assault and the rock, started hand  
20 excavating down by probing and digging till we found the  
21 facility.

22 Q. And how did you perform that digging?

23 A. By shovel and probed rod.

24 Q. And is shoveling called potholing in your industry?

25 A. Yes.

1 Q. And why did you use those means of excavation to find  
2 the utility?

3 A. It's Chandler's safety rule.

4 Q. And when you were doing that, what we call noninvasive  
5 excavation, what were you expecting to find underneath?

6 A. A concrete duct bank.

7 Q. And what did you find during your excavation?

8 A. A terracotta facility.

9 Q. Is it, is it your experience that a terracotta facility  
10 or would a conduit be a good way to call that terracotta  
11 facility you found?

12 A. Yeah. Yes.

13 Q. Is it, in your experience, a terracotta conduit  
14 referred to as a duct bank, duct bank?

15 A. No.

16 Q. And when you found the terracotta conduit, will you  
17 explain to me a little bit about how you uncovered it using  
18 the potholing and the probing?

19 A. You locate it with the probe rod to locate any  
20 structures in the ground and then you uncover it with the  
21 shovel. You shoot it, you coordinate, profile to go over it  
22 or beyond it to not damage it.

23 Q. We'll get to that a little bit so you can explain it to  
24 us.

25 But when you did uncover it, did you see any damage to

1 that terracotta --

2 A. No.

3 Q. -- facility?

4 And looking at that terracotta facility or the markings  
5 on the pavement, did you know how many cables or, or lines  
6 were running through it?

7 A. No.

8 Q. And if you would of observed any damage to that  
9 terracotta casing conduit, whatever we want to call it,  
10 facility, would you have notified the operators immediately?

11 A. Yes.

12 Q. And when you visually identified that terracotta, what  
13 did you do next?

14 I think you mentioned it, profiled it?

15 A. Yeah, I mean we've got a drawing or a waterline that  
16 I'm trying to put in at 3-foot a cover. So, we shoot it and  
17 plan to install the utility to avoid hitting another  
18 utility.

19 Q. And the fifth photo -- and this is the fifth photograph  
20 in Plaintiff's Exhibit 1.

21 Did you take this picture, Mr. Brinkley?

22 A. Yes.

23 Q. And where is this picture located relative to the  
24 excavation site we're talking about?

25 A. It's about 300-foot south on McMillan where we crossed

1 it.

2 Q. And is this the type of work you were attempting to do  
3 with regard to that excavation site which is the subject of  
4 the lawsuit?

5 A. Yes.

6 Q. And except it's a little bit different was this one is  
7 going underneath the---

8 A. The one---

9 Q. ---facility?

10 A. Yeah.

11 Q. You, you were going over it, correct?

12 A. That's correct.

13 Q. So, after you locate the underground facility, you talk  
14 about profiling it, what is profiling?

15 Can you explain profiling to me?

16 A. We shoot the elevation of the existing versus the  
17 proposed and either go under it, over it.

18 Q. And are these the actions you took, took during the  
19 excavation at McMillan Av.?

20 A. Yes.

21 Q. And did you plan that new utility, that waterline, as  
22 to avoid conflict with this existing facility?

23 A. Yes.

24 Q. And when did you become aware that the alleged damage  
25 had occurred to this AT&T (indiscernible)?

Shane Brinkley - Direct examination  
By Ms. Nicholson

1 A. After I received a call from Sam, my assistant, around  
2 7:30 that night the excavation was done.

3 Q. After you left the job site?

4 A. Correct.

5 Q. And when you left the job site on March 13<sup>th</sup>, did you  
6 have any knowledge that a facility had been damaged?

7 A. No.

8 Q. Show the next one please -- second.

9 Mr. Brinkley, did you take this photo?

10 A. Yes.

11 Q. And when was this photo taken?

12 A. The day after the -- we installed the waterline.

13 Q. And why did you take this photo?

14 A. Documenting the excavation and that there was no damage  
15 visible.

16 Q. And do you know -- do you know who this person is in  
17 this photo?

18 A. One of the AT&T's subs, Ansco's employees.

19 Q. And how do you know that's who that is?

20 A. Cause I was there.

21 Q. And before taking this photo, do you know if any other  
22 contractor besides Chandler performed any work at the site?

23 A. No.

24 Q. Other than Chandler, there was no work done?

25 A. Other than the Ansco guys that were there the next day.

1 Q. And what did Ansco -- what kind of work did Ansco  
2 perform?

3 A. They're a sub and they were excavating the utility that  
4 we had just installed.

5 Q. And why were they doing that?

6 A. Cause they felt that there was a damage there.

7 Q. And did you observe them excavate that area?

8 A. Yes.

9 Q. And what kind of equipment, equipment did they use?

10 A. An excavator. A track hoe.

11 Q. And a track hoe, for us that don't know the industry,  
12 what kind of machinery is that?

13 A. A, a tract hydraulic bucket.

14 Q. Is it a -- mechanized machinery?

15 A. Yes.

16 Q. And this person in this photo, is he standing on top of  
17 the facility that's in question here?

18 A. That's correct.

19 Q. And is this the condition of that facility the same as  
20 what Chandler left it in the day before?

21 A. That is correct.

22 Q. And when you took this photo, did you observe any  
23 damage to that facility?

24 A. No.

25 Q. And we can scroll down.

1           And is this the same photo, Mr. Brinkley?

2   A.   Yes.

3   Q.   And are these markings that you made just to show where  
4   that facility runs in that photo?

5   A.   It's just to outline it because the soils look like the  
6   facility.

7   Q.   And when's the first time that you observed any damage  
8   to that terracotta facility?

9   A.   After, after mechanical excavation by the sub.

10   Q.   All right. Mr. Brinkley, did you also take this photo?

11   A.   Yes.

12   Q.   Can you explain to us what this photo shows?

13   A.   It's different holes in the casing that's inside of the  
14   terracotta facility.

15   Q.   So we're looking inside the terracotta facility.

16           How did that -- how did the terracotta facility get  
17   removed?

18   A.   By Ansco, the sub.

19   Q.   And did you make these arrow marks on this picture?

20   A.   Yes.

21   Q.   And what are they pointing to?

22   A.   Different holes in the line inside the terracotta.

23   Q.   And do these markings on this that you're pointing to  
24   in this photo, do they match up with the teeth of the Ansco  
25   excavator?

Shane Brinkley - Direct examination  
By Ms. Nicholson

1 A. Yes.

2 Q. And at any point during your observation of Ansco's  
3 work, did AT&T or their agents ever identify to you where  
4 the facility had allegedly been damaged?

5 A. No.

6 Q. And did Chandler ever remove that terracotta conduit or  
7 casing during their excavation?

8 A. No.

9 Q. And was that, the terracotta facility that you  
10 observed, was it greater than 3-inches wide?

11 A. Yes.

12 Q. How wide would you say it was?

13 A. I'd say a foot by a foot.

14 Q. Box shape?

15 A. Correct.

16 Q. And you just testified that Chandler never removed that  
17 terracotta during the excavation?

18 A. That's correct.

19 Q. How would Chandler have damaged the facilities inside  
20 that casing without removing or penetrating that casing?

21 A. I do not know that.

22 Q. And what additional information could AT&T or the  
23 operator have given you to perform your excavation?

24 A. That it was a terracotta facility with paper fibers  
25 inside of it instead of a traditional concrete duct bank as

1 the markings show.

2 Q. And if you had given this additional information  
3 regarding this terracotta facility and the pulp cable or  
4 paper fiber as you recall it, what would you have done  
5 differently during the excavation?

6 A. All hand excavation with shovels or either hydro  
7 excavation.

8 Q. What -- can you explain hydro excavation to me?

9 A. A shop vac on a truck that just sucks the dirt out and  
10 removes it.

11 Q. And why don't you always use these types of excavation?

12 A. Cost and time. If you're looking for a concrete  
13 structure in the ground or conduits, you wouldn't use a  
14 hydro excavation. It caught -- takes more time and money.

15 Q. And those are all the questions I have for you, Mr.  
16 Brinkley. Defense may ask you some questions.

17 MR. BUTLER: Thank you.

18 Could we scroll down to the first photograph you were  
19 showing him?

20 MR. BRUORTON: If you'll give me one second.

21 This one?

22 MR. BUTLER: Yes, that's fine. Thank you.

23 CROSS-EXAMINATION

24 BY MR. BUTLER:

25 Q. Mr. Brinkley, good morning, sir. My name's Jeff

Shane Brinkley - Cross-examination  
By Mr. Butler

1 Butler. I represent BellSouth in this case.

2 Can you hear me okay?

3 A. Yes, sir.

4 Q. Thank you, sir.

5 According to the photograph, it, it does appear that  
6 there were orange lines marked on the roadway prior to any  
7 excavation work your company performed.

8 would you agree with that?

9 A. Yes, sir.

10 Q. All right. And it looks to me like those markings  
11 continued for some distance up I believe that's McMillan  
12 Avenue?

13 A. Yes.

14 Q. All right. So the low -- the horizontal location of  
15 the conduit belonging to BellSouth was identified to you  
16 although you were not aware that it was a terracotta --  
17 contained within a terracotta shell.

18 Is that correct?

19 A. Yes.

20 Q. All right. And the marking of the, the diamond in the  
21 center, you indicated that that told you that this was a  
22 duct run?

23 A. It's---

24 Q. Is that correct?

25 A. ---a duct bank, yes.

Shane Brinkley - Cross-examination  
By Mr. Butler

1 Q. Duct bank.

2 Okay. would that indicate to you that the underground  
3 conduit was likely more than 3-inches in diameter?

4 A. Yes.

5 Q. And based on the lines that you saw, did you feel  
6 comfortable in performing excavation at or near that area?

7 A. Absolutely.

8 Q. All right. Prior to performing any excavation, did you  
9 request BellSouth or anyone else to provide any additional  
10 information?

11 A. I had no reason to.

12 Q. All right.

13 A. No.

14 Q. On the photograph there where the car is, can you tell  
15 me the approximate location as to where the excavation was  
16 taking place?

17 would it be in front of the car, right where the car's  
18 at, behind the car?

19 A. I'm gonna do something that I shouldn't probably.

20 Right across from the back of the car.

21 MS. NICHOLSON: Can you point to it, Chip?

22 MR. BRUORTON: Yeah.

23 THE WITNESS: She can see. Yeah, there.

24 MS. NICHOLSON: Can you see that arrow, Mr. Butler?

25 MR. BUTLER: I can.

Shane Brinkley - Cross-examination  
By Mr. Butler

1           Okay. So we're, we're almost even with the front of  
2 the car?

3           Is that what I'm seeing?

4 A.       With the back of the car.

5 Q.       The back of the car. Very good, sir.

6           I recollect from other photographs that there was a  
7 manhole in the area.

8           Do you recall that?

9 A.       That's correct.

10 Q.       And how far from the manhole was the excavation?

11 A.       Say 10-foot.

12 Q.       All right. And did the, the markings go past or  
13 include the manhole and then beyond the manhole?

14 A.       They were marked on either side of the manhole.

15 Q.       All right. And prior to performing the excavation, you  
16 were actually able to locate the underground cables or the  
17 con -- the duct run, the duct bank, whatever you want to  
18 call it?

19 A.       Correct.

20           MR. BUTLER: All right. I have no further questions  
21 for this witness, Your Honor.

22           THE COURT: All right. Any additional on direct?

23           MS. NICHOLSON: No, Your Honor.

24           THE COURT: All right. You can call your next witness.

25           MR. BRUORTON: Thank you, Your Honor.

Shane Brinkley - Cross-examination  
By Mr. Butler

1 Next witness for Chandler is Matt Bares.

2 THE COURT: All right. Mr. Bares, if you could raise  
3 your right-hand.

4 MATT BARES, being first duly  
5 sworn, testified as follows:

6 THE COURT: All right. And if you could state your  
7 full name and spell your last.

8 THE WITNESS: Sure. Matthew Collins Bares. Be, as in  
9 bravo, A-R-E-S.

10 THE COURT: Thank you so much.

11 THE WITNESS: You're welcome.

12 THE COURT: Please proceed.

13 MR. BRUORTON: Thank you, Your Honor.

14 One housekeeping matter before we get started with  
15 Mr. Bares. We -- these exhibits were all premarked and  
16 stipulated between the, the parties. I just want to make  
17 sure that they're all admitted into evidence and that we  
18 don't need to go through the process of submitting them into  
19 evidence.

20 THE COURT: Is there any objection to any of the  
21 premarked exhibits, Mr. Butler?

22 MR. BUTLER: I have no objection, Your Honor.

23 THE COURT: All right. Without objection, they'll all  
24 be admitted for purposes of the record.

25 MR. BRUORTON: Thank you.

Matthew Bares - Direct examination  
By Mr. Bruorton

1 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through 5 were  
2 received into evidence at this time.)

3 MR. BRUORTON: Oh, one other thing. Mr. Brinkley's got  
4 a lot to do.

5 Can he be dismissed?

6 THE COURT: Fine with me.

7 Mr. Butler, any problem with that?

8 MR. BUTLER: We have no objection, Your Honor.

9 THE COURT: All right. He's free to leave.

10 MR. BRINKLEY: Y'all have a great day.

11 MR. BUTLER: Hope you have a better day than we're  
12 having.

13 DIRECT EXAMINATION

14 BY MR. BRUORTON:

15 Q. All right. Mr. Bares, good morning.

16 A. Good morning.

17 Q. You've introduced yourself to the Court.

18 why don't you tell me a little bit about your personal  
19 background as far as, you know, how you got started at  
20 Chandler Construction?

21 A. I began with Chandler Construction about 20 years ago  
22 as a project manager. I bought into the organization in  
23 2011. Purchased controlling share in 2015 and completed the  
24 buyout of a 50 year old family run construction company in  
25 2020.

1 Q. So, what is your current title with Chandler?

2 A. Currently the Chandler CFO and CEO.

3 Q. Okay. And as part of those -- as part of that role,  
4 what operations does Chandler or what type of work does  
5 Chandler perform?

6 A. Primarily underground utilities, water, sewer, fire  
7 protection. Pretty much tell people we do it if it's ground  
8 and in the ground it's our type of work. Demolition, new  
9 in -- new construction and repairs. We don't do anything  
10 with wires. I'm not an electrician. Don't do anything  
11 electrical. Don't do anything telecommunications related  
12 other than actually installing conduit.

13 Q. Okay. Nothing vertical?

14 A. Nothing vertical, no, sir.

15 Q. And your progression within Chandler starting as a  
16 project manager to where you are today, you've worked both  
17 in the field and in the office?

18 A. Yes, sir, I fully recognized all aspects of our  
19 management from the position that Shane held at the time in  
20 which we were doing the work on McMillan, and then through  
21 senior management and ownership.

22 Q. Okay. And just for -- I -- background purposes, can  
23 you tell the Court your education background?

24 A. Sure. I've got a B.S. in geology and a lot of trade  
25 organization training from a standpoint of primarily safety

1 and quality related.

2 Q. And where did you obtain your degree?

3 A. College of Charleston here.

4 Q. And where all does Chandler perform its, its  
5 operations?

6 A. We're licensed in North Carolina, South Carolina, and  
7 Georgia and we have offices in Summerville, South Carolina,  
8 Fort Mill, South Carolina and our home office is in the  
9 booming metropolis of Ninety-Six, South Carolina.

10 Q. And are there any limitations on the license that  
11 Chandler holds?

12 A. None whatsoever.

13 Q. Okay. So it's unlimited?

14 A. That's correct.

15 Q. I'm gonna show you what was premarked as Exhibit 4.  
16 There we go. Sorry about that.

17 All right. Mr. Bares, I'm showing you the, the  
18 coversheet to what is Title 58 Chapter 36 of the South  
19 Carolina Code, and it is labeled South Carolina Underground  
20 Facility Damage Prevention Act.

21 Are you familiar with this statute?

22 A. Intimate with it.

23 Q. Okay. Explain to the Court how you are intimate with  
24 this statute.

25 A. In 2000s when I was management projects and performed

1 much of the same duties that Shane Brinkley is testified  
2 performing for, there were numerous occasions where  
3 primarily the telecommunication industry, and specifically  
4 at the time BellSouth, would send us invoices for damage to  
5 buried facilities of which I didn't feel Chandler was  
6 responsible for causing the damage. Often, and  
7 historically, it was just cheaper to pay the bills and not  
8 argue it, just not to dispute it, and it became a cost of  
9 doing business of having to pay the telecommunications  
10 industry for what we're -- I thought were frivolous at the  
11 time and really aggressive billing tactics, tactics to  
12 collect money from excavators.

13 At the time I was serving on the board of the Carolinas  
14 Associated General Contractors, a trade organization  
15 representing about 2,000 excavators in North and South  
16 Carolina, and we started reviewing the current statute at  
17 the time, which was from back in the 1970s that was very  
18 antiquated and primarily developed, from my experience,  
19 around the natural gas industry, electric and natural gas.  
20 At the time, if you go back to the 1970s, telecommunications  
21 were primarily overhead. It actually was the -- the  
22 regulation as the -- currently what we were having to follow  
23 didn't really address many of the modern challenges of  
24 having so much underground to work around.

25 Our -- from a safety prospective, if it was

1 underground, it was typically electric -- no, it was  
2 typically natural gas with some electric early on and then  
3 it grew to be more and more electric as all, all the  
4 overhead facilities went underground and then the  
5 telecommunication industry kind of followed suit.

6 So I got involved in representing about 2,000  
7 excavators throughout the Carolinas in exploring new  
8 legislation to update what we call the one call law. In  
9 2009 timeframe I was appointed to a Senate, South Carolina  
10 Senatorial Subcommittee, and I was the -- one of two  
11 excavators that were tasked by the Senate subcommittee to  
12 come up with compromise legislation which resulted in this  
13 law in 2009, 2010, and going in full effect a few years  
14 later.

15 Q. And what was the purpose of the act?

16 A. The purpose of the -- the purpose of the act, for  
17 Chandler or for the excavators, was primarily safety, safety  
18 of our employees, safety for the general public.

19 If you're not an excavator, and you don't understand  
20 the challenges of how much is underground in modern society,  
21 it's very dangerous. And while mistakes can be made, the  
22 law, as written, was intended to---

23 MR. BUTLER: Your Honor, I have to -- I'm gonna try to  
24 object at this point if I may.

25 The plaintiff's complaint is that BellSouth failed to

1 comply with the statute. To that extent, I think it's the  
2 Court's duty to interpret the statute, what it says, what  
3 its requirements are. I think that to the extent that  
4 there's any background or expert interpretation of the  
5 statute being offered by Mr. Bares, I would object. I, I  
6 would submit that it's up to the Court to interpret the  
7 statute as written and whether BellSouth has complied with  
8 the statute as written.

9 THE COURT: Okay. Well, you know, I agree with your  
10 assessment on it's the Court's -- with re -- with regard to  
11 the Court's duties as it applies to interpretation of the  
12 statutes. I think they're just trying to lay some groundwork  
13 on his familiarity with the statute, which I'm, I'm happy  
14 the hear from. But certainly the Court takes, takes notice  
15 of his involvement with the enactment of the statute and  
16 I'll allow him to testify a little bit further into it.

17 But I'm not taking his, you know, testimony as with any  
18 weight of some sort of an expert opinion or anything like  
19 that.

20 All right?

21 MR. BUTLER: Thank you, Your Honor.

22 THE COURT: All right. Please continue.

23 THE WITNESS: Thank you, judge.

24 My position or what I was trying to demonstrate is I  
25 didn't get involved and spend time and company resources to

1 work for the industry for -- solely for damage prevention.  
2 It was for safety and the welfare of my work force and the  
3 general public that we're working around and in the public  
4 right of way and the streets of our towns and cities.

5       What is -- what I wanted to get -- the point I need to  
6 get across here is, when we see a mark on the ground, all  
7 marks are important to us from, first and foremost, for  
8 safety. So we follow the statute. We have policies in  
9 place and our employees are instructed, our workers are  
10 instructed, to follow to the letter of the law, what needs  
11 to be done to comply with the law with the sole purpose of  
12 their worker safety.

13       Damage prevention is -- gets -- rides the coattails of  
14 safety from an excavator's perspective. And I can  
15 understand, as an operator, while you may not care about the  
16 safety and wellbeing of my employees, I would think you'd  
17 care about the safety and wellbeing of the general public.

18       MR. BUTLER: Your Honor, I have to object to the extent  
19 that he's insinuating that BellSouth doesn't care about the  
20 safety of, of operators.

21       THE WITNESS: I'm not insinuating---

22       THE COURT: All right.

23       MR. BRUORTON: Hold, hold on.

24       THE COURT: I, I think he meant the proverbial you but  
25 we'll just move on.

1 Thank you.

2 A. The, the marks on the ground are important, and the  
3 accuracy of those marks are important. And what those marks  
4 tell our excavators are critical from a standpoint of us  
5 being able to properly physically locate what buried  
6 facilities we have to work around.

7 There are numerous occasions where marks do not reflect  
8 the accuracy of what's in the ground, and that information,  
9 that misleading information or incomplete information, can  
10 have catastrophic consequences. So, I wanted to stress the  
11 importance of the accuracy of what we have and the  
12 information of what we have is critical for us to safely do  
13 our job.

14 Q. And, Mr. Bares, as far as compliance with the act, when  
15 Chandler is performing an excavation project, dealing with  
16 underground facilities is only one of the things that it has  
17 to take into consideration.

18 Isn't that correct?

19 A. That's correct.

20 Q. What, what other types of things, from a safety  
21 standpoint, is Chandler having to pay attention to?

22 A. Our managers are tasked with identifying not only  
23 working around our buried facility, but wherein, often in  
24 this case, we're having to deal with traffic. So there's  
25 traffic safety. There is scheduling around Meals On wheels

1 or, you know, school bus deliveries or child, you know,  
2 children being picked up and dropped off for school on  
3 school buses, garbage collection, what day of the week  
4 garbage collection takes place.

5 We have cases where people have -- are on kidney  
6 dialysis and we have to make sure they have access. We have  
7 to always maintain emergency access for fire and police.

8 So, there's more than just what's underground. It's  
9 just the, the typical liabilities that we have to assess and  
10 mitigate with really every bucket of dirt that we move.

11 Q. And as the excavator, you don't do the locate yourself.  
12 You call in the locate and you rely on the identification of  
13 the, of the underground utility when you're performing your  
14 work.

15 A. The law requires us to either -- to contact, through  
16 policy, through 811 or through the port -- online portal,  
17 identify where we're gonna be doing the work and the type of  
18 work -- excavation we're gonna do and then the facility  
19 owners or operators are responsible for locating the  
20 horizontal location of the facility either through markings  
21 or flagging.

22 In this specific case, and I think it was brought  
23 out -- and I, and I don't know necessarily who marks their  
24 facilities. Some facility owners mark it internally. In  
25 this specific case, I believe it was marked by a third party

1 locating service.

2 Q. Okay. And so walk me through the process at, as, as  
3 the CEO of Chandler, what you expect from your crew when  
4 they're performing an excavation job?

5 A. I expect the management to confirm that they have an  
6 active and current locate in place. I expect that we allow  
7 the -- sufficient time per the law before we proceed with  
8 our excavation. I expect to check positive response which  
9 is a, a new condition within the new statute that wasn't  
10 before so we can verify that the marks on the ground are  
11 complete.

12 And the reason that is important, and I think it was  
13 pointed out in what Shane Brinkley disclosed, that there was  
14 a manhole 10-feet away. If there weren't -- I'll use that  
15 as a good example.

16 If there were no marks on the ground, and we physically  
17 saw the manhole, that's the purpose of positive response  
18 that we can reach back out and confirm that whoever owned  
19 that manhole, whether or not they have facilities coming in  
20 and out of it. To that extent, markings going through a  
21 manhole don't mean -- necessarily mean that the, the two are  
22 connected because while it's easy to sit in here and look at  
23 a piece of paper or look at a photograph, that is only one  
24 dimension -- two dimensions. We're working the third  
25 dimension and digging underground and we have to make sure,

1 as Shane pointed in his testimony, we have to make sure that  
2 various utilities can coexist in different planes within the  
3 earth.

4 Q. And tell me a little bit by what you mean by positive  
5 response.

6 what -- how -- what does that mean within your  
7 industry?

8 A. We check back after the locate period has been  
9 completely -- it can be, can be during the locate period.  
10 If they're any other member utility companies, and it's  
11 called the one call all for the purpose that all public  
12 utilities are suppose to be members, that they've all  
13 actually identified at their facilities. And if we were to  
14 see a manhole or a pedestal or a, a gas valve, water valve,  
15 regulator, if we see some other -- if we see conduit coming  
16 down a power pole and no marks on ground, it's our  
17 responsibility to verify that the facility owners had an  
18 opportunity to properly mark their facilities.

19 Q. And I'm gonna show you what was previously marked as  
20 Exhibit 5.

21 Can you tell me what this is?

22 A. That looks to be a locate request.

23 Q. Okay. And if you look at the second page?

24 Can you give me a little bit more description as to  
25 what this is?

1 A. That's for Chandler to disclose that Chandler's  
2 performing the excavation or plans to perform the  
3 excavation. It shows that Sam Kraebber, who's a Chandler  
4 employee, contacted the one call center to advise of the  
5 locate -- of, of the locate request. It has Sam's contact  
6 information which would explain why he was contacted when --  
7 in response to the work in the area cause he actually called  
8 in the locate.

9 And then it looks like below down there if you scroll  
10 down, it's the location and the type of work we were doing,  
11 where the work was being completed. If you scroll down  
12 more, it demonstrates -- it should demonstrate all the  
13 different member facilities.

14 Q. That's the last page.

15 MS. NICHOLSON: Facilities are at the top.

16 Q. Facility's at the top.

17 A. It's usually in the middle section of it, my  
18 recollection. There you go.

19 So you can see there those are the different facility  
20 owners or operators that were located, and, in this specific  
21 days, it's shows AT&T/D and it shows Comcast Cablevision.  
22 And if you scan down further, it shows Wide Open West.

23 Just from experience, I know that all three of those  
24 are telecommunications companies but the orange marks on the  
25 ground don't say whether it's Wide Open West, Knology, AT&T,

1 or, in the case of prior test -- prior comments, BellSouth.

2 Q. Learn something new every day. I had no idea what  
3 W.O.W stood for.

4 A. Yep, wide Open West.

5 Q. Good deal.

6 All right. And all of this information that's set  
7 forth on this locate notice request, is that information  
8 that is required by the Underground Damage Prevention  
9 Statute?

10 A. I, I believe it's, from the excavator's prospective, I  
11 can say it has all the information that is provided. I  
12 don't know, from a operator prospective, cause I don't  
13 provide the information.

14 Q. Okay. And have you encountered any problems as a  
15 company with complying with the act and calling in these  
16 locates?

17 A. Have we -- can you rephrase the question?

18 I'm not sure.

19 Q. Have you encountered any issues, as a company, whenever  
20 you've complied with, with the locate requirement and get a  
21 locate before your job, has that resulted in any issues  
22 within your company of, of what you've had to deal with when  
23 doing your work?

24 A. Has damage ever occurred?

25 Is that what you're asking or --?

1 Q. Sure.

2 A. Yeah, damage does occur. In this specific case of  
3 Chandler's experience and calling in locates, it's quite  
4 common that we get facility owners sending us claims for  
5 damages and invoices for damages -- for damage we didn't  
6 occur -- that we didn't cause. We have experience where --  
7 we've experienced in the past where we only get the damage  
8 notice because we're the ones who called in a locate.

9 So there may be other trades working. We're not  
10 solely -- in this specific case, we are working for the  
11 folks that are building the railroad. They were doing other  
12 relocations of overhead power. The DOT was doing their  
13 assessments for the new flyover for the -- going over the  
14 railroad track. There's other trades that are working in  
15 the area besides Chandler. But I only have access to locate  
16 request that Chandler calls in.

17 Q. And what have you seen within your industry of how  
18 prevalent it is for an excavator to call in a locate?

19 A. I, I believe, in South Carolina, it's quite common.  
20 It's a law for us to call in the locate request and I can't  
21 speak for other companies. I can only speak for Chandler  
22 that, if we're working in the area, we typically get a bill  
23 if there's damage.

24 Q. I'm gonna show you Exhibit 2 and this is a  
25 March 31<sup>st</sup>, 2020, letter from AT&T.

1 Do you recall receiving this?

2 A. I do.

3 Q. Okay. And what, if anything, did you do in response?

4 A. I believe I went back -- typically what I do when I  
5 receive a bill is I go back and I look at -- and we -- this  
6 is an isolated occurrence.

7 So, I go back and I look at what the manager has  
8 collected post-accident reporting. I look at the job files  
9 to find out if we're actually working that area. There's a  
10 percentage of the time where we weren't even actually  
11 working on the job. It might be the wrong -- there's more  
12 than one Chandler Construction. So, I just verify really  
13 what I call consider from the 30,000 foot level that it's a  
14 legitimate claim for damages and then I investigate it. I  
15 ask questions of our employees and I review available  
16 information, any photographs, and determine whether or not  
17 it's legitimate.

18 Q. Okay. And, in the past, has Chandler Construction paid  
19 for damage to underground utilities of AT&T?

20 A. Yes, we have.

21 Q. Okay. I show you Exhibit 3.

22 Do you recognize this February 4<sup>th</sup>, 2020, letter?

23 A. I do.

24 Q. Okay. And tell me what this is.

25 A. After I failed to respond and write them a check, they

1 sent me a follow-up demand and I -- that's when I reached  
2 out to you personally and decided to go on the offensive  
3 because I felt we weren't at fault. We didn't do anything  
4 wrong. We fully complied with both the law and the intent  
5 of the law having been involved with the development of the  
6 law, and really, out of frustration, felt it was more  
7 important to spend my money and resources in demonstrating  
8 what I believe our industry needs, which is to not settle on  
9 something when you're not at fault.

10 Q. All right. So, the March 31<sup>st</sup>, 2020, letter that was  
11 marked Exhibit 2 that we looked at, tell me what knowledge  
12 or information you had prior to that letter about events  
13 leading up or about the McMillan Avenue project and events  
14 leading up to that letter being received by Chandler.

15 A. Being it was two years ago, I don't know specifically  
16 what knowledge I had but I can speak from ex -- you know,  
17 regular experience. We meet Monday every week. First thing  
18 we talk about is safety and the accidents or incidents or,  
19 you know, potential problems we have and then we talk about  
20 our scheduling and resources for the three weeks ahead. And  
21 that's just kind of a moving scheduling meeting that we have  
22 every Monday.

23 I'm confident, following the fact that this was over  
24 the weekend, that our employees were getting phonecalls from  
25 AT&T about damage, we would of talked about it on that

1 following Monday and I would of directed Shane, with a  
2 manager at the time, to collect any additional information.  
3 At some point in time when I received one of the follow-up  
4 letters, I did instruct all of our management to preserve  
5 any records associated with the damage but I don't remember  
6 the timeframe on that. I just remember I received a written  
7 request to do so.

8 So I sent out an email to any management involved with  
9 the project to retain any records, and I believe most of  
10 those records or whatever were put in evidence today.

11 Q. All right. And I want to look at Exhibit 1, the photo,  
12 a group of photos that we looked at earlier with Mr.  
13 Brinkley.

14 Okay. And you were here when Mr. Brinkley testified  
15 earlier?

16 A. Yes, sir.

17 Q. All right. And he identified this photo as one that he  
18 took of the McMillan Avenue area where Chandler was working,  
19 correct?

20 A. That's correct.

21 Q. And the orange identification markings that are on the  
22 pavement, based on your experience in the industry, what  
23 does that orange marking mean?

24 A. It's standardized in the industry, no to South Carolina  
25 law, but in the industry, in the Colorado Alliance and also

1 oh, foot, the APWA I believe. I can't recall the, the  
2 acronym. But it's the nomenclature for a duct bank, which  
3 is the diamond and the two marks on either side and the  
4 orange would denote that it's telecommunications.

5 Q. Okay. And, in the industry, what defines a duct bank?  
6 what does that mean?

7 A. It's a grouping, it's a bank, so it's more than one,  
8 it's a grouping of typically conduit which has some type of  
9 cable on the inside. It's transmitting something on the  
10 inside. So, it's a casing, a rock, to protect -- protective  
11 casing around buried facilities.

12 THE COURT: Mr. Bruorton, I hate to do this. I'm gonna  
13 have to take our break a little bit early, our morning  
14 break. We'll just be at ease, everybody, for about five or  
15 10 minutes. I've had a, a -- my warrant come here a little  
16 bit early that I need to take care of real quick. So, we'll  
17 just take our break right now.

18 MR. BRUORTON: Okay.

19 THE COURT: We'll be at ease, like I said, for about  
20 five or ten minutes.

21 MR. BRUORTON: Okay. Thank you.

22 THE WITNESS: Thank you.

23 (WHEREUPON, a short recess was taken at this time.)

24 THE COURT: Okay. I am ready whenever everybody else  
25 is to start back. I appreciate the break.

1 MR. BRUORTON: Sure thing, Your Honor. I think -- it  
2 looks like --.

3 THE COURT: Take your time.

4 MR. BRUORTON: I think we're waiting on Mr. Sanders.

5 MR. BUTLER: There he is.

6 THE COURT: No problem.

7 All right.

8 MR. BRUORTON: All right.

9 THE COURT: All right. Mr. Bruorton, thank you so  
10 much. I'll---

11 MR. BRUORTON: No worries.

12 THE COURT: Please proceed.

13 MR. BRUORTON: Yeah, I'll go back to my prior question.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. BRUORTON:

16 Q. We were looking at these markings and you were talking  
17 about the -- what the orange represents and that this  
18 represents a duct bank.

19 Do you see any dimensions within these markings?

20 A. I don't see any dim -- I see the -- you know,  
21 there's -- obviously there's a distance between the orange  
22 lines and the diamond and they're pretty consistent.

23 Q. And, and, in the industry, does that represent the size  
24 of the anticipated structure that you're going to be looking  
25 for?

1 A. It typically means it's a duct bank.

2 Q. Okay.

3 A. And in this specific case, the distance between those  
4 markings is greater than what it's showing. I mean the  
5 purpose of the -- of knowing the diameter, specifically with  
6 over than 3-inches and it may be, you know, nuance to a lot  
7 of people from, but, from our business, in the law there's a  
8 tolerance zone of 24-inches an either side of the facility.

9 MR. BUTLER: Your Honor, I'm gonna ob -- I'm gonna  
10 object if he's testifying as to the law.

11 THE COURT: Okay. Overruled.

12 Go ahead.

13 A. I can proceed?

14 Q. Yes.

15 A. Okay. Thank you, Your Honor.

16 The -- it is important for our excavators in the field  
17 to know the diameter is we have to work within that  
18 tolerance zone with shovels and spades and probe rods and  
19 non-mechanized equipment, and if the -- if the facility  
20 itself is bigger than the tolerance zone, we'd be -- we  
21 wouldn't be able to find it. So I means it's the whole  
22 purpose of knowing the sizes is a very relative one from a  
23 construct-ability standpoint in the field. So we have to  
24 know what we're looking for.

25 Q. And you heard Mr. Brinkley's testimony and you've seen

1 the pictures.

2 Is what was found in the, in the field represented by  
3 these orange markings?

4 A. Not in our experience.

5 Q. Why not?

6 A. It was a terra -- they keep saying terracotta. It's a  
7 clay vault basically, clay, clay run conduit or casing that  
8 we don't know what's inside of it. We just -- just like if  
9 it were an actual duct bank, we typically hit concrete or a  
10 bundle of conduit.

11 Q. And is there anything that you believe Chandler  
12 Constructions crew could have done differently?

13 A. No, sir.

14 MR. BRUORTON: Sorry. Siri's listening to us  
15 apparently.

16 Did y'all hear that?

17 MR. BUTLER: Yes, we did.

18 MR. BRUORTON: Yeah, I don't know how to cut that off.  
19 That's annoying.

20 THE WITNESS: Siri is not my testimony.

21 THE COURT: I'll order Siri stricken from the record.  
22 That happened to me once during a guilty plea. So, it could  
23 be worse.

24 Q. All right. Let's -- hopefully she won't interrupt us  
25 anymore.

1 All right. I want to look at the act, which was  
2 Exhibit 4 and I want to go to 15-38-60. Just put Page 14 in  
3 there. This is the responsibilities of the excavator.

4 You're familiar with this provision in the code?

5 A. Yes.

6 Q. All right. In looking at 15-38-60(A), before Chandler  
7 performed any excavation work on McMillan Avenue, do you  
8 know whether they notified the notification center of their  
9 intent to excavate?

10 A. We did.

11 Q. And that would be based off the locate ticket that we  
12 looked at?

13 A. That's correct. The locate ticket is assigned as  
14 record of the notice being back.

15 Q. Okay. And within that locate ticket, there's a certain  
16 timeframe within which the work has to be performed?

17 A. That's correct.

18 Q. And was Chandler performing work within that timeframe?

19 A. We were, we were and it was -- the work is ongoing.  
20 So, there's more than one ticket. You know, as a ticket  
21 expires, we have to call in a new ticket cause they're only  
22 good for a certain period of time.

23 Q. That ticket that we looked at earlier, did it address  
24 the timeframe in which the work that we're talking about  
25 today was being performed?

1 A. It would -- it did, yes.

2 Q. Okay. And then we looked at the notice.

3 Is there anything within 15-38-60(C) that was not  
4 included on that notifications certificate that should of  
5 been?

6 A. Everything I've seen, we fully complied with the law.

7 Q. And this was all horizontal underground work, not  
8 anything related to demolishing a building or anything like  
9 that, correct?

10 A. Our work was complete in this -- it had everything to  
11 doing with being underground.

12 Q. Okay.

13 A. That's correct.

14 Q. So 15-38-60(D) would be inapplicable?

15 A. That's correct.

16 Q. All right. And then there's a laundry list in  
17 15-38-60(E), nine different things that the excavator must  
18 do. I just want to run through those quickly.

19 Do you -- in listening to Mr. Brinkley's testimony and  
20 reviewing the documents, did you understand -- understand  
21 that he designated the route of what y'all were intending to  
22 excavate?

23 A. Yes, I don't see anything that we were deficient in in  
24 (E).

25 Q. Okay. Checked the notifications center for positive

1 response. You discussed that earlier.

2 A. We did.

3 Q. Planned the excavation or demolition. He said he  
4 mapped that out.

5 Correct?

6 A. He did.

7 Q. Any extraordinary circumstances that you're aware of  
8 related to this project?

9 A. Not specific to this, no.

10 Q. And as far as staking and marking of where Chandler was  
11 gonna be working, was that visible on the first photo of the  
12 (indiscernible)?

13 A. Yeah, there were stakes. We stake where our fittings  
14 are gonna go and then we have to extrapolate between those  
15 fittings when we lay our pipes in a straight-line.

16 Q. Okay. And did Chandler notify -- well, the alleged  
17 damage occurred before this.

18 But did Chandler notify the notifications center when  
19 the excavation was complete?

20 A. Yes.

21 Q. And do you know what type -- based on Mr. Brinkley's  
22 testimony and your communications with your employees and  
23 investigation of this incident, do you know whether  
24 mechanic -- mechanized equipment was used in this area by  
25 Chandler Construction?

1 A. It was not used until we have positively identified the  
2 location of the buried facility.

3 Q. Okay. And what tools do you understand were used?

4 A. For potholing or for the actual excavation?

5 Q. For the excavation.

6 well, to identify -- to get to the point where this  
7 facility was identified.

8 A. Oh, we used shovels, probe rod. I believe that was it.

9 Q. All right. And now let's look at 15-36-70,  
10 responsibilities of the facility operators.

11 okay?

12 A. Yes.

13 Q. Looking at (A)(1), we looked at the photo that showed  
14 identification markings on the pavement. From a color  
15 standpoint, it was orange which represents  
16 telecommunications.

17 No dispute over that?

18 A. That's correct.

19 Q. No dispute that A -- when the notification center was  
20 notified, AT&T had a locator, whether it was internal or a  
21 third party, go out and identify their underground utility?

22 A. At the time we were doing our work, we don't know who  
23 put the orange marks down or which facility owner instructed  
24 for the marks to be placed. But we just know that it's a  
25 telecommunications line, and based on our ticket that we're

1 provided from the one call center, that it would of been one  
2 of three operators.

3 Q. And the symbol that is marked on the pavement in the  
4 photo in Exhibit 1 is representative in the industry of a  
5 duct bank?

6 A. It is -- representative of a duct bank, and while it  
7 is -- shows something larger than 3-inches, it doesn't show  
8 the dimensions of the facility and was not represented of  
9 the dimensions of the facility.

10 Q. And Mr. Brinkley testified that a duct bank is, in the  
11 industry, normally concrete.

12 would you agree with that?

13 A. It's, it's a bundle of conduit and usually encased in  
14 concrete.

15 Q. Okay.

16 A. That's correct.

17 Q. How common is terracotta casing?

18 A. I have never seen it in 20 years and Shane, in speaking  
19 with him, I've -- it's a hand full of---

20 MR. BUTLER: Objection.

21 THE COURT: Overruled.

22 MR. BUTLER: Mr.---

23 THE COURT: He can testify on his experience.

24 MR. BUTLER: No, ma'am, I was objecting to what he was  
25 saying Mr. Brinkley told him.

1 THE COURT: Oh, okay. Thank you.

2 Q. Yeah, just keep your -- just based on your own  
3 knowledge, how often is terracotta casings used?

4 A. The, the, the purpose of my statement is that, as part  
5 of the investigation when we were accused of causing  
6 damage---

7 THE COURT: No, sir, I'm sorry. I'm gonna stop you  
8 right there.

9 THE WITNESS: Okay.

10 THE COURT: Just stick to answering exactly what your  
11 attorney asked you please.

12 Okay?

13 THE WITNESS: Yes, Your Honor.

14 Q. You've been in this---

15 THE COURT: Thank you.

16 Q. ---industry for 20 years.

17 A. Yes.

18 Q. In your experience in this industry, how common is  
19 terracotta casing?

20 A. I have never seen it.

21 Q. In Section 58-36-70(A)(2), was Chandler Construction  
22 provided with any other information from AT&T other than the  
23 pavement markings?

24 A. No.

25 Q. In your experience in the excavation industry, does the

1 excavator have a responsibility to seek additional  
2 information?

3 A. If it's a critical infrastructure I would expect them  
4 to.

5 Q. Okay.

6 A. I've, I've always taken the position that, if the  
7 facility owner doesn't know what's in the ground, I don't  
8 understand how the excavator's suppose to know.

9 Q. What additional information do you believe should of  
10 been provided to Chandler Construction as it relates to this  
11 marked facility?

12 A. That it was a -- clay encased, I don't even know the  
13 terminology, pulp -- whatever the bill said, pulp fiber or  
14 pulp cable, that could be easily damaged.

15 Q. And you testified earlier that you had paid AT&T in the  
16 past when there has been damage to underground facilities,  
17 correct?

18 A. That's correct.

19 Q. Why did you dispute this claim?

20 A. Cause we weren't at fault. There was no evidence of  
21 anything we did internally wrong and we fully complied with  
22 the law and the intent of the law.

23 Q. Have you seen any photos or documentation that shows  
24 any damage to the terracotta casing or conduit?

25 A. Not at the time Chandler was working there.

1 Q. And have you seen anything from a photographic  
2 standpoint or documentation that shows any damage to the  
3 pulp cable itself?

4 A. I have not.

5 Q. All right.

6 A. I'm not even certain that the cable was damaged---

7 Q. And---

8 A. ---other than I've received a bill for it.

9 Q. And you brought this case as a declaratory judgment  
10 action.

11 what relief are you seeking from the Court?

12 A. In this specific case, that we're found not responsible  
13 for the actual damage. We did everything we could do. We  
14 followed the law. We took the time and the effort to do it  
15 correctly, and I still don't know what damage occurred other  
16 than I received a bill for it. But when damage occurs that  
17 Chandler is not responsible if we have not done anything  
18 wrong, that we can't be sent invoices and bills and claims  
19 for damages when we're fully complying with the law.

20 It's -- the bigger picture is that it's a dangerous  
21 precedent to continue to send bills to con -- excavators and  
22 business owners for doing the right thing. I've gotten to a  
23 point in my career where it's frustrating and it's  
24 concerning that if you -- if I'm going to get charged for  
25 the damage, I might as well just not spend the money working

1 around it and cause the damage and move on with my business  
2 and I would actually make, you know, either greater profits  
3 or have less losses. But that's a terrible precedent to  
4 send cause it -- it's not just -- and we, we talked earlier  
5 about the gas lines and electric lines.

6 Phone lines are just as important. It's not somebody  
7 just noting -- not getting their pizza order or being able  
8 to call grandma for her birthday. It is 9-1-1. It can be  
9 tell-- it can be emergency related. Business owners and  
10 hospitals rely on that critical infrastructure.

11 So, it -- excavators need to respect the marks. They  
12 need to respect the law, and while I understand, in the  
13 future, you know, damages can occur, and that I acknowledge  
14 freely that we've made mistakes in the past, in this  
15 specific case, Chandler didn't do anything wrong and, you  
16 know, we still received a bill.

17 And, in future cases, if I continue to promote for my  
18 industry and be an advocate for my industry and promote  
19 within my own workforce that we are going to do it  
20 correctly, I expect to be treated fairly and accordance with  
21 the law and for the person responsible for the damage to pay  
22 for the repairs.

23 Q. Do you, as an excavator, expect the operator to comply  
24 with the act?

25 A. Yes.

Matthew Bares - Direct examination  
By Mr. Bruorton

1 Q. And, in this particular case, based on the information  
2 that you have received and the documents that you've  
3 reviewed, do you believe that AT&T met the requirements of  
4 the act as to the operator?

5 A. They did not.

6 Q. Mr. Bares, those are all the questions I have. I  
7 appreciate your time today. Please answer any questions  
8 that opposing counsel may have.

9 MR. BUTLER: May I proceed, Your Honor?

10 THE COURT: Yes. Go ahead.

11 CROSS-EXAMINATION

12 BY MR. BUTLER:

13 Q. Okay. Mr. Bares?

14 THE COURT: Go ahead. There you go.

15 Q. Can you hear me, Mr. Bares?

16 A. Yes, Mr. Butler.

17 Q. Very good, sir.

18 You and I have met before, haven't we?

19 I believe we talked about your case before?

20 You might not remember. That's, that's all right.

21 Mr. Bares, you heard the testimony of Mr. Brinkley?

22 A. I have.

23 Q. And I believe Mr. Brinkley testified that I think on  
24 the night of the 13<sup>th</sup> he was notified or he received  
25 notification that damage had been reported to the area that

1 your company had been excavating?

2 A. I believe he received -- he re -- he testified that he  
3 received a call from our assistant PM who had received a  
4 call.

5 Q. Okay. Had you seen this job site prior to your company  
6 performing any excavation?

7 A. I had, during the bid process when I walked it.

8 Q. All right. Did you see the area after it had been  
9 marked but prior to your company performing any excavation?

10 A. I don't believe so.

11 Q. All right. From the photographs that you've seen, does  
12 it appear that there were horizontal markings indicating the  
13 presence of underground tele -- telecommunication conduit?

14 A. Duct bank.

15 Q. Yes, sir.

16 Did it appear that the, the horizontal area had been  
17 marked?

18 A. Yes, the horizontal area denoting a duct bank with  
19 telecommunications.

20 Q. All right. And it, it also indicated that -- the  
21 symbol was there indicating that it was going to be a, a  
22 pretty wide pipe, at least 3-inches or more in diameter?

23 would you say that's a fair assessment?

24 A. No, sir.

25 Q. Okay. You think it was -- you don't think there was

1 anything there to indicate that it was, that it was more  
2 than 3-inches?

3 A. No, it didn't indicate that it was a single pipe. It  
4 indicated that it was a duct bank.

5 Q. All right.

6 A. No pipes.

7 Q. All right. You had two lines there though, right?

8 Two, two orange lines?

9 A. There were actually three markings. There was a  
10 diamond in the middle and a mark on either side about every  
11 15 to 20-feet. That's correct.

12 Q. Yes, sir. I'm -- okay. And how far apart were those  
13 lines?

14 A. Eighteen inches probably.

15 Q. All right. And then the, the, the symbol in the center  
16 indicating that it was the, the duct bank, the duct run,  
17 correct?

18 A. From an industry prospective, yes, that it's going to  
19 be a duct bank.

20 Q. All right. And when your company started performing  
21 the, the excavation by hand, they were able to find the, the  
22 underground telecommunications cable encased in the  
23 terracotta or clay---

24 A. No.

25 Q. ---encapsulate?

Matthew Bares - Cross-examination  
By Mr. Butler

1 A. No, we did not. We have never seen -- at the time we  
2 were doing our excavation, I still, to this day, don't know  
3 if there's a cable inside that duct.

4 Q. Well, he found material---

5 A. I said---

6 Q. He found the terracotta though, did he not?

7 A. Found the terra -- the, the casing that was there, the,  
8 the clay casing that was in place that was square about 12  
9 by 12 inches that we saw in the photographs is what they  
10 found.

11 Q. All right. So he found, he found -- in the, the -- the  
12 markings were accurate as to the location of something under  
13 there.

14 Is that, is that a fair statement?

15 A. It's a fair statement that we found the clay casing  
16 because of the markings. That's correct.

17 Q. Okay. And you were able to expose it or could of  
18 exposed it more fully had you chosen to do so but you had  
19 located it in the area where you were performing the  
20 excavation?

21 A. In this specific case, we located it in the area we  
22 were performing the excavation and the grade allowed us to  
23 go over the top of it. So, there's no reason to do any  
24 other additional work around it.

25 Q. Okay. And within the meaning of subsection A of

Matthew Bares - Cross-examination  
By Mr. Butler

1 58-36-70, the markings were horizontal, correct, along  
2 the---

3 A. I---

4 Q. ---along McMillan Avenue?

5 A. If you'll bear with me. I'm, I'm citing -- I'm taking  
6 your word for it as far as the reference you're giving me.

7 Q. Okay.

8 A. I don't have the exhibit in front of me.

9 Q. I certainly don't, I certainly don't mean to mislead  
10 you, sir. Just wanted to make sure that we're---

11 A. That's okay.

12 And which section did you have?

13 Q. This is Section 70 Subpart Capital A.

14 A. Okay. I'm with you, yes, sir.

15 Q. All right. So, there were horizontal -- there were  
16 markings on the surface in orange?

17 A. That's correct. Denoting telecommunications.

18 Q. Okay. They, they went beyond the area that you were  
19 gonna be -- they included the area that you were planning to  
20 excavate and went beyond it in both directions I believe?

21 A. That's correct.

22 Q. The, the lines were more than 18-inches apart?

23 A. Right. It says---

24 Q. The two horizontal line -- the two lines were more  
25 than -- the width of the two lines was 18-inches or more and

Matthew Bares - Cross-examination  
By Mr. Butler

1 maybe 20-inches apart?

2 A. Correct.

3 Q. And based upon the markings on the surface, your crew  
4 was able to locate something, at least they located the  
5 terracotta, where, where they thought they would find  
6 something?

7 A. That's correct and we safely worked around it.

8 Q. And you safely worked around it?

9 A. That's correct.

10 Q. Is it possible that the lines could of later been  
11 damaged during the work your company was performing on the  
12 scene and not necessarily during the locating of the cable?

13 Does that ever happen?

14 A. I don't know if -- I guess anything could be possible.  
15 I think it's more likely that the damage occurred when AT&T  
16 responded to work around it and tore the top off the casing.

17 Q. Okay. Why would AT&T respond?

18 A. You'll have to ask AT&T that.

19 Q. Okay. In your experience, sir, why would AT&T respond  
20 to it -- and come to a job site like this?

21 A. Apparently because their facility's out there.

22 Q. Okay. You don't think it's a fair assumption to  
23 believe that maybe AT&T was looking for damage that had been  
24 reported to them?

25 A. I don't understand -- I don't know how damage is

1 reported to AT&T.

2 Q. Okay. In your experience, does AT&T come out to a job  
3 site on the day or the day after your company finishes work?

4 A. Not typically unless I call them and tell them damage  
5 has occurred.

6 Q. Okay. Is it a fair assumption to say that AT&T then  
7 came out there because they might of suspected there had  
8 been damage in the area where you were working?

9 A. I don't know why AT&T would respond to my job site.  
10 It -- we were in the public right of way and they had  
11 facilities there. So they had every right and reason to be  
12 there.

13 There were other facilities being relocated as well.  
14 Electrical, I testified earlier that the DOT was doing a  
15 bridge widening, that they're putting new railroad tracks  
16 in. There were other trades working in the area, and, from  
17 my understanding, our work completed on a Friday afternoon  
18 and this work all progressed Friday evening into Saturday.

19 Q. Yeah.

20 My point, sir, is do you, do you believe that you had,  
21 based on what AT&T provided and based upon what the locator  
22 services marked, you had everything you needed to identify  
23 the location of whatever was under there?

24 whether you could actually see the ATT cables or not,  
25 you were able to -- you were able to locate whatever was

1 under there?

2 A. No, sir. As I testified earlier, it's not uncommon for  
3 the marks to not reflect what's there. We have to make the  
4 assumption that the facility we find matches the mark above.  
5 without having who the facility owner is or what the  
6 facility is that we're looking for, once we find something  
7 in the ground, then we have to make the assumption that it's  
8 within that tolerance zone. That is it.

9 I can testify personally we have found gas lines under  
10 a yellow mark, and 2-feet over, hit a live gas line because  
11 the old line we found was abandoned. Each facility should  
12 have its own mark. This was a single facility. The duct  
13 bank suggested it would be a large conglomerate of multiple  
14 conduits, at least again -- being a bank, more than one.

15 We had to go with the assumption that that was the  
16 actual duct bank that AT&T, and now -- at the time we didn't  
17 know it was AT&T, had marked with the orange markings.

18 The sole purpose for me sitting here today is we got  
19 lucky. We had to assume that that was the duct bank, and  
20 even though -- and, as I testified, in my experience, it's  
21 not clay. It's typically concrete or a bundle of conduits.  
22 All facility head -- owners have to understand that the  
23 excavators are reliant upon accurate information that we can  
24 use to plan our excavation safely, and if I don't stand  
25 and -- sit in front of you today and have conversations,

1 hard conversations like this, things aren't going to change,  
2 and sending bills to excavators like myself doesn't help.  
3 It only hurts the future of the safety of my workforce and  
4 the public that I work around.

5 It could of been a gas line that was mismarked and I  
6 could of had a school bus riding by next to me with my  
7 children on it or your children on it. There's so much more  
8 than just the fact that the information was not adequate  
9 enough for us to do our job. I am looking forward thinking,  
10 and while it's -- Mr. Bruorton brought up at the very  
11 beginning, it's not about the \$9,400. I can assure you I  
12 spent a lot more time and money getting to this point  
13 because of that.

14 It's the principle that we should not be held  
15 accountable for somebody else's failure to comply with the  
16 law. If we do what we're suppose to do in accordance with  
17 the law, and we adequately locate it, and the proof is in  
18 the pudding here we did adequately locate, locate it, only  
19 because we are lucky. That's it. And if we weren't lucky  
20 and we had damaged it, I would of wrote them a \$9,500 check,  
21 which I didn't.

22 Q. Again, sir, I don't understand though. You found  
23 something under there. Whether it was enclosed in concrete  
24 or enclosed in terracotta, you still found it.

25 A. I did find it---

1 Q. And you---

2 A. ---and we didn't -- and we didn't damage it.

3 Q. So it was still -- it was properly marked. It was  
4 not -- you're saying it wasn't properly identified but it  
5 was properly marked and could you not conclude from the  
6 markings on the surface that that must of contained the  
7 telecommunications?

8 A. Why would I assume that it must contain the  
9 telecommunications line when I wasn't informed that we're  
10 looking for a concrete casing or a terracotta casing?

11 Q. Did you see anything -- any other lines of any other  
12 kind under there?

13 A. We've already -- we had already potholed to the depth  
14 of our excavation and there was nothing else in our way.  
15 So, we profiled it and we proceed to perform our work.

16 Q. Okay. So -- but you -- is it your position here then  
17 that the -- that because AT&T didn't specify that the casing  
18 was terracotta rather than concrete that they had failed to  
19 comply with the exca -- with the Underground Facilities  
20 Protection Act?

21 A. I'm stating that AT&T failed to provide any other  
22 information that would assist Chandler to identify and  
23 thereby avoid damage in the marked facilities. I  
24 acknowledge that the facilities were marked, albeit  
25 improperly, but they were marked. We did get lucky and find

Matthew Bares - Cross-examination  
By Mr. Butler

1 them and we did not damage them.

2 Q. Okay.

3 A. As the photograph evidence showed, there was no damage  
4 to the actual duct bank until the, until the -- to the, the  
5 terracotta casing until after AT&T's repair service showed  
6 up.

7 Q. Okay. Well, part of what your declaratory action is  
8 here you're saying that AT&T failed to follow the  
9 Underground Facility Damages Prevention Act in helping you  
10 locate the conduit?

11 A. That's correct.

12 Q. And our point is you found the conduit?

13 A. Out of luck.

14 MR. BUTLER: I have no further questions, Your Honor.

15 THE COURT: All right. Any redirect of this witness?

16 MR. BRUORTON: Briefly.

17 REDIRECT EXAMINATION

18 BY MR. BRUORTON:

19 Q. Mr. Bares, you mentioned the term APWA earlier, which  
20 is actually defined in the statute as American Public Works  
21 Association.

22 Is that the acronym you---

23 A. That, that is the acronym, yes, sir.

24 MR. BRUORTON: All right. Your Honor, I want to pull  
25 up what's marked for identification purposes the APWA

1 recommended marking guidelines for underground utilities.

2 Share my screen.

3 Mr. Bares, are you familiar with this document?

4 A. I am.

5 Q. Okay. And what do you understand this document to  
6 contain?

7 A. It just has general marking instructions that kind of  
8 standardizes it, or doesn't kind of, it standardizes what we  
9 expect, as excavators, to see based on what a utility  
10 locator or an operator will place on the ground.

11 MR. BRUORTON: Your Honor, I'd like to move for this to  
12 be admitted into evidence as Plaintiff's Exhibit No. 6.

13 THE COURT: Is there any objection?

14 MR. BUTLER: Your Honor, I would, I would object to it.  
15 That's, that's not what they filed this complaint about.  
16 They filed the complaint about that we failed to provide  
17 them the information to locate it and they've admitted they  
18 located it. These are recommendations for marking  
19 guidelines. I don't see anything that says it's a  
20 requirement.

21 THE COURT: Okay. Well, I think he's laid a sufficient  
22 foundation for me to admit it into evidence at this point.  
23 I think your argument would be relevance, relevance, which  
24 you will -- obviously you can maintain. But I'll allow it  
25 over your objections.

1           So this will be marked as Plaintiff's 6.

2           MR. BRUORTON: Thank you, Your Honor.

3           (WHEREUPON, the APWA recommended marking guidelines was  
4 marked as Plaintiff's Exhibit No. 6 and received into  
5 evidence at this time.)

6 Q.    Mr. Bares, I'm gonna scroll down. There's a section  
7 within this document that shows samples and suggestions of  
8 line markings.

9           Are these the types of markings that you traditionally  
10 find in your industry?

11 A.    We do.

12 Q.    Okay. And is this conduit marking the marking that you  
13 saw on McMillan Avenue?

14 A.    Very similar, yes, sir.

15 Q.    And what does it represent as far as what should be in  
16 the ground?

17 A.    Duct bank.

18 Q.    Okay. Do these lines on either side of the diamond  
19 have anything to do with dimensions in your experience?

20 A.    No, sir.

21 Q.    And the lines -- and the terracotta casing that was  
22 found in the ground was larger than 3-inches?

23 A.    That's correct.

24 Q.    And there were no dimensions provided to Chandler as to  
25 the actual size of the terracotta casing or facility,

1 correct?

2 A. That's correct.

3 Q. And the statute requires the operator to provide  
4 dimensions, does it not?

5 A. I think it says if the diameter or width of the  
6 facility is greater than 3-inches, the dimension of the  
7 facility will be indicated at least every 25-feet in the  
8 area of the proposed excavation as you can see in the  
9 marking above like on the waterline where it says water  
10 42-inch.

11 Q. Yep.

12 Okay. So the markings that we see on McMillan Avenue  
13 have no description as far as dimension?

14 A. No, sir.

15 Q. And there was no other information provided to Chandler  
16 other than that marked facility?

17 A. That's correct.

18 Q. And---

19 A. There is no additional information provided.

20 Q. And if you look at Section 60 of the or Section 70 of  
21 the statute, the operator or designated representative must  
22 provide to an excavator the following information. Number  
23 one is the horizontal location which we agreed they did.

24 A. They did. That's correct.

25 Q. Description of the facility.

1           We agree that it represents---

2   A.    A duct bank.

3   Q.    ---a duct bank?

4   A.    That's correct.

5   Q.    It's just it was terracotta and not concrete that  
6   you're used to?

7   A.    That's correct.

8   Q.    But there was no -- when, when -- the diameter of the  
9   duct was larger than 3-inches?

10  A.    That's correct.

11  Q.    And there was no dimension of the facility indicated  
12  every 25-feet in the area.

13           Is that correct?

14  A.    That's correct.

15  Q.    And Number 2, the operator or designated representative  
16  must provide any other information that would assist the  
17  excavator to identify and thereby avoid damage to the marked  
18  facilities.

19           The only information you had was the marked facility?

20  A.    Showing it being a duct bank.

21  Q.    Okay. You were -- received no other information from  
22  AT&T?

23  A.    Not until after they were on the job site. After they  
24  called us they had -- the damage had occurred and I still  
25  haven't seen any damage.

1 MR. BRUORTON: No further questions.

2 MR. BUTLER: Nothing further, Your Honor.

3 THE COURT: Okay. All right.

4 Okay. Is that your witnesses then, Mr. Bruorton?

5 MR. BRUORTON: It is, Your Honor. That wraps up the  
6 plaintiff's case.

7 THE COURT: All right.

8 All right. Mr. Butler, you can call your first  
9 witness.

10 MR. BRUORTON: Thank you.

11 MR. BUTLER: And, Your Honor, just as, just as a point  
12 of order here, I know this is a bench trial, but I've,  
13 I've -- I would make a motion for what is the equivalent of  
14 a directed verdict. They've testified that, based on the  
15 markings, they were able to locate the facility. So, so far  
16 as the declaratory judgment action portion of the claim is  
17 concerned, I would, to preserve BellSouth's rights, I would  
18 suggest to the Court that they have failed to prove that  
19 BellSouth hadn't done what they were required to do. They  
20 have -- they have done it. They admitted it. Based on the  
21 markings, they found the underground utilities.

22 THE COURT: All right. Mr. Bruorton.

23 MR. BRUORTON: Yeah. Your Honor, obviously our  
24 declaratory judgment action states that Chandler  
25 Construction did everything they were suppose to under the

1 statute and that BellSouth, AT&T, did not do everything it  
2 was suppose to do under the statute.

3 I think we have put forth evidence through testimony  
4 and documentation that, while the underground utility was  
5 marked, it was improperly identified. Dimensions were not  
6 provided and the statute specifically requires additional  
7 information be provided to the excavator that would help or  
8 assist them in I -- not only identifying but avoiding damage  
9 to the facility, which my client is being sued for and that  
10 was not complied with either.

11 So, we have shown that AT&T did not comply with the  
12 statute and our declaratory judgment action seeks that  
13 Chandler Construction can't be held liable for damages when  
14 it has complied with the statute but the operator has not.

15 THE COURT: All right. Anything else, Mr. Butler?

16 MR. BUTLER: No, ma'am.

17 THE COURT: Okay. Well, respectfully, at this point,  
18 I'll deny your motion for directed verdict as to the  
19 declaratory judgment. I think it's advantageous for me to  
20 hear from your witnesses on this issue.

21 So, I will do that next.

22 Happy for you to call your first witness.

23 MR. BUTLER: Yes, ma'am.

24 I would call Mr. Michael Hines.

25 THE COURT: All right. And, Mr. Hines, welcome.

1 If you could raise your right-hand for me?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Let's see. Where is Mr. Hines?

4 MR. BUTLER: I think he needs to turn his video on.

5 THE COURT: Yep.

6 Do you see a -- there he goes.

7 THE WITNESS: There we go.

8 THE COURT: Start video.

9 Oh, gosh, you're not actually driving or anything, are  
10 you?

11 THE WITNESS: Oh, no, ma'am. I'm parked somewhere.

12 THE COURT: Okay. All right. Mr. Hines, raise your  
13 right-hand for me please, sir.

14 THE WITNESS: Yes, ma'am.

15 MICHAEL HINES, being first duly  
16 sworn, testified as follows:

17 THE COURT: Thank you so much. Please state your full  
18 name and spell your last.

19 THE WITNESS: Michael Lowell Hines. H-I-N-E-S.

20 THE COURT: Mr. Butler, you may proceed.

21 MR. BUTLER: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. BUTLER:

24 Q. Mr. Hines, this is Jeff Butler.

25 Can you hear me all right?

Michael Hines - Direct examination  
By Mr. Butler

1 A. Yes, sir.

2 Q. Mr. Hines, where are you employed?

3 A. USIC.

4 Q. Is that the United States Infrastructure Company?

5 A. Yes, sir.

6 Q. And what do -- we call USIC, U-S-I-C?

7 A. Yes, sir, USIC's fine.

8 Q. Okay. What does USIC do?

9 What is it -- what is its business?

10 A. We locate underground utilities for different  
11 contractors or different companies, AT&T, water companies,  
12 gas lines depending on what state we're in---

13 Q. And are you---

14 A. ---and which contracts we have.

15 Q. All right. Have you received any training for this  
16 role?

17 A. Yes, sir, we have a training program where you go in a  
18 classroom and then you'll work with an experienced  
19 technician for a while when you have to be certified by our  
20 standards.

21 Q. All right. Have you been---

22 A. And by state law, yes, sir.

23 Q. All right. How long have you been doing this kind of  
24 work, sir?

25 A. A little over 15 years.

1 Q. All right. Typically what do you do to, to locate AT&T  
2 cables at any particular location?

3 A. We arrive on site, look at the locate request, see what  
4 they're asking us to mark, check the prints that were  
5 provided, and see if anything's in conflict with their  
6 excavation area.

7 Q. Okay.

8 A. And we mark those as thoroughly and best of our ability  
9 with the program -- with the prints that we have.

10 Q. All right. And, sir, are you also familiar with the,  
11 the records of your company as it relates to areas that you  
12 marked and any investigations that you do after excavation  
13 has taken place?

14 A. Yes, sir.

15 Q. You're familiar with the reports created by your  
16 company as it relates to an incident that occurred in March  
17 of 2020 at or near McMillan Avenue?

18 A. Yes, sir, I was the damage investigator on that  
19 particular damage.

20 Q. I understand that you took some photographs of the  
21 area?

22 A. Yes, sir.

23 Q. We have submitted to the Court and opposing counsel 31  
24 separate photographs. Some of which I believe may be  
25 duplicative.

1 Is it typical for these photographs to be timestamped?

2 A. Yes, sir, USIC system timestamps everything.

3 Q. All right. And the photographs would also say that  
4 they were property of your company?

5 A. Yes, sir.

6 MR. BUTLER: Your Honor, I apologize. I don't -- I  
7 neglected to download these photographs into my tablet. I  
8 can't show them on the screen. But I had previously  
9 submitted to opposing counsel and the Court 31 separate  
10 photographs and I would ask the Court to just let me hold  
11 the photographs up to the screen and see if the witness can  
12 identify.

13 MR. BRUORTON: Jeff, we have them. If, if the Court  
14 would give us share rights, we'll pull -- we can pull them  
15 up.

16 MR. BUTLER: What, what -- can we do that please?

17 UNIDENTIFIED SPEAKER: All right. You should be  
18 getting presenter mode now.

19 MR. BRUORTON: Okay. All right. Just one second.  
20 we'll pull that up.

21 MR. BUTLER: Okay.

22 MS. NICHOLSON: Do you know what exhibit that is, Jeff?

23 MR. BUTLER: I'm looking at Defendant's Exhibit 3.  
24 Specifically I'm looking for Photograph 6 and 7. There we  
25 go.

1 All right. Very good.

2 Mr. Hines, how would your -- how would you or USIC mark  
3 the surface area to indicate the presence of underground  
4 telecommunication cables?

5 A. Well, in this---

6 Q. What would, what would you do?

7 A. In this case we have where we go to the closest access  
8 point, which I don't know which one he went to, but most  
9 likely that manhole, and we'll go through, depending on what  
10 the underground prints show, let's say there's 10 lines in  
11 there, and we'll hook to each individual line, and the  
12 line's on the outside generally represent the width of the  
13 package due to because sometimes they'll lay the pipes flat  
14 to go over drainage pipes and things like that. So  
15 generally the outside lines are for the width of the  
16 package.

17 Q. So to, to indicate the width of the package, you would  
18 use the outside lines like you see here in the photograph?

19 A. Yes, sir, and on -- yes, sir.

20 Q. All right. Does in the -- in your industry for the  
21 telecommunications, would you actually write the numerical  
22 width of the lines in chalk or paint on the surface?

23 A. No, sir, we've never done that there, because on the  
24 prints we have, generally they won't show what the  
25 material's made of or the width of the line because it could

1 depend on the gauge of the line. And as things advance  
2 like, you know, I believe the 2,400's like this big but, you  
3 know, as it advances, you know, they get smaller with  
4 technology.

5 Q. All right. In your opinion, does the markings that you  
6 see in this photograph accurately depict what USIC believed  
7 to be the width of the underground cables---

8 A. Yes.

9 Q. ---including whatever in capsules -- was in capsules --  
10 encapsulated in whether it's terracotta or concrete?

11 A. Yes, sir.

12 Q. All right. And how -- typically how far would USIC go  
13 in markings these cables?

14 A. It depends on what the marking instructions are. We're  
15 required to mark 25-feet past the excavation point.

16 Q. All right. And, sir, did there come a point where you  
17 investigated any allegations that there had been any damage  
18 to any telecommunications line at or near the job site?

19 A. The supervisor at the time gave me a call that he got a  
20 call from AT&T that one of their lines or a duct package had  
21 been damaged off McMillan. That's what got me out there  
22 to -- on the investigation.

23 Q. All right. What did you observe when you went there?

24 A. I observed -- well, first I went through and had to  
25 perform the investigation to prove that the marks were

Michael Hines - Direct examination  
By Mr. Butler

1 marked accurately and that I believe Ansco had arrived or  
2 were there at the time I arrived there --

3 Q. Okay.

4 A. -- and I determined---

5 Q. All right.

6 A. ---that the facility was marked within tolerance and  
7 marked accurately.

8 Q. All right. The area that had been identified where the  
9 incident occurred, had -- where was that in relation to the  
10 surface markings?

11 A. It was in line with it --

12 Q. Okay.

13 A. -- if that's what you're asking.

14 Q. Yes. Yes, sir.

15 During the period of time that you were out there, did  
16 you see any other companies or excavators performing any  
17 work?

18 A. AT&T subcontract, Ansco, which exposes it for them --  
19 for the AT&T techs to repair it.

20 Q. All right.

21 A. That's the only one I---

22 Q. Any other companies -- any other companies say like  
23 Chandler or anybody of that nature?

24 A. I don't recall them being out there at the time of my  
25 investigation.

Michael Hines - Direct examination  
By Mr. Butler

1 Q. During your investigation, did you determine whether  
2 any other companies had been, had been doing work in the  
3 area before or after Chandler?

4 A. No, sir.

5 Q. Did you have the opportunity to discuss with anyone at  
6 Chandler what had happened?

7 A. No, sir.

8 Q. Typically -- and how long do you say you been doing  
9 this work, sir, about 15 years?

10 A. Yes, sir.

11 Q. Have you ever seen a or has your company, to your  
12 knowledge, ever marked the actual dimensions of the  
13 underground cable on its surface?

14 A. No, sir.

15 Q. Is that part of your instructions or training?

16 A. No, sir, it is not.

17 Q. Are you aware of industry standards of what other  
18 companies may do?

19 A. No, sir, I, I don't -- I'm not sure what other  
20 companies do with their standards or what their, you know,  
21 contracts and everything require them to do.

22 MR. BUTLER: All right. The witness is with you  
23 please, sir.

24 MR. BRUORTON: Thank you.

25 CROSS-EXAMINATION

1 BY MR. BRUORTON:

2 Q. Mr. Hines, Chip Bruorton here on behalf of Chandler  
3 Construction. Just some follow-up questions to your  
4 testimony earlier. I believe you testified that the outside  
5 width of the marking that we see on this photo represents  
6 the outside line of the package.

7 Is that what you testified to?

8 A. Yes, sir, we do that to---

9 Q. Are you---

10 A. ---the best of our ability.

11 Q. Are you interchanging package and facility?

12 Does that mean the same thing to you?

13 A. Yes, sir, duct package, duct run, and things like that.

14 Q. And you said it's not industry standard for you to mark  
15 dimensions.

16 Was that your testimony?

17 A. Yes, sir.

18 Q. But in this case you did mark dimensions cause you were  
19 marking it as the outside line?

20 A. What I'm referring to is like, since we don't have  
21 anything to show us like it's a 4-inch pipe or anything like  
22 that, that's what I'm referring to with that. I'm talking  
23 about the actual, you know, width of it. Not measurement  
24 wise because---

25 Q. How is---

Michael Hines - Cross-examination  
By Mr. Bruorton

1 A. ---that could be confused if I were to put or if we  
2 were to put 4-inches on there, they're thinking that's  
3 possibly the depth of the cable.

4 Q. Okay. How, how wide is the marking that we see in  
5 photo one that you took?

6 A. It appears I mean to be a foot and a half, 18,  
7 20-inches, something like that.

8 Q. And how big was the terracotta casing or facility under  
9 the ground?

10 A. It appears to be a foot, you know, a -- maybe  
11 15-inches.

12 Q. So you would agree with me that this marking is  
13 actually larger in, in width than what was found under the  
14 ground?

15 A. It may be. I didn't measure it compared to what was in  
16 the hole.

17 Q. Well, let's look at Exhibit 1, the fifth photo.  
18 Do you see that, sir?

19 A. Yes, sir.

20 Q. Do you recognize what is represented in this photo?

21 A. Yes, sir, appears to be the water line they installed  
22 and that looks like the duct package.

23 Q. Okay. You would agree with me that that duct package  
24 in width is much smaller than what is represented by your  
25 orange marking at the top left of that photo, is it not?

Michael Hines - Cross-examination  
By Mr. Bruorton

1 A. I wouldn't say much. I mean it may be a couple inches  
2 wider but that could be of -- when you're hooking every  
3 single line, you know sometimes -- you know, since they  
4 splice together inside the manhole, that it may cause a  
5 little bit for you to get a little variance in the signal.

6 Q. And does that duct run line up with the orange marking?

7 A. Yes, sir, it appears to be from that angle.

8 Q. And what information is provided to you from AT&T  
9 whenever you're going to do a locate?

10 A. We have -- I'm not sure how we have it on our system.  
11 But we have the underground prints that will show us, you  
12 know, hey, there's a conduit package there and our access  
13 points and sometimes it will show what's underground inside  
14 that package.

15 Q. I believe you testified earlier that it doesn't tell  
16 you what type of material it is.

17 Is that right?

18 A. No, sir, from my understanding, terracotta is something  
19 used either before PX -- PVC was used or during. It's, it's  
20 a very fragile -- you know, it's clay. It can be cracked by  
21 probably stepping on it or, you know, I don't know.

22 Q. So is it---

23 A. So it's a very fragile material.

24 Q. It's a fragile material and it's a -- it's an older  
25 material that's not readily used anymore.

1 Is that correct?

2 A. No, sir, there's -- no, sir.

3 Q. No, sir, that's not correct or, or---

4 A. Oh.

5 Q. ---it is correct?

6 A. No, sir, it's not a material that's used very often  
7 now. It's -- it's generally PVC and some of the other --  
8 your witnesses said that a lot of it's encased in conduit.  
9 I've never seen that with communication lines. I've seen  
10 that in power conduits but never in communication lines that  
11 they're encased in conduit.

12 Q. Okay. Duct runs, do you normally see those as  
13 concrete?

14 A. Well, we generally don't see them exposed cause we're  
15 not the ones the -- digging. But no, I've never seen them  
16 as concrete except for, like I said, a power duct bank when  
17 it was exposed and encased it in conduit or they enclosed in  
18 concrete, excuse me, but the conduit's inside the concrete.

19 Q. And you testified you were the investigator on this for  
20 this (indiscernible).

21 A. Yes, sir.

22 Q. Is that right?

23 A. Yes, sir.

24 Q. Okay. And so the 30 something pictures that we see as  
25 Defendant's Exhibit 3, did you take all of those?

Michael Hines - Cross-examination  
By Mr. Bruorton

1 A. Well, not the ones that all you see is just the orange  
2 paint. Mine would be the ones with the white paint in it.

3 Q. So the 3/16 photos?

4 A. Yes, sir.

5 Q. March 16<sup>th</sup>.

6 Okay. I just want to go through those and I believe  
7 you said, when you came on site, Ansco was already working  
8 in the area?

9 A. I said I, I couldn't recall if they were on -- well,  
10 obviously you can see in the picture. It appears that's  
11 Ansco there. I don't know if they were -- I mean they had  
12 to move that steel plate. So, they were working, yes.

13 Q. Okay. Do you know whether they had started performing  
14 excavation work?

15 A. Not that I'm aware of.

16 Q. In this photo that we're looking at here, do you see  
17 any damage to the terracotta casing?

18 A. Oh, in that photo you can't even see the actual duct  
19 package. So, no, but -- typically, from my understanding,  
20 AT&T -- either, either alarm goes off cause they brought  
21 this point up. Alarm goes off or a customer complains about  
22 an outage. That's how they're aware of the damage.

23 Q. But you don't know how, how they were notified in this  
24 particular situation, do you?

25 A. No, sir, it could of been an alarm went off and they

1 got the call out there.

2 Q. So, your next photo, we don't see the actual casing  
3 itself in that photo either, do we?

4 A. No, sir, it should be in that hole where the---

5 Q. So, there's no, there's no sign of damage in that  
6 photo, is there?

7 A. No, sir, not in that photo.

8 Q. How about the next one?

9 Do you see any damage represented by that photo?

10 A. No, sir.

11 Q. And how about the next one?

12 A. No, sir, that's me showing the marks and the manhole  
13 which typically the manhole have a, a, a phone sign or  
14 BellSouth or AT&T listed on the manhole depending on what---

15 Q. Okay.

16 A. ---year it was made.

17 Q. And looking at the next picture, any damage in that  
18 one?

19 A. No, sir, not that you can see.

20 Q. That goes back to March 9<sup>th</sup>. Keep going.

21 How about any damage in this photo?

22 A. No, sir. But with that being said, with terracotta,  
23 they stated they dug with shovels and probe rods. With it  
24 being clay, it's possible that they cracked it while probing  
25 and water got in there and damaged that paper or pulp cable.

Michael Hines - Cross-examination  
By Mr. Bruorton

1 Q. And, and you don't know that?

2 A. No, sir, I said I'm just saying it's possible.

3 Q. Okay. There's no damage photos in this picture?

4 A. No, sir.

5 Q. No damage in the next photo?

6 A. No, sir.

7 Q. And these are all photos you took, correct?

8 A. Yes, sir.

9 Q. Keep scrolling through. Tell me if you see damage in  
10 any of these photos that you took.

11 A. No, sir, I thought I had some pictures inside the hole.  
12 But it's sometimes unclear to see if anything's -- with it  
13 being -- like I said, it's -- that one I can't really see  
14 inside the hole to see the package.

15 Q. Did you actually take any photos of the actual damage?

16 A. I don't know if I have any inside the hole. If they  
17 were, they would of been provided.

18 Q. Did you actually observe damage to the terracotta  
19 casing?

20 A. No, sir, I did not.

21 Q. Okay. So, if you didn't observe damage to the  
22 terracotta casing, you couldn't have observed damage to the  
23 pulp cable?

24 A. No, sir, I believe, when I got there, there was water  
25 in the hole. That may of been why I didn't take the, the

1 photos inside of there.

2 Q. So the only explanation that you have for damage is  
3 that AT&T told you that they had a report of damage?

4 A. Yes, sir, we get notifications from them cause we'll  
5 have no way of knowing anything's damaged and like if---

6 Q. But in your---

7 A. ---the damage occurred here on whatever date.

8 Q. Okay. In your investigation, you were not able to  
9 actually identify where the damage occurred?

10 A. Except for the hole being opened which you don't --  
11 there's no photo showing inside there that I have on here  
12 on, no, sir.

13 Q. So, when you get notice from AT&T, do they give you  
14 coordinates of where you're suppose to go?

15 A. In this case---

16 Q. Do they actually identify the location of, of where  
17 they're getting an alarm?

18 A. In this case they did because they called the  
19 supervisor who called me and AT&T was on site and showed me,  
20 you know, hey, the damage happened here. But I didn't  
21 actually see the damage.

22 Q. All right. And, and you -- the only indication you  
23 have is what you were told by AT&T?

24 A. Yes, sir.

25 Q. Did you write up the damage summary report?

Michael Hines - Cross-examination  
By Mr. Bruorton

1 A. Yes, sir, I believe I did on this one.

2 Q. Okay. Let's look at that, which is Defendant's Exhibit  
3 2.

4 Is it possible that AnSCO could of damaged the facility  
5 when they were doing their work?

6 A. Anything's possible but AnSCO's doesn't get on -- go  
7 onto a job unless AT&T tells them to, and I believe we got  
8 an emergency ticket for a repair there from AnSCO.

9 Q. Looking at your summary, this -- these are your notes.  
10 Is this correct?

11 A. No, sir, those are not my notes. Those must be from  
12 the AT&T tech, Brett O'Toole or Steven O'Toole.

13 Q. Okay. Let me see here. I saw your name on something.  
14 Investigator name. Photos taken, Michael Hines, took  
15 these -- this isn't your report?

16 A. No, sir, this is -- that -- no, sir, I don't type up.  
17 That, that BLST number is AT&T's blast number and that's  
18 their information there.

19 Q. Okay.

20 A. No -- ex -- forgive -- excuse me. That -- yes, the  
21 notes right there are mine.

22 Q. Okay. So, how did you determine that Chandler  
23 Construction hit the duct run in at least one 2,400 pulp  
24 cable?

25 A. Actually I'm wrong. Those aren't mine. Those are --

Michael Hines - Cross-examination  
By Mr. Bruorton

1 that's what comes across on our screen from AT&T. That's  
2 why it has on the Brett O'Toole's guy and the -- his  
3 supervisor there.

4 Q. Okay.

5 A. That's the notification we get from AT&T.

6 Q. All right. If you go to Page 5, it says facilities  
7 exposed at time of investigation, yes.

8 would you have put that marker in --

9 A. Yes, sir, I would have.

10 Q. -- as an indicator?

11 So the facilities were exposed when you did your  
12 investigation?

13 A. It may of -- when I took those photos it wasn't but I  
14 may have and I should of taken photos afterwards. I may of  
15 stayed out there longer and it was exposed at the time I  
16 pulled this out.

17 Q. Okay.

18 A. But I didn't take photos of that.

19 Q. And you yourself have already testified you saw no  
20 damage to the terracotta casing?

21 A. No, sir, not unless I'd seen it afterwards and I didn't  
22 take a photo of it.

23 Q. And you yourself saw no damage to the pulp cable?

24 A. No, sir.

25 Q. Okay. And you said that you didn't have the

1 opportunity to talk with the excavators.

2 Is there any particular reason why?

3 Did you attempt to?

4 A. I don't think they were on site. That's generally we  
5 don't have to do that in our investigation. We go there and  
6 see if the marks are accurate, if we have good photos, and  
7 then we attach all that and submit it.

8 Q. Is it your normal practice not to take photos of the  
9 damage?

10 A. Generally we do. I must of made a mistake on that one  
11 and not had them.

12 MR. BRUORTON: No further questions.

13 MR. BUTLER: Your Honor, at this time I would move into  
14 evidence Exhibits D-3, the photographs that contain the  
15 notation that they were taken on March the 16<sup>th</sup>, 2020.  
16 Because Mr. Hines didn't take the pictures that were taken  
17 on March 9<sup>th</sup>, I would ask that the Court to -- disregard  
18 those photographs and not introduce those into evidence.  
19 But the individual photographs are marked and there's a  
20 timestamp at the bottom of each photograph identifying the  
21 date they were, they were taken.

22 THE COURT: Okay. And so which ones are you seeking to  
23 admit?

24 MR. BUTLER: The ones that are dated March the 16<sup>th</sup>.

25 THE COURT: And are they labeled?

1 MR. BUTLER: Yes, ma'am, each, each photograph's  
2 separately labeled with the date stamp on it. Included  
3 within---

4 THE COURT: Right.

5 MR. BUTLER: Included within the package are several  
6 that have the notation March the 9<sup>th</sup>. I would ask the Court  
7 to disregard those and just admit the ones that are dated  
8 March the 16<sup>th</sup>.

9 THE COURT: Okay. And that's within defense what?

10 MR. BUTLER: Mr. Hines testified that he took the  
11 photographs on---

12 THE COURT: Right.

13 MR. BUTLER: ---March the 16<sup>th</sup> of the area after the  
14 damages---

15 THE COURT: Okay.

16 MR. BUTLER: ---were reported.

17 THE COURT: I'm sorry.

18 were these premarked already at all?

19 MR. BUTLER: Yes, ma'am.

20 THE COURT: As what?

21 MR. BUTLER: AS EX -- as Plaintiff's Exhibit D-3 and  
22 each separate number of each photograph.

23 MS. NICHOLSON: I'm sorry. Defendant's Exhibit 3.

24 MR. BRUORTON: Yeah, defendants.

25 MR. BUTLER: Excuse me. Defendant's Exhibit 3. I'm

1 sorry, Your Honor.

2 THE COURT: Thanks. That's all I was getting at.

3 MR. BUTLER: Thank you.

4 THE COURT: Okay. All right. Any objection to those  
5 marked March 16<sup>th</sup>?

6 MR. BRUORTON: No, Your Honor, and I'm fine with the,  
7 the 9<sup>th</sup> coming out because I think it's just pictures of the  
8 road---

9 THE COURT: Okay.

10 MR. BRUORTON: ---prior to.

11 THE COURT: All right. Thank you.

12 (WHEREUPON, Defendant's Exhibit No. 3 was received into  
13 evidence at this time.)

14 THE COURT: Okay. All right. Any other questions  
15 for---

16 MR. BUTLER: No further---

17 THE COURT: ---for this witness?

18 MR. BUTLER: No, ma'am.

19 THE COURT: All right. Any objection to him being  
20 excused?

21 MR. BRUORTON: None from plaintiffs.

22 THE COURT: Mr. Butler, can your witness be excused?

23 MR. BUTLER: Please, ma'am.

24 THE COURT: All right. Mr. Hines, you're free to  
25 leave. Thanks for your time.

Kelly Crews - Direct examination  
By Mr. Butler

1 THE WITNESS: Thank y'all.

2 THE COURT: All right. You can call your next witness.

3 MR. BUTLER: Call Ms. Kelly Crews.

4 THE COURT: All right, Ms. Crews, get you unmuted. Ask  
5 you to raise your right-hand for me.

6 THE WITNESS: Okay. I'm unmuted.

7 KELLY CREWS, being first duly  
8 sworn, testified as follows:

9 THE COURT: Okay. If you could lower your hand and  
10 state your full name for the record and spell your last.

11 THE WITNESS: Kelly Crews. C-R-E-W-S.

12 THE COURT: All right. Thank you.

13 Mr. Butler, your witness.

14 MR. BUTLER: Thank you.

15 DIRECT EXAMINATION

16 BY MR. BUTLER:

17 Q. Ms. Crews, where are you employed?

18 A. AT&T.

19 Q. What are your job duties and responsibilities there?

20 A. I'm a damage claims investigator. I am the other side  
21 of what Mike does for the company.

22 Q. All right. How long have you been doing this work,  
23 ma'am?

24 A. Twenty-three years now.

25 Q. And have you received training for this position?

1 A. I have.

2 Q. You're familiar with the types of records that are  
3 routinely gathered and maintained by your employer?

4 A. Yes.

5 Q. Are these records kept in the usual course of business  
6 by your company?

7 A. Yes.

8 Q. And would these records been prepared under your  
9 supervision by employees who are required to create these  
10 documents?

11 A. Yes.

12 Q. All right. Ma'am, your familiar with a, a claim for  
13 damages that you've heard us talk about it today, McMillan  
14 Avenue in Charleston?

15 A. Yes.

16 Q. And you've seen the photographs that have been admitted  
17 into evidence?

18 A. Yes.

19 Q. Typically, ma'am, how does AT&T find out that any of  
20 its cables have been damaged?

21 A. Typically we're either alerted by an outage of a  
22 customer or, in special cases, which would include this  
23 case, we're alerted by automation that is on those lines to  
24 let us know when certain types of cables are damaged.

25 Q. All right. what kind of cables are we talking about in

1 this case?

2 A. This is a cable that was placed in 1964. Terracotta  
3 was common in 1964 for placing telecommunications lines.  
4 Inside the terracotta containment was a air pressure cable.  
5 It was a 24 pair -- air pressure cable.

6 This means that pressurized air is on that cable at all  
7 times. It keeps the cable usable. There are alarms on this  
8 cable. Alarms went off on this cable which notified our  
9 centers where our technicians are that there -- a damage had  
10 occurred to this cable.

11 Q. Okay. And what's the purpose of the air that was under  
12 pressure?

13 A. The air keeps it inflated. This -- the technology at  
14 the time required a certain amount of space for the  
15 information to pass along the cable lines. So you have to  
16 pressurize the cable and inflate it. Inside the terracotta  
17 is paper and then inside the paper are the actual cables,  
18 the actual thin little lines, and, in this particular case,  
19 there would be 2,400 of them.

20 Q. Okay. And what happens if you lose the air pressure?

21 A. It stops the cable from working.

22 Q. Does anything seep into the cable---

23 A. Ab---

24 Q. ---into the terracotta?

25 A. Absolutely. In this case particularly, the water

1 seeped into the cable through pin holes.

2 Q. Okay. So it only takes a small -- a small puncture can  
3 do a lot of damage?

4 Is that possible?

5 A. Absolutely. With pressurized cables, as long as they  
6 are -- they're still widely used throughout the United  
7 States because a cable in the ground, as long as it's not  
8 disturbed, will work just fine. But it is a type of balloon  
9 technology. If it's stabbed or cracked or anything like  
10 that, it will pop like a balloon and allow the air to  
11 escape.

12 Q. All right. Ma'am, you've heard some testimony  
13 regarding the presence of AnSCO Construction on the job  
14 site.

15 Are you familiar with AnSCO?

16 A. I am.

17 Q. Under what circumstances does AT&T have AnSCO come to  
18 any particular location?

19 A. AnSCO has two roles in our company, and, one, they open  
20 up damages that we are looking for to expose them so that we  
21 can work. The other thing that they do is actually place  
22 facilities for us.

23 Q. All right.

24 A. They work in three states in the southeast.

25 Q. In this particular case, would AnSCO have been there at

1 this location to install any facilities or do any work or  
2 would they be there for another reason?

3 A. They were on -- they called in a locate ticket. They  
4 locate our facilities when they're working. But they have  
5 to have the other utilities marked for them. They called in  
6 a damage ticket because they knew, before going out there,  
7 that they were going out there on a damage and they were  
8 called because the pressure transducer alarm went off and  
9 take -- our tech -- they -- actually the manager, Vance  
10 Collier, called them and said that they were heading out to  
11 the site to find this damage.

12 Q. All right. Ma'am, you've, you've heard some testimony  
13 here that nobody showed any of the damage -- any of the  
14 damaged fibers or any of the damage location to the  
15 defendant in this case.

16 Can you explain why that would not have been done?

17 A. Well, most of the time -- this was a very, very small  
18 damage to this pressurized cable. Most of the time spent in  
19 the first couple days of uncovering it and drying it out  
20 because there will -- was water on the cable. So, our  
21 technician's time was spent what they called "dropping air"  
22 on the facility to keep the cable inflated while they got  
23 the water out of the hole and were able to dry it out so  
24 that they could make repairs. This was -- and, again, this,  
25 this was a small damage.

1           They didn't have to remove the terracotta. They didn't  
2 have to replace a section. They simply patched the paper.  
3 Once it was dried out, they re-toned the, the paper and the  
4 few cables in that paper pulp or paper cable and then they  
5 patched it and set it back in motion. Covered the  
6 terracotta back and it was good to go. But most of the time  
7 was spent keeping it inflated while it was -- water was  
8 removed and it was dried out.

9 Q. All right. Ma'am, have you reviewed a, a breakdown of  
10 demand and claim for damages that we attached to our answer  
11 and counterclaim?

12 A. I have.

13 Q. Is that a document that AT&T routinely prepares in, in  
14 the -- assessing its damage claims?

15 A. Yes.

16 Q. How much was actually -- and does this relate to the  
17 particular claim, what it cost, in your opinion, to fix the  
18 damages located at the incident -- the scene of the  
19 incident?

20 A. At the time this was demanded, the person that sent the  
21 demand and issued the demand missed a large invoice for  
22 repairing the road because it was on us to repair the road  
23 once we fixed the cable.

24 Q. Okay. So what---

25 A. I---

1 Q. But we're talking now just about fixing the cable.

2 A. We're -- yeah. We're well under what this actually  
3 cost.

4 Q. Okay. You show -- your document shows a small amount  
5 for parts?

6 A. Right, because it was only patched. You won't see a --  
7 what would typically be waffle case or a zaga (phonetic)  
8 closure. You see sheath repair because that's what they did  
9 was a sheath repair.

10 Q. You said that some, some paper that had got wet had to  
11 dry out and then some it had to be replaced?

12 A. Right.

13 Q. All right. So, parts aren't a large -- parts are not a  
14 very large part of this repair?

15 A. No.

16 Q. You have down here \$131.82.

17 For the type of incident reported, does that appear to  
18 you to be what you would expect?

19 A. For those materials, yes.

20 Q. All right. You have quite a bit here for labor. Your,  
21 your document reflects \$8,244.36 for labor.

22 Can you explain why that was so high?

23 A. Because most of the time was spent keeping air --  
24 physically pushing air into the cable at the point of damage  
25 so that facilities would continue to be usable on that cable

1 while trying to get the cable dry and ready to be repaired.

2 Q. All right.

3 A. They have to physically push air into it. So---

4 Q. Right.

5 A. ---you have to be there the whole time, 24 hours,  
6 pumping air into that cable.

7 Q. All right. You're saying this is a labor intensive  
8 job?

9 A. It is for that part of it, yes.

10 Q. All right. You also have a cost down here for 1,080.24  
11 to Ansco.

12 A. Yes.

13 Q. Can you tell the Court what that was about?

14 A. That com -- that particular invoice was simply for  
15 cutting the concrete. That was the only thing on that  
16 particular invoice.

17 Q. All right. Ansco -- you -- did you hear the testimony  
18 earlier that the -- that Ansco may have damaged this pipe  
19 when they removed it or the, the terracotta pipe when they  
20 removed it?

21 A. Yes.

22 Q. Is that possible?

23 A. No.

24 Q. Had the damage already been reported to AT&T before you  
25 sent Ansco to the job site?

1 A. Yes.

2 Q. Ma'am, based on your opinion -- based on your  
3 experience and training, do you believe that the sum of  
4 \$9,456.42 represents the reasonable cost of the necessary  
5 labor and material to repair the damage to your property --  
6 BellSouth property?

7 A. Yes.

8 Q. Okay. And, of course, that doesn't include the extra  
9 amounts you had to pay to replace the road section?

10 A. Right.

11 Q. All right.

12 A. And normally that would be on the demand sent to an  
13 excavator.

14 Q. All right. Ma'am, do you have any knowledge that --  
15 exactly as to how the damage occurred?

16 Do you know if the damage occurred while the  
17 underground utility was being located or if it was damaged  
18 later when the water pipes were being installed?

19 Do you have any knowledge one way or the other?

20 A. I have pictures of bubbles coming out from underneath  
21 the water with the waterline going over the top of the area  
22 of the damage. So, when a pressurized cable gets a hole,  
23 gets punctured, or gets damaged, it's losing air, which is  
24 why the area has to be, you know, constantly put on it.

25 Q. Right.

1 A. So it bubbles just like, you know, putting an intertube  
2 under water. There's bubbles coming up showing that there's  
3 where the damage happened and it is in direct conflict with  
4 the waterline that's shown in the photo. I will say that my  
5 technicians did not get a photo after they had dried it out.  
6 But they took photos while they were waiting for the bubbles  
7 and the water to be removed in trying to access the cable.

8 Q. Ma'am, prior to Chandler working at or near the job  
9 site, had there been any problems with this particular  
10 location?

11 A. No, not that I'm aware of.

12 Q. Okay.

13 A. The cable was secure in the ground underneath a road.  
14 So there was not any trouble on it.

15 Q. And I believe the report or the -- I guess you'd call  
16 it a computerized warning that there'd been a puncture  
17 occurred I think on March the 13<sup>th</sup>, 2020?

18 Is that---

19 A. Yeah, I'm gonna look real quick. I'm looking at the  
20 report. Yep, that's the date I have and that's the  
21 timeframe I have.

22 MR. BUTLER: Your Honor, at this time I would ask the  
23 Court to accept into evidence the document that was attached  
24 to our answer and counterclaim, the breakdown of demand and  
25 claim for damages. I would ask that that be introduced into

1 evidence as D-1 for --.

2 THE COURT: All right. Any objection?

3 MR. BRUORTON: No. No, Your Honor.

4 THE COURT: All right. That will be admitted without  
5 objection as Defense 1.

6 (WHEREUPON, the invoice was marked as Defendant's  
7 Exhibit No. 1 and received into evidence at this time.)

8 MR. BUTLER: The witness is with the defense -- with  
9 the plaintiff.

10 THE COURT: All right. Thank you, Mr. Bruorton, or,  
11 Ms. Nicholson, whoever, go ahead.

12 CROSS-EXAMINATION

13 BY MR. BRUORTON:

14 Q. Ms. Crews, the photos of the bubbling, who took those  
15 photos?

16 A. Technicians on site.

17 Q. Okay. You didn't produce those photos in this lawsuit,  
18 did you?

19 A. I'm not sure what you were presented.

20 Q. And what are -- are there other reasons that water can  
21 bubble underground?

22 A. There are not other reasons why air pressure escaping  
23 from air pressure cable would not have caused those bubbles  
24 when they're right above the air pressure duct.

25 Q. Okay. And your technicians performing or taking

1 photos, they would of been taking photos after Ansco had  
2 been working in the area, right?

3 A. Yes.

4 Q. Okay. Do you have---

5 A. They would have to wait until it was uncovered.

6 Q. All right. So, do -- you don't have any photos of  
7 bubbling when Chandler was doing its work?

8 A. No, I don't but I would like to say something in  
9 regards to that. Mr. Bares right, we're all trying to be  
10 safe. But unlike a power cable or a gas line that gets hit  
11 which causes bodily injury and harm, it's been my  
12 experience, in 20 years that I've been doing this job, that  
13 when excavators hit communication lines, absolutely nothing  
14 happens to their physical self or to their equipment, and  
15 they will generally not realize that they hit it or they  
16 will know that they hit it and cover it back up.

17 This is a lot more common than the reporting of damages  
18 to telecommunications and, in this case, Chandler may not  
19 have even realized that they hit it. But being the only  
20 excavator doing work and with pictures of the waterline in  
21 conflict with the damage, and having the only locate in that  
22 area, the determination was made that it was Chandler that  
23 hit the cable while placing that waterline.

24 Q. The alarm that went off, how do we know when that was  
25 reported?

1 A. I have reports. It's called a Prin -- it's called  
2 pressure transducer alarm and they are maintained on all  
3 pressure cables in the United States.

4 Q. Okay. What was the time that the alarm went off?

5 A. The time that the alarm went off that I have is 11:13.  
6 But it would have taken some time, and I do not mean more than  
7 an hour or two, for the pressure to start being released and  
8 the cables to start collapsing.

9 So, just because you punctured it right the second,  
10 it's not quite the exploding balloon effect. It's an  
11 escaping air effect and it does take a little bit for that  
12 air to start affecting it and set alarms off.

13 Q. And that report also wasn't produced in this case, was  
14 it?

15 A. I'm not sure, sir. I'm not sure what you were  
16 provided.

17 Q. Okay. Let me ask you a couple questions.

18 Was that AM or PM that you were referring to 11:13?

19 A. It would be AM.

20 Q. Okay. Do you know whether Chandler Construction was  
21 notified that the cables were pressurized?

22 A. They were notified that there was a duct.

23 Q. Okay. Were they given information other than the  
24 marking to show that this was a pressurized cable?

25 A. It was in what was considered in 1964 a duct bank. So

1 it was labeled a duct bank and that's what generally all  
2 pressurized cables are labeled. You have single underground  
3 cables and you have ducts. And single is a direct buried  
4 and duct means you have something that contains facilities  
5 inside, whether it's PVC or concrete or terracotta.

6 Q. And you testified earlier that terracotta's extremely  
7 brittle?

8 A. No, that's what Mr. Hines said.

9 Q. Okay. Do you know whether -- wouldn't you agree that  
10 it's in -- it would of been valuable information to Chandler  
11 to know that the duct run was encased with terracotta, which  
12 is extremely brittle, and that the cables were pressurized  
13 inside of that terracotta casing?

14 A. My understanding is that the excavator identifies that  
15 there's a facility and exposes it and works around it.  
16 Whatever the facility may be, whether it's concrete, duct,  
17 or PVC, the pit -- the terracotta duct would of never been  
18 harmed or lost pressure had the work not being done on top  
19 of it.

20 Q. Okay. It---

21 A. So it's actually very common material and a damage that  
22 occurs pretty regularly. So, I -- it's not my first or even  
23 my one hundredth case where terracotta was in the ground.  
24 For that matter, PVC gets crushed and broken. So---

25 Q. Well, let's---

1 A. You know, I do think that terracotta is old and the  
2 advancements in technology certainly has made an improvement  
3 of it. But that doesn't mean that the facility that was in  
4 the ground worked any less while it was undisturbed.

5 Q. And you heard Mr. Brinkley's testimony that he would of  
6 used a vac truck potentially in this area had he known that  
7 it was a papered faced cable and brittle terracotta.

8 So you don't think that's valuable information to the  
9 contractor to know what is underground so that they can  
10 choose the proper mechanism to extricate the area?

11 A. I think if he'd been hand digging he probably wouldn't  
12 have poked it.

13 Q. Okay. And what evidence do you have that they weren't  
14 hand digging?

15 A. The law says that they were hand digging. So I assumed  
16 that they were.

17 Q. Okay. And they---

18 A. But they also used probe rods which is what probably  
19 caused the hole because the hole was very small.

20 Q. And let's, for purposes of this question, let's assume  
21 the probe rod caused the damage. Mr. Brinkley testified he  
22 wouldn't even have been using a probe rod had he known that  
23 this was a paper faced cable inside of a brittle terracotta.

24 So, if that information had been provided to him, this  
25 whole situation could of been avoided assuming the probe rod

1 is what caused the damage, correct?

2 A. Do accidents happen, yes. Do I think---

3 Q. That's wasn't my question.

4 A. ---he intentionally poked it, yes. I don't know that  
5 it would of been any more helpful to him to know that it was  
6 terracotta because he said also in his testimony that he had  
7 never seen anything like it. I don't know that he would of  
8 known how to handle it if he had known because I don't know  
9 what his level of experience is.

10 Q. I believe that Mr. Bares testified that -- to that.  
11 Not Mr. Brinkley. I think Mr. Brinkley's testimony was he  
12 would of used a vac truck had he known and there would of  
13 been no piercing opportunity of the terracotta casing had a  
14 vac truck been used.

15 Correct?

16 A. I'm sorry. I thought he said that he had never seen  
17 anything like it or had never---

18 Q. That's the---

19 A. ---experienced---

20 Q. That was---

21 A. ---or had one like that.

22 Q. That was Mr. Bares.

23 A. Well then I---

24 Q. I'm talking about Mr. Brinkley.

25 A. Well then I do apologize for getting the two different

1 testimonies confused. I think that, if they hand dug within  
2 30 -- within the tolerance zone and exposed the cable and  
3 worked around, it would of been fine.

4 Q. And you don't have any---

5 A. And I think---

6 Q. ---documentation or evidence that they did anything  
7 other than what Mr. Brinkley said they were doing, correct?

8 A. No, I don't.

9 Q. Let me look at Exhibit 1. The first photo of Exhibit 1  
10 and then scroll. I think -- it might be the third photo.  
11 This one.

12 You -- do you recall Mr. Brinkley's testimony that this  
13 picture's of an Ansco employee standing on the terracotta  
14 pipe?

15 A. Yes.

16 Q. And you recall Mr. Hines testifying that standing on a  
17 terracotta pipe could cause it to crack?

18 A. You know, I don't recall him saying that. I do recall  
19 him saying that it could be brittle and this is after the  
20 damage occurred.

21 Q. Is it possible that the damage actually occurred  
22 somewhere else along the line and it got further damaged in  
23 this location by Mr. -- by the Ansco employee standing on  
24 the terracotta pipe?

25 A. I can't attest to the fact that it did or did not cause

1 further damage. I can only tell you that I know when the  
2 damage occurred by the air pressure alarm that went off.

3 Q. Okay. And did---

4 A. I wasn't aware of any other damage. I know that it's a  
5 very, very small damage, and if it had caused further damage  
6 and they would of had to replace a section, which would of  
7 been a lot more money.

8 Q. How long is the---

9 A. This was a tiny hole.

10 Q. How long is this terracotta run?

11 How long does it run -- how long does it span?

12 Not the width but the actual run itself.

13 Miles?

14 A. I would assume so. I could look up the records and  
15 verify how much the length is if that's what -- you know,  
16 but I, I would think that it goes for at least several  
17 blocks.

18 Q. Okay. And when you got your automated notification,  
19 does it tell you the specific location that the, the cable  
20 is damaged?

21 A. It does tell us the general location within, you know,  
22 probably 20, 25-feet. The alarms are sectional. So you  
23 have ways to tell where the air pressure is building up or  
24 where it's being released at. We would of gone to this site  
25 knowing that it was in the general area of 25-feet within

1 that manhole. You could look at the manhole lid and see  
2 that it's an AT&T facility and they would of accessed the  
3 manhole and connected to each of the cables until they found  
4 about how far they thought it would go out.

5 And they also had the construction covering slate on  
6 top, the, the metal sheets that cover the work that they've  
7 been doing. So, it would of been a good guess or a  
8 experienced guess, I would say, that you could go over,  
9 since you found this manhole and you found that this is  
10 where the air is released, and 8-feet from it you find metal  
11 sheets covering the road on top of the manhole -- I mean on  
12 top of the terracotta duct, that you could move those sheets  
13 and see what work was being performed in there. That's --.

14 Q. And do you, do you agree that or are you familiar with  
15 the Underground Facilities Prevention -- Damage Prevention  
16 Act?

17 A. Yes.

18 Q. Okay. And would you agree that AT&T, under the  
19 definitions within that act, is an operator?

20 A. Yes.

21 Q. Okay. And what most policies does AT&T have in place  
22 to fully comply with the requirements of an operator under  
23 the act?

24 A. We contract USIC to perform all locates to the  
25 specifications of the requirements for that state.

1 Q. Anything else that AT&T does besides hire somebody else  
2 to locate their underground utilities?

3 A. We put -- we have a team of people that name actually  
4 appear on the locate ticket that goes out when -- when you  
5 put in for a locate or when you call in for a locate, at the  
6 bottom of that sheet where they were explaining which one it  
7 is, it tells you who you can call and say you want more  
8 information or you're working close to a manhole and you're  
9 not satisfied with what is there. You can certainly call  
10 damage prevention and ask for somebody to come out on site  
11 with you.

12 Q. Let's look at Exhibit 4 Title 58-36-70.

13 well, first of all, let me ask you is -- are you aware  
14 of anything that Chandler Construction did that was not  
15 fully compliant with the act for the responsibilities of  
16 an excavator?

17 A. I wasn't on site while they were working. So, I am  
18 taking their word for it that they uncovered the facility  
19 and protected it or attempted to protect it.

20 Q. Okay.

21 A. But that doesn't preclude accidents that happen when  
22 you're doing that. Excavation is not easy work.

23 Q. But you aren't testifying that Chandler Construction  
24 failed to comply with the Underground Facilities Damage  
25 Prevention Act?

1 A. Is that what we're suing them for?

2 Q. I, I -- I'm, I'm asking you questions, ma'am.

3 A. I haven't seen the -- we're suing them for recovery of  
4 damages that they caused. That I can testify to.

5 Q. All right. And they're suing for declaratory judgment  
6 that they fully complied with the act.

7 You are not testifying that they did anything that was  
8 not in compliance with the act which we've marked as Exhibit  
9 4, are you?

10 A. I've -- I did not -- I -- a pre-demand letter asking  
11 for information from Chandler was sent to them on 3/1.  
12 That's the first thing you showed in your exhibits and they  
13 did not respond. And they did not call me and say hey,  
14 look, this is what happened so that we could discuss it. So  
15 I have no information from them on what they recorded prior  
16 to this testimony.

17 They were sent a demand letter, an actual recovery  
18 letter on 4/28, and, again, they did not contact me. The  
19 first, the first idea that I had that there was something  
20 that they did not agree with was 6/5 in the summons. So, I  
21 haven't had a discussion with them about what they thought  
22 they did or didn't do.

23 Q. Okay. So the answer to my question then is no, you can  
24 not testify as to whether Chandler Construction did anything  
25 that wasn't fully compliant with the act?

Kelly Crews - Cross-examination  
By Mr. Bruorton

1 A. Not that they admitted to me, no.

2 Q. Okay. And let's look at 58-36-70, which are the  
3 responsibilities of the facility operator.

4 A. Okay.

5 Q. You called in a locate or Chandler called in a locate  
6 and you hired a third party to go identify the underground  
7 utility, correct?

8 A. Yes.

9 Q. But you didn't give the underground utility identifier  
10 any information as to what type of casing or what type of  
11 cable was in the ground other than telecommunications,  
12 right?

13 A. They have our -- yes, they have information because  
14 they have access to our underground facility records, our  
15 engineering prints. They would go out to the site. They  
16 would know where to access cables. They have to actually  
17 physically connect to those cables with equipment in order  
18 to mark them. So they have -- they know what is in the  
19 ground.

20 Q. Okay. Did AT&T provide Chandler Construction, as the  
21 excavator, with any other information to assist them to  
22 identify the duct run and thereby avoid damage to it other  
23 than the pavement marking that we have seen in the photos in  
24 this case?

25 A. Identifying a duct as a duct run and identifying it in

1 an accurate location is what they're suppose to do.

2 Q. Okay.

3 A. The size of the duct marked are supposed to indicate  
4 the general size of the duct that might be underground, and  
5 the zone, from my understanding, is suppose to be clearing  
6 it even 30-inches beyond that. But, no, there was no  
7 indication that that was terracotta and, and, in the three  
8 states that I worked, I've never seen that done either.

9 Q. Okay. So, all the stuff that you talked about would be  
10 under Section 1 as far as locating and dimensions and all of  
11 that, and, under Section 2, there was no other information  
12 given to Chandler, correct, other than the markings?

13 A. Or the ability to contact AT&T if they felt like they  
14 needed to.

15 Q. Okay. So nothing as to what type of casing or what  
16 type of cable they were looking for other---

17 A. No, sir.

18 Q. ---than a duct?

19 Okay. well, look at the report which was Defendant's  
20 Exhibit 2 I believe and let's go to -- are you familiar with  
21 this report?

22 A. Yes, I am.

23 Q. Okay. And let's go to Page 6. The report states that  
24 the root cause was found to exposed marked facilities.

25 Do you see that?

Kelly Crews - Cross-examination  
By Mr. Bruorton

1 A. Yeah.

2 Q. What does that mean?

3 A. It generally means that the reason that the cable was  
4 hit is because of a failure to expose marked facilities.

5 Q. Okay. But we know the, the facility was identified --  
6 was found and worked around by Chandler Construction, right?

7 A. The determination that this is made is by -- made by  
8 USIC, not by AT&T. This is the report that they provide us.  
9 I combine that with my investigation of the -- what happened  
10 on site to make a determination of liability. This is  
11 what---

12 Q. And---

13 A. ---they put on their document. That's what they  
14 discovered as the cause of the damage.

15 Q. And as far as information or documentation that  
16 Chandler failed to expose it, you don't have any  
17 documentation that they failed to expose the underground  
18 facility?

19 A. No, I don't.

20 Q. And your liability allocation as to Chandler is solely  
21 based on the fact that they were working in that area on the  
22 day---

23 A. Yes.

24 Q. ---that you got a notification that the, the line was  
25 not working properly?

Kelly Crews - Cross-examination  
By Mr. Bruorton

1 A. And the photograph that the waterline is going directly  
2 over the damaged bubbling area.

3 Q. Okay. which is not---

4 A. That's---

5 Q. which is not in evidence. So I'm saying any other  
6 evidence that you have.

7 A. No.

8 MR. BRUORTON: One second, Your Honor.

9 (Pause.)

10 Q. That's all we have for Ms. Crews.

11 Thank you, Ms. Crews.

12 A. Thank you.

13 MR. BUTLER: Redirect, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BUTLER:

16 Q. Ms. crews?

17 A. Yes, sir.

18 Q. How often have you seen terracotta used to contain  
19 telecommunications lines?

20 A. I work in Georgia, Florida, South Carolina, and North  
21 Carolina, and Alabama damages and I've seen them in all four  
22 states or all five states and they are very old. They  
23 probably were not placed any later than 1973 I think is the  
24 youngest ones I have ever seen. But they all work perfectly  
25 as long as they're not disturbed.

1 Q. Was it a surprise to learn that there was a terracotta  
2 encapsulate in this case?

3 A. No.

4 Q. All right. Regardless of whether it's terracotta  
5 concrete, PVC, or anything else, is it a good idea to use a  
6 probe to, to jab to try to find some -- to try to locate  
7 that, that cable?

8 MR. BRUORTON: Objection, Your Honor. I don't know if  
9 she's qualified to testify as to the actual excavation  
10 method. She's a damage investigator.

11 THE COURT: Sustained. You can rephrase it if you want  
12 to try to rephrase it --

13 MR. BUTLER: Yes, ma'am.

14 THE COURT: -- but as phrased, sustained.

15 MR. BUTLER: Yes, ma'am.

16 Ms. Crews, in your experience, have you had the  
17 opportunity to study situations in which underground cables  
18 belonging to AT&T have been damaged?

19 A. Yes, I have.

20 Q. And during this period of time, have you had the  
21 opportunity to determine when damage may have occurred while  
22 somebody was trying to locate the underground cable?

23 A. Yes, I have.

24 Q. And sometimes are cables damaged by the use of probes  
25 when they're trying to locate the cable?

1 A. Yes, they are.

2 Q. Do you -- does AT&T recommend or, or approve of using a  
3 probe to penetrate the ground to try to locate the cable  
4 and, if so, how much force should be used on the probe --

5 A. I'm---

6 Q. -- in your experience?

7 A. I've seen probes damage cables, not just terracotta,  
8 other types of cables and other types of ducts. We actually  
9 have wooden ducts in some areas of major cities because  
10 we've been in the ground since about 1910. I've seen them  
11 do damage more than probably a thousand times. I don't know  
12 how much pressure to use or not use. But I would think  
13 that, once you find your duct, you start using your hand, or  
14 if you're in that tolerance zone, you, you -- you're in  
15 there moving the dirt away with your hand until you expose  
16 whatever facility is sitting there, whether it's  
17 telecommunications or gas or power.

18 Q. Mr. Bruorton also asked you about the possibility that  
19 they'd been damage at another place on the line.

20 Do you recall that when he was talking to you---

21 A. Yes.

22 Q. ---about the Ansco gentleman stepping on the, stepping  
23 on the terracotta line?

24 A. Yes.

25 Q. After the repair work was done at the location, did the

1 warning systems at AT&T record any leaks anywhere else up  
2 and down that conduit?

3 A. No, there wasn't another leak. This was the damage and  
4 it wasn't caused by him standing on it or we would of had to  
5 replace a section of cable, even 3 or 4-feet, because it  
6 would of broke where he was standing. This was a patch that  
7 was made and that's seen in the materials that is used in  
8 the repair.

9 Q. And, again, AnSCO would not have been at the scene  
10 until after AT&T had received its report of a, of a  
11 puncture?

12 A. Yes.

13 Q. All right. Ms. Crews, in -- based on your experience  
14 with AT&T, how many excavations are going on at any given  
15 time in, in South Carolina for instance?

16 Do you know?

17 A. I know that in South Carolina in 2020 we had 490,000  
18 locates that were done. In 2021, there was five -- 500,012.

19 Q. All right.

20 A. So there's at least 500,000 damage -- locates being  
21 done every year for telecommunication.

22 Q. All right. And does AT&T make available to excavators  
23 additional information?

24 A. We do have a department that handles that. That's why  
25 that phone number is provided. Usually people are -- these,

1 these excavators are usually really experienced guys. They  
2 know a lot about what's going on. There's no doubt about  
3 that. They look at the sites and everything.

4 There was a manhole there. If they were worried about  
5 what might be under there, they could of called the number.  
6 There is a department that handles let me come out there and  
7 take a look. You can call an engineer to come out, you  
8 know, if you're interested in not, you know, doing the  
9 damage that you're not certain of what's gonna happen.  
10 There are ways around that other than just an indication on  
11 the street.

12 Q. Typically, Ms. Crews, would AT&T advise any excavator,  
13 the material that was underground, whether it's terra --  
14 encapsulate in as terracotta or concrete or PVC, is that  
15 typical of the information that would be provided?

16 A. Not generally, no.

17 Q. All right. How could it possibly cause a delay if you  
18 had to provide this information to the excavators?

19 How readily available would this information be?

20 A. Well, even in the records, the engineering that -- the  
21 engineering records that I look at and that they're the same  
22 ones that USIC look at, look at, it doesn't generally tell  
23 us the material that was used in the -- on that cable. It  
24 will tell us that there's ducts. It will tell us how many  
25 ducts. It will tell us how long those are or how, you know,

1 what kind of cables are inside the ducts. But not generally  
2 the material.

3 That would be quite a feat. I had to go and look in  
4 the actual created records for the job that placed this  
5 cable in 1964 to find that it would of been terracotta --

6 Q. All right.

7 A. -- though I suspected, when I looked at it at 1964 as  
8 the placement date, that I suspected that it would be  
9 terracotta. But to find the words was -- took, took quite a  
10 bit of effort.

11 Q. All right. Ma'am, you're aware of the requirements  
12 under the statute that AT&T is suppose to provide all  
13 information to excavators to assist them in preventing  
14 damages to the underground cables?

15 A. Yes.

16 Q. In this case, would you have provided any information  
17 requested had you been requested?

18 A. I would of told them that there was a duct run with a  
19 2,400 bare cable there. There's also some -- and, and, by  
20 the way, there's actually more cable underneath that duct  
21 run. I mean I would of told them there's also a 96 fiber  
22 and a 46 fiber.

23 I'm sorry. Somebody came to my door and I'm working  
24 from home. I apologize for the dogs.

25 Q. You're, you're, you're all right. You're all right.

1           would, would AT&T have provided some representative or  
2 technician or somebody to go out to the job scene had there  
3 been a request?

4 A.   Yes.  Yes, we have a department for that.

5 Q.   Very good.  Thank you.

6           That's all the questions I have, Your Honor.

7           THE COURT:  All right.  Any recross?

8           MR. BRUORTON:  Brief.  Very brief.

9   RECROSS EXAMINATION

10 BY MR. BRUORTON:

11 Q.   Ms. Wells or Crews.  Excuse me.

12 A.   Yes, sir.

13 Q.   You just testified that there was 96 fiber and a 46  
14 fiber in that same area, correct, under---

15 A.   Yes.

16 Q.   ---this?

17           That's not identified on the markings on the pavement,  
18 is it?

19 A.   It's part of the duct.  It's just underneath.  It,  
20 it---

21 Q.   What do you mean?

22 A.   Just as Mr. Bare explained to you that, when you see a  
23 duct, you expect to see multiple ducts in one area and it's  
24 a package.  There is two -- there's two cables that were  
25 pri -- that are placed in PVC underneath the terracotta that

1 were placed in 1996 and in I think 2004. I'd have to go  
2 back and look but I think it was 2004.

3 Q. Is the one---

4 A. They're underneath.

5 Q. Under, under the statute, each facility is suppose to  
6 be identified separately, correct?

7 A. I believe it was described as a duct package, which is  
8 what ducts typically are, multiple containers with multiple  
9 facilities in them in an, in an area and that is---

10 Q. But these---

11 A. ---typical.

12 Q. These fiber conduits were not in the terracotta casing  
13 cause they were placed in 1996, correct?

14 A. Right.

15 Q. So they should of been identified as separate  
16 facilities cause they're not part of that one duct run?

17 A. They're not in the terracotta. They were identified as  
18 a duct package, yes.

19 Q. And the -- well, you're saying duct package. The duct  
20 bank is a collection within a casing or a conduit. So  
21 anything outside of that casing or conduit is gonna be a  
22 separate facility and should of been identified and it  
23 wasn't.

24 A. Actually it was. It was identified going out of the  
25 manhole in the other direction which is why it wasn't

1 considered here. But it's, it's, it's, it's in that area.

2 Q. Okay. Does it run under the area that we're -- we been  
3 talking about today where damage occurred?

4 A. No, it just runs under that, that manhole. It's out of  
5 that manhole in a different direction.

6 Q. So if it's under the---

7 A. And there were marks on there.

8 Q. There were marks on it?

9 A. Yeah, there were marks on it. It's just going to the  
10 right of the duct instead of along the street. It wasn't in  
11 their excavation area. So, they didn't pothole it cause  
12 it's not in conflict. You can pull up the locate photos.

13 Q. That's what we're doing.

14 A. Okay. I'm sorry. I did not mean to muddy the waters  
15 by saying it. It's not in conflict with where we're looking  
16 at. You'll need to go to the locate photos in the locate  
17 investigation. You need to go to the, the 9<sup>th</sup>, the 3/9<sup>th</sup>  
18 photos -- the 3/9 photos, the day of the locate.

19 Okay. Do you see up there where the manhole is?

20 MS. NICHOLSON: Right here?

21 THE WITNESS: In other photos -- I don't see it in this  
22 one. But, in other photos, there's photos perpendicular  
23 going over to the work area to the right---

24 Q. And those photos---

25 A. ---with marks on it.

1 Q. ---haven't been produced in this case either, is there?

2 A. Oh, yeah, you can see them there. There it is.

3 You see the orange mark?

4 Q. I see one -- I see -- in the grass.

5 Are you talking about on---

6 A. Yeah, there's one.

7 Q. ---in that -- in the divot in the, in the road?

8 A. Yeah, there's a mark there and then there's a mark onto  
9 the grass and it's the conduit that contains the fiber.

10 Q. Okay. So it doesn't run the other direction either?

11 A. No, it runs perpendicular to the road.

12 Q. Okay. All right. Thank you for that clarification.

13 A. I'm, I'm sorry. I didn't mean to throw---

14 Q. That's all right.

15 A. ---throw mud on that.

16 Q. Threw, threw me off on a tangent there.

17 THE COURT: I'm sorry.

18 Was that the conclusion of your recross?

19 MR. BRUORTON: I'm -- hold on. I, I think so. Hold on  
20 one second, Your Honor.

21 (Pause.)

22 MR. BRUORTON: I believe so, yeah.

23 Thank you, Ms. Crews.

24 THE COURT: All right. Any other witnesses---

25 MR. BUTLER: No, Your Honor.

1 THE COURT: ---from AT&T?

2 MR. BUTLER: No, Your Honor.

3 THE COURT: In lieu of closing arguments, obviously  
4 we're in a nonjury trial. I'm gonna ask the attorneys on  
5 each side to produce proposed orders. I'm gonna ask that  
6 you do that within the next 20 days, if possible. If an  
7 extension is required, just feel free to reach out and ask  
8 for one. That's not a problem. That just gives us a date  
9 on our calendar to check back in if we haven't heard from  
10 you-all.

11 MR. BRUORTON: Okay.

12 THE COURT: Appreciate everybody's time today. Don't  
13 mean to cut you off so quickly. But I've -- we've gone  
14 over -- half an hour over our -- what I allotted.

15 MR. BUTLER: Yes, ma'am.

16 THE COURT: So, I've got some other things I need to  
17 take care of today. Thank y'all very much and look  
18 forward---

19 MR. BUTLER: Thank you, Your Honor.

20 THE COURT: ---to those proposed orders.

21 MR. BRUORTON: Thank you, Your Honor. Nice working  
22 with you.

23 THE COURT: Also for -- sends them in word format to my  
24 law clerk please.

25 MR. BRUORTON: Okay.

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MR. BUTLER: Thank you.

THE COURT: Thank you.

\* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Charleston County, South Carolina, on the 28<sup>th</sup> day of January, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 2<sup>nd</sup>, 2022



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PAMELA E. GREEN, Court Reporter