

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Jennifer B. McCoy, Circuit Judge

APR 28 2023

SC Court of Appeals

Appellate Case No. 2022-001170  
Court of Common Pleas Case No. 2020-CP-10-02430

CHANDLER CONSTRUCTION SERVICES, INC.,

Appellant,

v.

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T SOUTH CAROLINA,

Respondent.

**RECORD ON APPEAL**

Elizabeth F. Nicholson (SC Bar 102334)  
James A. Bruorton, IV (SC Bar 71300)  
ROSEN HAGOOD, LLC  
40 Calhoun Street, Suite 450  
Charleston, SC 29401  
[enicholson@rosenhagood.com](mailto:enicholson@rosenhagood.com)  
[cbruorton@rosenhagood.com](mailto:cbruorton@rosenhagood.com)  
(843) 577-6726 telephone  
ATTORNEYS FOR APPELLANT

A. Mattison Bogan (SC Bar 72629)  
Mary S. Williams (SC Bar 105883)  
NELSON MULLINS RILEY & SCARBOROUGH  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201  
[matt.bogan@nelsonmullins.com](mailto:matt.bogan@nelsonmullins.com)  
[mary.williams@nelsonmullins.com](mailto:mary.williams@nelsonmullins.com)  
(803) 799-2000

Jeffrey M. Butler (SC Bar 1056)  
Woodard & Butler, LLC  
P.O. Box 1906  
Walterboro, SC 29488  
[Rwooda@lowcountry.com](mailto:Rwooda@lowcountry.com)  
(843) 538-4566

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1002430

Chandler Construction Services Inc  
PLAINTIFF(S)

Bellsouth Telecommunications LLC et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter is before the Court pursuant to Plaintiff Chandler Construction Services, Inc.'s Complaint requesting declaratory relief and Defendant Bellsouth Telecommunication, LLC's Counterclaim asserting negligence against Chandler Construction. A hearing on the merits and oral arguments were heard in this matter on January 28, 2022. Upon the Court's lengthy consideration of the pleadings, oral arguments, and record in this matter, Plaintiff Chandler Construction Services, Inc.'s request for declaratory relief and Defendant Bellsouth Telecommunication, LLC's claim for negligence are both hereby DENIED. Plaintiff Chandler Construction Services, Inc.'s request for declaratory relief is DENIED for failure to prove its material allegations by a preponderance of the evidence. Specifically, this Court does not find that Defendant Bellsouth Telecommunication, LLC d/b/a AT&T failed to fulfill it's duties under SC Code 58-36-10 ff.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/20/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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The Act establishes duties on both excavators and operators in the interest of public safety.

Code Section 58-36-70(A)(2) does not specify that the material of the pipe must be disclosed. Absent this specific requirement, this Court declines to grant Chandler Construction declaratory relief. Additionally, Defendant's counterclaim for negligence is DENIED for failure to meet its burden to prove the Plaintiff's actions constituted a breach of duty under the Act.



Charleston Common Pleas

**Case Caption:** Chandler Construction Services Inc VS Bellsouth  
Telecommunications LLC , defendant, et al

**Case Number:** 2020CP1002430

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**Type:** Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2022-07-20 11:15:56 page 3 of 3

ELECTRONICALLY FILED - 2022 Jul 20 11:40 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002430

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.:
	)	
CHANDLER CONSTRUCTION SERVICES, INC.,	)	
	)	
	)	<b>SUMMONS</b>
Plaintiff,	)	
	)	
v.	)	
	)	
BELLSOUTH TELECOMMUNICATION, INC. d/b/a AT&T South Carolina,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, Rosen Hagood, at their offices at 151 Meeting Street, Suite 400 (P.O. Box 893), Charleston, South Carolina 29402, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

ROSEN HAGOOD, LLC

By: s/Elizabeth F. Nicholson  
James A. Bruorton, IV  
Elizabeth F. Nicholson  
151 Meeting Street, Suite 400  
Charleston, SC 29401

(843) 577-6726

ATTORNEY(S) FOR CHANDLER  
CONSTRUCTION SERVICES, INC.

Charleston, South Carolina  
June 2, 2020

ELECTRONICALLY FILED - 2020 Jun 02 1:57 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002430

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.:
	)	
CHANDLER CONSTRUCTION SERVICES, INC.,	)	
	)	
Plaintiff,	)	<b>COMPLAINT FOR DECLARATORY JUDGMENT</b>
	)	
v.	)	
	)	
BELLSOUTH TELECOMMUNICATION, INC. d/b/a AT&T South Carolina,	)	
	)	
Defendant.	)	
	)	

Plaintiff Chandler Construction Services, Inc. (“Chandler Construction”), by and through its undersigned counsel, hereby files this Complaint for declaratory judgment pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.* against Defendant Bellsouth Telecommunication, Inc. d/b/a AT&T South Carolina (“AT&T”), alleging upon information and belief as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Chandler Construction is a corporation organized and existing under the laws of the state of South Carolina and has its principle place of business in Greenwood County, South Carolina. Plaintiff is authorized and does business in Charleston County, South Carolina.
2. Upon information and belief, Defendant AT&T is a telecommunications company and is a corporation organized and existing under the laws of the state of South Carolina and does business in the state of South Carolina.
3. Venue is proper in the County of Charleston, South Carolina as all or a substantial amount of the events giving rise to this dispute occurred within Charleston County, South Carolina.

4. The action is brought under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.* to determine and resolve questions of actual controversy involving the above-referenced parties.

### **FACTUAL ALLEGATIONS**

5. On or about March 13, 2020, Plaintiff Chandler Construction was performing excavation work along McMillan Ave in North Charleston, South Carolina.

6. Pursuant to industry standards and the Underground Facility Damage Prevention Act, S.C. Code Ann. § 58-36-10 *et seq.* (the "Act"), Chandler Construction provided timely notice to AT&T of its intent to excavate within the vicinity of AT&T's underground facilities.

7. In response to the notice given by Chandler Construction, AT&T marked the supposed horizontal location of its underground facilities. AT&T did not provide any additional information to assist Chandler Construction in identifying the marked facilities.

8. In reliance on the information provided by AT&T, Chandler Construction commenced the excavation using non-invasive equipment as required by the Act.

9. Chandler Construction visually identified underground facilities greater than three inches diameter near the marked locations specified by AT&T. Chandler Construction proceeded its excavation using reasonable precautions as required by the Act.

10. Chandler Construction observed no damage to AT&T's facilities which were uncovered using non-invasive equipment.

11. Subsequently, that same day, AT&T traveled to the excavation site and removed the facilities from the site claiming damage had occurred during Chandler Construction's excavation process.

12. AT&T did not provide Chandler Construction any documentation evidencing the alleged damage to the facilities.

13. On or about May 11, 2020, Chandler Construction received an invoice from AT&T demanding payment of Nine Thousand Four Hundred Fifty-Six And 42/100 (\$9,456.42) Dollars as a claim for damages allegedly caused by Chandler Construction during the March 13, 2020 excavation. The Demand and Claim for Damages ("Demand") is attached as Exhibit A and incorporated herein.

**FOR A FIRST DECLARATION**

14. The allegations in the proceeding paragraphs are realleged as if repeated verbatim herein.

15. Chandler Construction, its employees, and its agents, acted in accordance with the Act during its excavation project on March 13, 2020.

16. Chandler Construction properly and timely notified AT&T regarding its intent to excavate within the vicinity of AT&T's underground facilities.

17. AT&T provided Chandler Construction insufficient information regarding its underground facilities.

18. Chandler Construction lawfully proceeded with the excavation and relied upon the horizontal location marked by AT&T.

19. AT&T failed to properly follow the Act in failing to provide the complete description of the facilities in the area of the proposed excavation.

20. AT&T is barred from bringing claims against Chandler Construction for damage to its underground facilities during the excavation that occurred on March 13, 2020 on McMillian Ave in North Charleston, South Carolina.

WHEREFORE, Plaintiff Chandler Construction Services, Inc. respectfully requests that the Court inquire into these matters and declare that Defendant Bellsouth Telecommunication, Inc. d/b/a AT&T South Carolina failed to follow the Underground Facility Damage Prevention Act and is barred from bringing claims against Chandler Construction Services, Inc. for damage to its underground facilities as demanded in the Demand attached hereto as Exhibit A, together with such other and further relief as the Court may deem just and proper.

---

ROSEN HAGOOD, LLC

By: s/Elizabeth F. Nicholson

James A. Bruorton, IV  
Elizabeth F. Nicholson  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 577-6726

ATTORNEY(S) FOR CHANDLER  
CONSTRUCTION SERVICES, INC.

Charleston, South Carolina  
June 2, 2020



March 31, 2020

AT&T-SOUTH CAROLINA  
630 S POST RD, Rm. REAR GAR  
INDIANAPOLIS, IN 46239-9743

Email: tm3243@us.att.com  
T: 317.801.0296  
TORRENCE MARTIN

CHANDLER CONSTRUCTION  
1511 NINTY-SIX HIGHWAY

NINTY-SIX, SC 29666

RE: Claim Number: BLST-64202003-55-0062  
Date Occurred: On or about March 13, 2020  
Location of Damage: MCMILLAN AVE BETWEEN SPRUILL AVE AND NOISETTE BLVD.  
ABOUT 8' FROM MANHOLE H-4, NORTH CHARLESTON

Sir, Madam

Please be advised we have sustained damages to our facilities at the above location.

Our investigation indicates you are responsible for the damages. The repairs and calculations for the damages are still in process. A demand and claim for damages will be submitted to you when these are complete. In the meantime, if you are covered by liability insurance for this incident, please provide our office, at the address above, with the name, address, telephone number and policy or claim number of your insurer.

Additionally, please treat this letter as a request from our legal department to preserve and not destroy all documents related to the damages to our facilities at the above location, including personnel information, work orders, work notes and diaries, photos and anything else that concerns what happened, why, and who was involved. If you have any questions regarding these damages, please contact us at the address or telephone number noted above. Thank you for your attention to this matter.

Respectfully,

AT&T Finance

**EXHIBIT A**

**APR 20 2020**

**Record on Appeal - 011**

ELECTRONICALLY FILED - 2020 Jun 03 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002430

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Chandler Construction Services, Inc

Plaintiff(s)

VS

Bellsouth Telecommunication, Inc  
D/b/a AT&T South Carolina

Defendant(s)

IN THE COMMON PLEAS COURT  
CASE NO: 2020-CP-10-02430

DEFENDANT'S ANSWER AND  
COUNTERCLAIM

Now comes Bellsouth Telecommunications, LLC d/b/a AT&T South Carolina,  
mistakenly designated as Bellsouth Telecommunication, Inc d/b/a AT&T South Carolina as  
Defendant and submits this its answer and counterclaim:

#### PARTIES AND JURISDICTION

1. Defendant admits paragraph one;
2. The Defendant admits that it is a limited liability company organized and existing pursuant to the laws of a State other than South Carolina but authorized to transact business within the State of South Carolina;
3. The Defendant admits that venue is proper within the County of Charleston, South Carolina;
4. Admit;

#### FACTUAL ALLEGATIONS

5. The Defendant admits paragraph five;
6. Defendant admits paragraph six;
7. The Defendant admits paragraph seven;
8. The Defendant is without sufficient information to determine whether the Plaintiff commenced the excavation using non-evasive equipment as required by the Act. Therefore, the

Defendant must deny this paragraph;

9. The Defendant is without information sufficient to determine whether the Plaintiff visually identified underground facilities greater than three inches diameter near the marked location specified by the Defendant. The Defendant does not believe that the Plaintiff preceded its excavation using reasonable precautions as required by the Act. The Defendant denies this paragraph;

10. The Defendant does not know what the Plaintiff observed at the site. The Defendants facilities were damaged. Therefore, the Defendant must deny this paragraph;

11. The Defendant denies that it traveled to the excavation site and "removed the facilities from the site". The Defendants property was damaged at the site and required repairs. The remainder of this paragraph is denied;

12. The Defendant has proved the Plaintiff with documentation describing the damages to Defendants facilities;

13. Admitted;

FOR A FIRST DECLARATION

14. This paragraph requires no response from the Defendant;

15. The Defendant denies that the Plaintiff has acted in accordance with the Act during its excavation project on March 13, 2020;

16. The Defendant admits paragraph sixteen;

17. The Defendant denies paragraph seventeen;

18. The Defendant admits that the Plaintiff lawfully proceeded with excavation and relied upon the horizontal location that was marked. However, despite being notified as to the presence of underground utility cables the Defendant maintains that the Plaintiff failed to properly locate the cables and damaged those cables as part of its excavation;

19. The Defendant denies this paragraph;

20. The Defendant denies this paragraph;

AT&T-702

## COUNTERCLAIM

1. That each and every other paragraph contained within this answer and counterclaim is hereby incorporated by reference as if repeated verbatim;
2. That as a result of the filing of this civil action the Plaintiff has submitted itself to the jurisdiction of this Court and venue is proper in this Court to determine all issues set forth in the Plaintiffs Complaint and the Defendant's Counterclaim;
3. That on or about March 13, 2020 at or near McMillan Avenue between Spruill Avenue and Noisette Blvd, about eight feet from manhole H-4 North Charleston South Carolina, employees of the Plaintiff while placing water pipe negligently damaged a duct run and at least one 2400 Pulp cable. As a result the Defendant's property had to be repaired;

---

4. The incident described in the preceding paragraph occurred as a direct and proximate result of the Plaintiffs negligence. The Plaintiff was negligent in one or more of the following specific instances:
  - a. By failing to expose the underground facilities prior to performing more extensive excavation;
  - b. By digging too closely within the marked tolerance zone;
  - c. By failing to properly supervise its employees;
  - d. By failing to maintain a safe look-out;
5. That as a direct and proximate result of the Plaintiffs negligence the property owned and maintained by the Defendant was damaged so as to require repairs reasonably totaling Nine Thousand Four Hundred Fifty-six Dollars and Forty-two cents (\$9,456.42). Attached to this Complaint and incorporated by reference is a true and correct copy of a "Breakdown of Demand and Claim for Damages" which more accurately describes how the Defendant calculated its damages. The Defendant is entitled to recover these amounts from the Plaintiff;

WHEREFORE, Defendant would pray this Court to deny the Plaintiff the relief requested in its Complaint and to enter an Order of Judgment in favor of the Defendant and against the Plaintiff for actual damages Nine Thousand Four Hundred Fifty-six Dollars and Forty-two cents (\$9,456.42) together with such other and further relief as this Court deems appropriate and proper.

This the 23rd day of June, 2020

/s/ Jeffrey M. Butler  
Jeffrey M. Butler  
Woodard & Butler, LLC  
Attorneys for the Plaintiff  
P.O. Box 1906  
Walterboro, SC 29488  
P: (843) 538-4566  
F: (843) 538-2322  
State bar No. 1056  
E-mail: rwooda@lowcountry.com



**BREAKDOWN OF DEMAND AND CLAIM FOR DAMAGES**

CLAIM NUMBER: BLST-64-202003-55-0062-SCJ

**LABOR COST**

EMPLOYEE	DATE OF REPAIR	REG HRS	REG RATE	OVT HRS	OVT RATE	DBL HRS	DBL RATE	AMOUNT
BO	03/16/2020	8.00	92.8942506	6.00	92.8942506			\$1,300.52
BO	03/17/2020	8.00	92.8942506	5.50	92.8942506			\$1,254.07
BO	03/15/2020	2.75	92.8942506					\$255.47
RM	03/16/2020	8.00	92.8942506	6.00	92.8942506			\$1,300.52
RM	03/17/2020	8.00	92.8942506	7.00	92.8942506			\$1,393.42
MM	03/16/2020	8.00	92.8942506	6.75	92.8942506			\$1,370.18
MM	03/17/2020	8.00	92.8942506	6.75	92.8942506			\$1,370.18
<b>Labor Cost Sub-Total</b>								<b>\$8,244.36</b>

**MATERIALS / UNIT COST ITEMS**

DESCRIPTION	QUANTITY	UNIT COST	AMOUNT
WIPE PAPER HEAVY DUTY WHITE	1	4.6185200	\$4.62
TROUBLE TICKETS-NCSC	1	6.4800000	\$6.48
NDC TROUBLE TICKET	1	8.3900000	\$8.39
CEMENT C ARMA 4 OZ.	1	3.8680105	\$3.87
CLAMP SEALING C CA08346 4IN	12	0.8313336	\$9.98
SCUFF SHEATH 4435	1	17.6081075	\$17.61
SLEEVE SHEATH REPAIR 4.75X5 FT	1	17.0192462	\$17.02
TAPE ALUM B 4"X40' RL 9313-3	2	9.2716789	\$18.54
TAPE DR 2"X15'	4	8.6019935	\$34.41
TAPE VINYL G 1" X 60" BLK	8	0.7851484	\$6.28
WIPE PAPER HEAVY DUTY WHITE	1	4.6185200	\$4.62
<b>Materials / Unit Cost Items Sub-Total</b>			<b>\$131.82</b>

**CONTRACTOR COST**

CONTRACTOR NAME	AMOUNT	
ANSCO & ASSOC. LLC (NC/SC ONLY)	\$1,080.24	
<b>Contractor Cost Sub-Total</b>		<b>\$1,080.24</b>

**OTHER COSTS**

DESCRIPTION	AMOUNT	
<b>Other Costs Sub-Total</b>		<b>\$0.00</b>

**Total Demand and Claim for Damages \$9,456.42**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2020-CP-10-02430
	)	
CHANDLER CONSTRUCTION SERVICES, INC.,	)	
	)	
	)	<b>ANSWER TO COUNTERCLAIM</b>
Plaintiff,	)	
	)	
v.	)	
	)	
BELLSOUTH TELECOMMUNICATION, INC. d/b/a AT&T South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Chandler Construction Services, Inc. (“Chandler Construction”), by and through its undersigned counsel, in answering the Counterclaim of Defendant Bellsouth Telecommunication, Inc. d/b/a/ AT&T South Carolina (“AT&T”) alleges and states as follows:

**FOR A FIRST DEFENSE**  
(General Denial)

1. Chandler Construction denies each and every allegation of AT&T’s Counterclaim not specifically admitted herein.
2. Paragraphs 1 through 20 of AT&T’s Answer and Counterclaim constitute AT&T’s Answer to Chandler Construction’s Complaint and require no response from Chandler Construction. However, to the extent responses are required, Chandler Construction denies the same and demands strict proof thereof.

**AS TO AT&T’S COUNTERCLAIM**

3. In answering Paragraph 1, Chandler Construction restates and reasserts its responses to the above Paragraphs as if set forth herein verbatim.

4. The allegations of Paragraph 2 state legal conclusions to which a response from Chandler Construction is not required. To the extent it can be construed that a response is required, Chandler Construction does not contest jurisdiction or venue and admits the allegations of Paragraph 2.

5. The allegations of Paragraphs 3 through 5 are denied.

**FOR A SECOND DEFENSE**  
(Failure to State a Claim)

Further and affirmatively answering AT&T's Counterclaim and as an additional and complete defense thereto, the Counterclaim should be dismissed pursuant to S.C. R. CIV PRO.

12(b)(6) for failure to state facts sufficient to constitute a claim against Chandler Construction.

**FOR A THIRD DEFENSE**  
(Waiver)

Further and affirmatively answering AT&T's Counterclaim and as an additional and complete defense thereto, AT&T's claims are barred in whole or in part by the doctrine of waiver and specified waivers within the Contract.

**FOR A FOURTH DEFENSE**  
(Estoppel)

Further and affirmatively answering AT&T's Counterclaim and as an additional and complete defense thereto, AT&T's claims are barred in whole or in part by the doctrine of estoppel.

**FOR A FIFTH DEENSE**  
(Intervening Acts)

Further and affirmative answering AT&T's Counterclaims and as an additional and complete defense thereto, the separate and intervening acts or failure to act on the part of persons other than Chandler Construction are the proximate causes of AT&T's damages.

**FOR A SIXTH DEFENSE**  
(Failure to Mitigate Damages)

Further and affirmatively answering AT&T's Counterclaims and as an additional and complete defense thereto, AT&T's claims are barred, in whole or in part, as a result of the AT&T's failure to mitigate its damages as required by law.

**FOR A SEVENTH DEFENSE**

Further and affirmatively answering AT&T's Counterclaims and as an additional and complete defense thereto, if and to the extent that AT&T was damaged as alleged, such damages were the result, in whole or in part, of the fault, negligence, culpable conduct, and/or assumption of risk of AT&T, as a result of which such damages are barred or must be reduced accordingly.

**FOR AN EIGHTH DEFENSE**

(Reservation of Additional Further Defenses)

Chandler Construction reserves any additional and further defense to AT&T's Counterclaim as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

ROSEN HAGOOD, LLC

By: s/Elizabeth F. Nicholson  
James A. Bruorton, IV  
Elizabeth F. Nicholson  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 577-6726

ATTORNEY(S) FOR CHANDLER  
CONSTRUCTION SERVICES, INC.

Charleston, South Carolina  
August 11, 2020

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHARLESTON )

COURT OF COMMON PLEAS NONJURY

3  
4 CHANDLER CONSTRUCTION SERVICES, )  
5 INC., )  
6 PLAINTIFF, )  
7 VS. )  
8 BELLSOUTH TELECOMMUNICATIONS, )  
9 INC. D/B/A AT&T SOUTH CAROLINA, )  
DEFENDANT. )

TRANSCRIPT  
OF  
RECORD

2020-CP-10-2430

**RECEIVED**  
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SC Court of Appeals

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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:

JAMES A. "CHIP" BRUORTON, IV and ELIZABETH F. NICHOLSON  
ESQ.  
Attorneys for the Plaintiff

JEFFREY M. BUTLER, ANDREW CONNOR and CHARLES SANDERS  
ESQ.  
Attorney for the Defendant

Transcribed by Pamela E. Green, from  
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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Plaintiff's Exhibits</u>		
P-1	Photograph		33
P-2	March 31 <sup>st</sup> , 2020, Letter from AT&T		33
P-3	February 4th, 2020, Letter from AT&T		33
P-4	SC888 Law		33
P-5	SC888 Locate Notice Request		33
P-6	APWA Recommended Marking Guidelines		75

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<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Defendant's Exhibits</u>		
D-1	Damages Claimed		111
D-2	Damage Estimate		
D-3	Photographs		99

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

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

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

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

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

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

Shane Brinkley - Direct examination  
By Ms. Nicholson

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

Shane Brinkley - Direct examination  
By Ms. Nicholson

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.

Shane Brinkley - Direct examination  
By Ms. Nicholson

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

Shane Brinkley - Direct examination  
By Ms. Nicholson

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

Shane Brinkley - Direct examination  
By Ms. Nicholson

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)?

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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.

Shane Brinkley - Direct examination  
By Ms. Nicholson

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.

Shane Brinkley - Direct examination  
By Ms. Nicholson

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

Shane Brinkley - Direct examination  
By Ms. Nicholson

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.

Matthew Bares - Direct examination  
By Mr. Bruorton

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

Matthew Bares - Direct examination  
By Mr. Bruorton

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

Matthew Bares - Direct examination  
By Mr. Bruorton

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 to 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

Matthew Bares - Direct examination  
By Mr. Bruorton

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 prospective. 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

Matthew Bares - Direct examination  
By Mr. Bruorton

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,

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By Mr. Bruorton

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 --?

Matthew Bares - Direct examination  
By Mr. Bruorton

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

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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

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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

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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.

Matthew Bares - Direct examination  
By Mr. Bruorton

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?

Matthew Bares - Direct examination  
By Mr. Bruorton

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 on 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.

Matthew Bares - Direct examination  
By Mr. Bruorton

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?

Matthew Bares - Direct examination  
By Mr. Bruorton

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

Matthew Bares - Direct examination  
By Mr. Bruorton

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?

Matthew Bares - Direct examination  
By Mr. Bruorton

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

Matthew Bares - Direct examination  
By Mr. Bruorton

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.

Matthew Bares - Direct examination  
By Mr. Bruorton

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.

Matthew Bares - Direct examination  
By Mr. Bruorton

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

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By Mr. Bruorton

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

Matthew Bares - Cross-examination  
By Mr. Butler

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

Matthew Bares - Cross-examination  
By Mr. Butler

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?

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

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,

Matthew Bares - Cross-examination  
By Mr. Butler

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

Matthew Bares - Redirect examination  
By Mr. Bruorton

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.

Matthew Bares - Redirect examination  
By Mr. Bruorton

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,

Matthew Bares - Redirect examination  
By Mr. Bruorton

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.

Matthew Bares - Redirect examination  
By Mr. Bruorton

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.



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.

Michael Hines - Direct examination  
By Mr. Butler

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.

Michael Hines - Direct examination  
By Mr. Butler

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.

Michael Hines - Direct examination  
By Mr. Butler

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

Michael Hines - Direct examination  
By Mr. Butler

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 encapsuled 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.

Michael Hines - Cross-examination  
By Mr. Bruorton

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

Michael Hines - Cross-examination  
By Mr. Bruorton

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?

Kelly Crews - Direct examination  
By Mr. Butler

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 be 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

Kelly Crews - Direct examination  
By Mr. Butler

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

Kelly Crews - Direct examination  
By Mr. Butler

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.

Kelly Crews - Direct examination  
By Mr. Butler

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---

Kelly Crews - Direct examination  
By Mr. Butler

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

Kelly Crews - Direct examination  
By Mr. Butler

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?

Kelly Crews - Direct examination  
By Mr. Butler

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.

Kelly Crews - Direct examination  
By Mr. Butler

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

Kelly Crews - Direct examination  
By Mr. Butler

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

Kelly Crews - Cross-examination  
By Mr. Bruorton

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?

Kelly Crews - Cross-examination  
By Mr. Bruorton

1 A. I have reports. It's called a Prin -- it's called  
2 pressure tranducer 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 of 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---

Kelly Crews - Cross-examination  
By Mr. Bruorton

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

Kelly Crews - Cross-examination  
By Mr. Bruorton

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

Kelly Crews - Cross-examination  
By Mr. Bruorton

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

Kelly Crews - Cross-examination  
By Mr. Bruorton

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

Kelly Crews - Cross-examination  
By Mr. Bruorton

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?

Kelly Crews - Cross-examination  
By Mr. Bruorton

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

Kelly Crews - Cross-examination  
By Mr. Bruorton

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.

Kelly Crews - Redirect examination  
By Mr. Butler

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?

Kelly Crews - Redirect examination  
By Mr. Butler

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

Kelly Crews - Redirect examination  
By Mr. Butler

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,

Kelly Crews - Redirect examination  
By Mr. Butler

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.

Kelly Crews - Redirect examination  
By Mr. Butler

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

Kelly Crews - Recross examination  
By Mr. Bruorton

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.

Kelly Crews - Recross examination  
By Mr. Bruorton

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\* \* \*

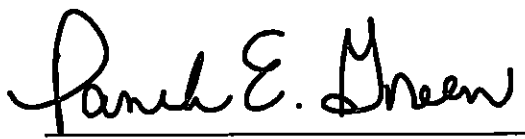
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C E R T I F I C A T E

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



PAMELA E. GREEN, Court Reporter



March 10

9:02 AM

All Photos



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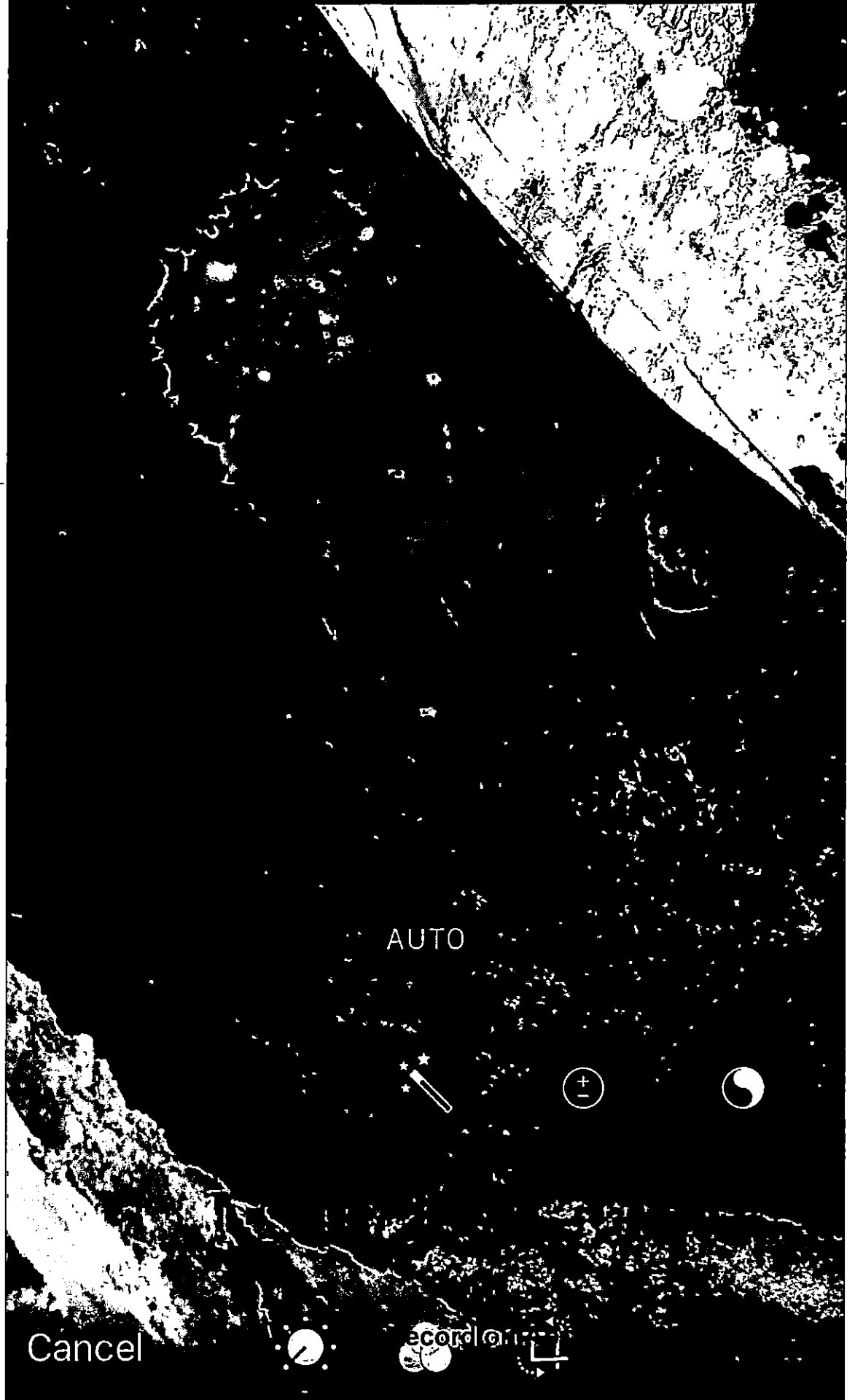
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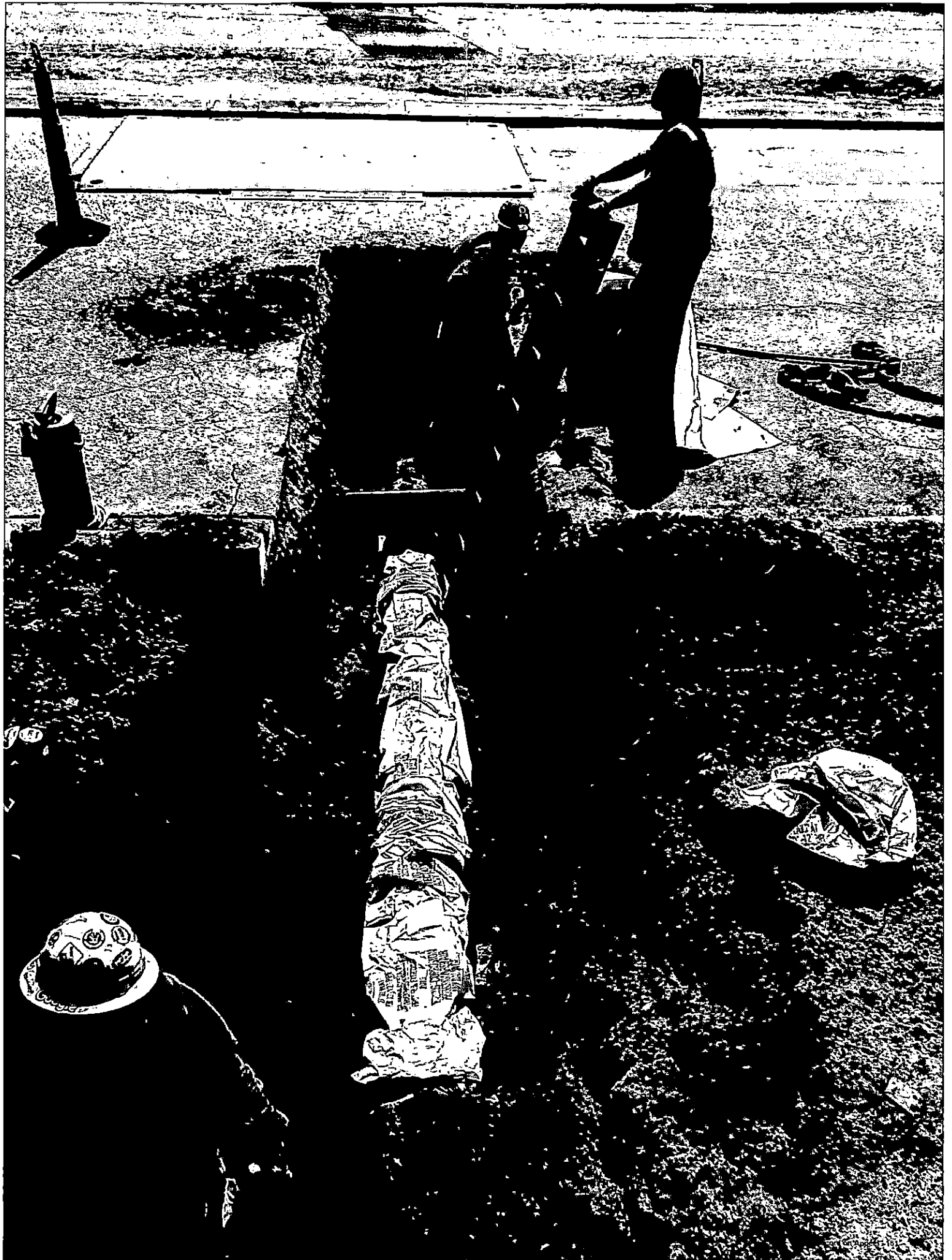
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March 31, 2020

AT&T-SOUTH CAROLINA  
630 S POST RD, Rm. REAR GAR  
INDIANAPOLIS, IN 46239-9743

Email: tm3243@us.att.com  
T: 317.801.0296  
TORRENCE MARTIN

CHANDLER CONSTRUCTION  
1511 NINTY-SIX HIGHWAY

NINTY-SIX, SC 29666

RE: Claim Number: BLST-64202003-55-0062  
Date Occurred: On or about March 13, 2020  
Location of Damage: MCMILLAN AVE BETWEEN SPRUILL AVE AND NOISETTE BLVD.  
ABOUT 8' FROM MANHOLE H-4, NORTH CHARLESTON

Sir, Madam

Please be advised we have sustained damages to our facilities at the above location.

Our investigation indicates you are responsible for the damages. The repairs and calculations for the damages are still in process. A demand and claim for damages will be submitted to you when these are complete. In the meantime, if you are covered by liability insurance for this incident, please provide our office, at the address above, with the name, address, telephone number and policy or claim number of your insurer.

Additionally, please treat this letter as a request from our legal department to preserve and not destroy all documents related to the damages to our facilities at the above location, including personnel information, work orders, work notes and diaries, photos and anything else that concerns what happened, why, and who was involved. If you have any questions regarding these damages, please contact us at the address or telephone number noted above. Thank you for your attention to this matter.

Respectfully,

AT&T Finance

APR 20 2020

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05/04/2020

BELLSOUTH TELECOMMUNICATIONS, LLC, DBA AT&T SOUTH CAROLINA  
1010 PINE 6W-P-02  
ST LOUIS MO 63101

CHANDLER CONSTRUCTION  
1511 NINTY-SIX HIGHWAY  
NINTY-SIX, SC 29666

**Re: Demand and Claim for Damages**

Claim Number: BLST-64-202003-55-0062-SCJ

BELLSOUTH TELECOMMUNICATIONS, LLC, DBA AT&T SOUTH CAROLINA (“AT&T”) hereby asserts this Demand and Claim for Damages (the “Demand”) in the amount of \$9,456.42 as payment for damages that CHANDLER CONSTRUCTION caused to AT&T’s property or assets located at MCMILLAN AVE BETWEEN SPRUILL AVE AND NOISETTE BLVD. ABOUT 8’ FROM MANHOLE H-4, NORTH CHARLESTON, SC on or about March 13, 2020 (the “Incident”). Specifically, CHANDLER CONSTRUCTION HIT DUCT RUN AND AT LEAST ONE 2400 PULP CABLE WHILE PLACING WATER PIPE.

Below are the components of the payment for damages demanded by AT&T that resulted from the Incident. The Labor Cost includes, but is not limited to, personnel, equipment, vehicles, and an allocation of general and

LABOR COST	\$8,244.36
MATERIALS/UNIT COST ITEMS	\$131.82
CONTRACTOR COST	\$1,080.24
<b>TOTAL DAMAGES</b>	<b>\$9,456.42</b>

CHANDLER CONSTRUCTION and AT&T agree that CHANDLER CONSTRUCTION’s full and complete payment of this Demand (the “Payment”) within 30 days of the date indicated above, and AT&T’s receipt and acceptance of the Payment, constitutes a full and final settlement and mutual release with regard to any and all liability related to this Demand and the Incident (the “Release”). Nothing herein shall require AT&T to accept any payment that is less than the Demand, and AT&T’s receipt and retention of any such partial payment, the Release notwithstanding, shall not preclude AT&T from seeking recovery of the remaining balance of the Demand. AT&T reserves the right to seek additional damages, attorneys’ fees, and costs where and as permitted by law. This Release is governed by **the Terms and Conditions on the reverse side of this page, which are incorporated in their entirety herein by reference.**

If you or your insurance carrier wish to discuss this Demand, or if you wish to request more detailed information about it, including the components and calculation of AT&T’s damages, you may contact AT&T by phone at 800-894-0374, email at [RMSCEN@att.com](mailto:RMSCEN@att.com) , or fax at 800-363-3234

**TERMS AND CONDITIONS**

**These Terms and Conditions in their entirety are incorporated into, and are an essential part of, the Demand and Claim for Damages on the reverse side of this page. The terms "Incident," "Payment," and "Demand" as used herein are defined on the reverse side of this page, and such definitions are incorporated by reference into these Terms and Conditions.**

Upon CHANDLER CONSTRUCTION's Payment to BELLSOUTH TELECOMMUNICATIONS, LLC, DBA AT&T SOUTH CAROLINA ("AT&T") and AT&T's receipt and acceptance thereof, CHANDLER CONSTRUCTION and AT&T agree to FULLY and FINALLY RELEASE each other as follows:

AT&T, for and on behalf of itself and its parent company, affiliates, related entities, predecessor and successor entities, subsidiaries, and all of their respective officers, directors, employees, insurers, and assigns, on one hand, and CHANDLER CONSTRUCTION, for itself, himself, or herself and, as applicable, its, his, or her parent company, affiliates, related entities, predecessor and successor entities, subsidiaries, officers, directors, employees, insurers, heirs, predecessors, successors, assigns, partners, contractors, and subcontractors (hereinafter collectively, "Damager"), on the other hand, do hereby FULLY and FINALLY RELEASE one another and covenant not to sue one another or make any further claim, whether known or unknown, in tort, contract, or pursuant to statute or regulation, or take any other form of legal action against the other, for any matter relating to, arising from, or in any way connected to the above-referenced Incident or Demand, as defined on the reverse side of this page. The above and foregoing notwithstanding, AT&T's retention of any partial payment less than the full and complete amount of the Demand shall not preclude AT&T from seeking recovery of the remaining balance of the Demand, plus additional damages, attorneys' fees, and costs where and as permitted by law.

Damager represents and warrants that it, he, or she has had a full opportunity to investigate AT&T's Demand, as well as the underlying Incident, and makes the Payment and agrees to and accepts these Terms and Conditions, including, but not limited to, the FULL and FINAL RELEASE above, at arms' length, relying solely on its own assessment of anything stated or not stated by AT&T related, directly or indirectly, to the Incident, the Payment, and/or the Demand, including, but not limited to, the categories of damages enumerated therein, the amount demanded for each category, the manner in which AT&T calculated the amount, or the elements included in those calculations. Damager understands that by entering into this RELEASE it waives the right to claim that the damages demanded by AT&T were improper, excessive, incorrectly calculated, or otherwise unlawful.

Damager represents and warrants that it, he, or she has had the opportunity to discuss these Terms and Conditions and the Demand on the reverse side of this page with an attorney or other competent advisor. Damager covenants and agrees that Damager's Payment, or any partial payment retained by AT&T, with no further action required or contemplated by Damager or AT&T, constitutes Damager's compromise, settlement, and FULL and FINAL RELEASE of any and all claims of liability related to the Incident, the Payment, and the Demand.



**TOTAL AMOUNT OF DEMAND AND CLAIM FOR DAMAGES: \$9,456.42**

**Return this page with Payment.**

**Payment enclosed: \$ \_\_\_\_\_ (Please write Claim # on check or money order.)**

**For Payment by credit card, please call 800-894-0374 to make payment by phone.**

**We do not accept cash.**

**Remit Payment for Demand and Claim for Damages to:**

**AT&T  
PO BOX 5070  
Carol Stream, IL 60197-5070**

**Claim # BLST-64-202003-55-0062-SCJ**



# South Carolina Underground Facility Damage Prevention Act

Effective June 7, 2012

**Know what's below.  
Call before you dig.**



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South Carolina General Assembly  
119th Session, 2011-2012

(R66, S705)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 36 TO TITLE 58 SO AS ENACT THE "UNDERGROUND FACILITY DAMAGE PREVENTION ACT", TO PROVIDE DEFINITIONS, TO PROVIDE LIMITS ON COSTS RELATED TO THIS CHAPTER, TO REQUIRE THE CREATION OF A NOTIFICATION CENTER ASSOCIATION PROVIDING FOR RECEIVING NOTICE OF EXCAVATION OR DEMOLITION IN A DEFINED AREA, TO CREATE AND SPECIFY THE MEMBERSHIP OF A BOARD TO GOVERN THE NOTIFICATION CENTER, TO PROVIDE MISCELLANEOUS REQUIREMENTS AND DUTIES RELATED TO THE NOTIFICATION CENTER, TO REQUIRE CERTAIN NOTICE RELATED TO EXCAVATIONS, DEMOLITIONS, AND DAMAGE RESULTING DURING AN EXCAVATION OR DEMOLITION, TO PROVIDE EXCEPTIONS TO THE NOTICE REQUIREMENTS AND OTHER PROVISIONS OF THIS CHAPTER, AND TO PROVIDE PENALTIES FOR A VIOLATION OF THIS CHAPTER; AND TO REPEAL SECTIONS 58-35-10, 58-35-20, 58-35-30, 58-35-40, 58-35-50, 58-35-60, 58-35-70, 58-35-80, 58-35-90, 58-35-100, 58-35-110, AND 58-35-120 ALL RELATING TO THE UNDERGROUND FACILITY DAMAGE PREVENTION ACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 36

**South Carolina Underground Facility  
Damage Prevention Act**

(Effective June 7, 2012)

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**Section 58-36-10 (Short Title)**

This chapter may be cited as the Underground Facility Damage Prevention Act.

**Section 58-36-20 (Definitions)**

For purposes of this chapter, the following words and terms are defined as follows:

- (1) ‘APWA’ means the American Public Works Association or successor organization or entity.
- (2) ‘Association’ means a group of operators, or their representatives, formed for the purpose of operating a notification center.
- (3) ‘Business continuation plan’ means a plan that includes actions to be taken in an effort to provide uninterrupted service during catastrophic events.
- (4) ‘Damage’ means the substantial weakening of structural or lateral support of a facility, penetration or destruction of protective coating, housing, or other protective device of a facility and the partial or complete severance of a facility.

- (5) 'Demolish' or 'demolition' means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of explosives.
- (6) 'Designer' means any architect, engineer, or other person who prepares or issues a drawing or blueprint for a construction or other project that requires excavation or demolition work.
- (7) 'Design request' means a communication to the notification center in which a request for identifying existing facilities for advance planning purposes is made. A design request may not be used for excavation purposes.
- (8) 'Emergency' means a sudden or unforeseen event involving a clear and imminent danger to life, health, or property; the interruption of essential utility services; or the blockage of transportation facilities, including highway, rail, water, and air, which require immediate action.
- (9) 'Excavate' or 'excavation' means an operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of mechanized equipment or by discharge of explosives and including augering, backfilling, digging, ditching, drilling, well drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling.
- (10) 'Excavator' means any person engaged in excavation or demolition.
- (11) 'Extraordinary circumstances' means circumstances which make it impractical or impossible for the operator to comply with the provisions of this chapter. Extraordinary circumstances may include hurricanes, tornadoes, floods, ice, snow, and acts of God.
- (12) 'Facility' means any underground line, underground system,

or underground infrastructure used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewerage. Provided there is no encroachment on any operator's right-of-way, easement, or permitted use and for purposes of this act, the following are not considered as an underground 'facility': petroleum storage systems subject to regulation pursuant to Chapter 2, Title 44; septic tanks as regulated by Chapter 55, Title 44; swimming pools and irrigation systems. For purposes of this act, and provided there is no encroachment on any operator's right-of-way, easement, or permitted use, liquefied petroleum gas 'systems' as defined in Section 40-82-20(8) do not constitute an underground 'facility' unless such a system is subject to Title 49 C.F.R. Part 192.

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(13) 'Locator' means a person that identifies and marks facilities for operators.

(14) 'Mechanized equipment' means equipment operated by means of mechanical power, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in or pulling-in cable or pipe.

(15) 'Nonmechanized equipment' means hand tools.

(16) 'Notification center' means an entity that administers a system through which a person can notify operators of proposed excavations or demolitions.

(17) 'Operator' means any person, public utility, communications and cable service provider, municipality, electrical utility, electric and telephone cooperatives, and the South Carolina Public Service Authority as defined in Titles 5, 6, 33, and 58, Code of Laws of South Carolina, 1976, who owns or operates a facility for commercial purposes in the State of South Carolina.

(18) 'Person' means any individual, owner, corporation, partner-

ship, association, or any other entity organized under the laws of any state; any subdivision or instrumentality of a state; and any authorized representative thereof.

(19) 'Positive response' means an automated information system that allows excavators, locators, operators, and other interested parties to determine the status of a locate request until excavation or demolition is complete.

(20) 'Subaqueous' means a facility that is under a body of water, including rivers, streams, lakes, waterways, swamps, and bogs.

(21) 'Tolerance zone' means:

- (a) if the diameter of the facility is known, the distance of one-half of the known diameter plus twenty-four inches on either side of the designated center line;
- (b) if the diameter of the facility is not marked, twenty-four inches on either side of the outside edge of the mark indicating a facility; or
- (c) for subaqueous facilities, a clearance of fifteen feet on either side of the indicated facility.

(22) 'Working day' means every day, except Saturday, Sunday, and legal holidays as defined by South Carolina law.

### **Section 58-36-30 (Ordinances and Permits)**

(A) The provisions in this chapter supersede and preempt any ordinance enacted by a local political subdivision that purports to:

- (1) require operators to obtain permits from local governments in order to identify facilities;
- (2) require pre-marking or marking of facilities;
- (3) specify the types of paint or other marking devices that are used to identify facilities; or
- (4) require removal of marks.

(B) A permit issued pursuant to law authorizing an excavation or

demolition shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter.

**Section 58-36-40 (Costs and Expenses)**

(A) Any costs or expenses associated with compliance by an excavator with the requirements in this chapter applicable to excavators shall not be charged to any operator. Any costs or expenses associated with compliance by an operator with the requirements in this chapter applicable to operators shall not be charged to any excavator. Neither the association nor the notification center may impose any charge on any person giving notice to the notification center.

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(B) This section shall not excuse an operator or excavator from liability for any damage or injury for which it would be responsible under applicable law.

**Section 58-36-50 (Responsibilities of Notification Center)**

(A) Operators must maintain an association that will operate a notification center providing for the receipt of notice of excavation or demolition in a defined geographical area. The notification center must be governed by a board of directors composed of operators and damage prevention stakeholders that are members of the association. The by-laws of the association must provide for a board of directors with the following membership:

- (1) one representative from each of the six facility members that receive the highest annual notification transmission volumes from the notification center;
- (2) one representative of a public water or sewer company;
- (3) one representative of an electric cooperative;
- (4) one representative of an investor-owned natural gas utility;
- (5) one representative of a company that transports hazardous liquids as defined in 49 U.S.C. 60101(a)(4);
- (6) one representative of a telephone cooperative;

- (7) one representative of a rural water district;
- (8) one representative of the South Carolina Association of Municipal Power Systems;
- (9) one representative of the South Carolina Association of Counties;
- (10) one representative of a company licensed in South Carolina for facility contract locating;
- (11) one representative of the South Carolina Department of Transportation;
- (12) one representative of a company licensed in South Carolina for construction of roads and highways;
- (13) one representative of a company licensed in South Carolina for construction of facilities;
- (14) one representative of a company licensed in South Carolina for landscaping or irrigation;
- (15) one representative of a company licensed in South Carolina as a general contractor or as a subcontractor in the construction industry;
- (16) three representatives employed by different facility operators in South Carolina; and
- (17) one representative of a special purpose district providing natural gas.

In choosing members of the association to fill these board positions, the association will solicit nominations from the membership of the association and industry organizations representing entities designated by this subsection. The South Carolina 811 Board of Directors existing on the effective date of this act must elect the board as required by the provisions of this subsection within nine months following the effective date of this act.

(B) All operators are required to join the association and utilize the services of the notification center.

- (1) Operators that are members of the existing association on the effective date of this act must remain members.
- (2) Operators with more than fifty thousand customers or one thousand miles of facilities who are not members must

join the association within one year from the effective date of this act.

(3) Operators with more than twenty-five thousand customers or five hundred miles of facilities, who are not members, must join the association within two years from the effective date of this act.

(4) All operators that do not meet the thresholds described in items (1), (2), or (3) must join the association within three years from the effective date of this act.

(C) There shall be only one notification center for the State of South Carolina.

(D) The association shall provide for a reasonable way of apportioning the cost of operating the notification center among its members.

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(E) The notification center shall receive notices from persons with intention of performing excavation or demolition and transmit to the operators the following information:

- (1) the name, address, and telephone number of the person providing the notice, and, if different, the excavator completing the proposed excavation or demolition;
- (2) the start date of the proposed excavation or demolition;
- (3) the anticipated duration of the proposed excavation or demolition;
- (4) the type of proposed excavation or demolition to be conducted;
- (5) the location of the proposed excavation or demolition; and
- (6) whether or not explosives are to be used in the proposed excavation or demolition.

(F) The notification center must maintain a record of the notices received pursuant to subsection (E), and information regarding operators failing to provide a response pursuant to subsection (E), and excavators failing to provide notice pursuant to Section 58-36-

60(C). This record must be maintained for at least three years.

(G) The notification center shall receive and transmit notices.

(H) The notification center must have a business continuation plan.

(I) The notification center shall provide a positive response system that must be fully operational within three years from the effective date of this act.

(J) The notification center shall file with the South Carolina Public Service Commission the telephone number and address of the notification center and a list of the names and addresses of each operator that received service from the notification center. This filing must be made no later than April fifteenth of each year.

(K) The notification center shall provide to the Chairman of the House of Representatives Labor, Commerce and Industry Committee and the Chairman of the Senate Judiciary Committee a report regarding the activities and operations of the notification center for the preceding calendar year. This report must include, but is not limited to, the following information:

- (1) average speed of answer;
- (2) abandoned call rate;
- (3) transmit times;
- (4) total number of locate requests;
- (5) total number of transmissions to operators of locate requests; and
- (6) business continuation plan.

This report must be made no later than April fifteenth of each year.

(L) The notification center must establish and operate a damage prevention training program.

## **Section 58-36-60 (Responsibilities of Excavators)**

(A) Before commencing any excavation or demolition, the person responsible for the excavation or demolition shall provide, or cause to be provided, notice to the notification center of his intent to excavate or demolish. Notice for any excavation or demolition that does not involve a subaqueous facility must be given within three to twelve full working days before the proposed commencement date of the excavation or demolition. Notice for any excavation or demolition in the vicinity of a subaqueous facility must be made within ten to twenty full working days before the proposed commencement date of the excavation or demolition.

(B) Notice given pursuant to subsection (A) shall expire within fifteen working days after the date of notice. No excavation or demolition may continue after this fifteen-day period unless the person responsible for the excavation or demolition provides a subsequent notice pursuant to subsection (A).

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(C) The notice to the notification center must contain:

- (1) the name, address, and telephone number of the person providing the notice;
- (2) the anticipated start date of the proposed excavation or demolition;
- (3) the anticipated duration of the proposed excavation or demolition;
- (4) the type of proposed excavation or demolition to be conducted;
- (5) the location of the proposed excavation or demolition, not to exceed one-quarter mile in geographical length, or five adjoining addresses; and
- (6) whether or not explosives are to be used in the proposed excavation or demolition.

(D) When demolition of a building is proposed, operators shall be given reasonable time to remove or protect their facilities before demolition is commenced.

- (E) An excavator must comply with the following:
- (1) When the excavation site cannot be clearly and adequately identified within the area described in the notice, the excavator must designate the route, specific area to be excavated, or both, by premarking before the operator performs a locate. Premarking must be made with white paint, flags, or stakes.
  - (2) Check the notification center's positive response system prior to excavating or demolishing to ensure that all operators have responded and that all facilities that may be affected by the proposed excavation or demolition have been marked.
  - (3) Plan the excavation or demolition to avoid damage to or minimize interference with facilities in and near the construction area.
  - (4) Excavation or demolition may begin prior to the specified waiting period if the excavator has confirmed that all operators responded with an appropriate positive response.
  - (5) If an operator declares extraordinary circumstances, the excavator must not excavate or demolish until after the time and date that the operator provided in its response.
  - (6) An operator's failure to respond to the positive response system does not prohibit the excavator from proceeding, provided there are no visible indications of a facility, such as a pole, marker, pedestal, or valve at the proposed excavation or demolition site. However, if the excavator is aware of or observes indications of an unmarked facility, the excavator must not begin excavation or demolition until an additional call is made to the notification center detailing the facility, and an arrangement is made for the facility to be marked by the operator within three hours from the time the additional call is received by the notification center.
  - (7) Beginning on the date provided in the excavator's notice to the notification center, the excavator shall preserve the staking, marking, or other designation until no longer required. When a mark is no longer visible, but the work continues in the vicinity of the facility, the excavator must request a remark from the notification center to ensure the protection of

the facility.

(8) The excavator shall notify the notification center's positive response system when the excavation or demolition is complete.

(9) An excavator may not perform any excavation or demolition within the tolerance zone unless the following conditions are met:

(a) no use of mechanized equipment, except non-invasive equipment specifically designed or intended to protect the integrity of the facility, within the marked tolerance zone of an existing facility until:

(i) the excavator has visually identified the precise location of the facility, or has visually confirmed that no facility is present up to the depth of excavation; and

(ii) reasonable precautions are taken to avoid any substantial weakening of the facility's structural or lateral support, or both, or penetration or destruction of the facilities or their protective coatings.

Mechanical means may be used, as necessary, for initial penetration and removal of pavement or other materials requiring use of mechanical means of excavation and then only to the depth of the pavement or other materials. For parallel type excavations within the tolerance zone, the existing facility shall be visually identified at intervals not to exceed fifty feet along the line of excavation to avoid damages. The excavator shall exercise due care at all times to protect the facilities when exposing these facilities;

(b) maintain clearance between a facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such facility; and

(c) provide support for facilities in and near the excavation or demolition area, including backfill operations, as may be reasonably required by the operator for the protection of such facilities.

## **Section 58-36-70 (Responsibilities of Facility Operators)**

(A) An operator or designated representative must provide to an excavator the following information:

(1) The horizontal location and description of all of its facilities in the area of the proposed excavation or demolition. The location shall be marked by stakes, paint, flags, or any combination thereof as appropriate depending on the site conditions of the proposed excavation or demolition using the APWA Uniform Color Code. If the diameter or width of the facility is greater than three inches, the dimension of the facility will be indicated at least every twenty-five feet in the area of the proposed excavation or demolition. Operators who operate multiple facilities in the same trench shall locate each facility individually.

(2) Any other information that would assist the excavator to identify, and thereby avoid damage to, the marked facilities.

(B) The information in subsection (A) must be provided to the excavator within:

(1) three full working days, not including the day the notice was made, for a facility after notice of the proposed excavation or demolition to the notification center;

(2) ten full working days, not including the day the notice was made, for a subaqueous facility after notice of the proposed excavation or demolition to the notification center; or

(3) as otherwise provided by written agreement by the excavator and the operator or designated representative of the operator.

These time lines do not apply in the event the operator declares an extraordinary circumstance.

(C) An operator may reject an excavation or demolition locate request due to homeland security considerations based upon federal statutes or federal regulations until the operator can confirm the legitimacy of the request. The operator must notify the person

making the request of the denial and request additional information, through the positive response system, within the time frame established in subsection (B).

(D) An operator must provide a positive response to the notification center prior to the expiration of the required notice period. This response shall indicate the status of the required activities of the operator or designated representative in regard to the proposed excavation or demolition.

(E) If the operator determines that provisions for marking subaqueous facilities are required, the operator or their designated representative will provide a positive response to the notification center not more than three full working days after notice of the proposed excavation or demolition from the notification center.

(F) If extraordinary circumstances prevent the operator from marking the location in the required time period, the operator must notify the excavator either by contacting the notification center or by directly contacting the excavator. The operator must state the date and time when the location will be marked.

(G) All facilities installed by or on behalf of an operator as of the effective date of this act, must be electronically locatable using a generally accepted locating method by operators.

(H) A facility locator must notify the operator if the locator becomes aware of an error or omission in facility placement documentation. The operator must update its records to correct the error or omission.

(I) An operator must prepare, or cause to be prepared, installation records of all facilities installed on or after the effective date of this act in a public street, alley, or right-of-way dedicated to public use, excluding service drops and services lines. The operator must maintain these records in its possession while the facility is in service.

(J) An operator that fails to become a member of the association as required by Section 58-36-50(B) may not recover for damages to a facility caused by an excavator that has complied with this chapter and has exercised reasonable care in the performance of the excavation or demolition.

### **Section 58-36-80 (Emergency Excavation)**

(A) An excavator performing an emergency excavation or demolition is exempt from the notice requirements in Section 58-36-60. However, the excavator must give, as soon as practicable, oral notice of the emergency to the notification center and the facility operator. The excavator must provide a description of the circumstances to the notification center and request emergency assistance from each affected operator in locating and providing immediate protection to the facilities.

(B) The declaration of an emergency excavation or demolition does not relieve any party of liability for causing damage to an operator's facilities, even if those facilities are unmarked.

### **Section 58-36-90 (Damages)**

(A) The excavator performing an excavation or demolition that results in any damage to a facility must, immediately upon discovery of such damage, notify the notification center and the facility operator, if known, of the location and nature of the damage. The excavator must allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such facility. The excavator shall delay any backfilling in the immediate area of the damaged facility until authorized by the operator. The repair of any damage shall be performed by the operator or by qualified personnel authorized by the operator.

(B) An excavator responsible for any excavation or demolition

that results in damage to a facility where damage results in the escape of any flammable, toxic, or corrosive gas or liquid, or electricity, or endangers life, health, or property, immediately shall notify emergency services, including 911, the notification center and the operator, if known. The excavator must take reasonable measures to protect themselves, those in immediate danger, the general public, property, and the environment until the operator or emergency responders have arrived and completed their assessment.

### **Section 58-36-100 (Design Requests)**

(A) A designer may submit a design request to the notification center. The design request shall describe the tract or parcel of land for which the design request has been submitted with sufficient particularity, as defined by policies developed and promulgated by the notification center, so that the operator can ascertain the precise tract or parcel of land involved.

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(B) Within fifteen working days after a design request has been submitted to the notification center for a proposed project, the operator shall respond by one of the following methods:

- (1) designate the location of all facilities within the area of the proposed excavation pursuant to Section 58-36-70(A);
- (2) provide to the person submitting the design request the best available description of all facilities in the area of proposed excavation, which may include drawings of facilities already built in the area, or other facility records that are maintained by the operator; or
- (3) allow the person submitting the design request or any other authorized person to inspect the drawings or other records for all facilities within the proposed area of excavation at an acceptable location.

(C) An operator may reject a design request based on homeland security pending additional information confirming the legitimacy of the request. The operator must notify the person making the request of the denial and request additional information, through the

positive response system, within the time frame set forth in Section 58-36-70(B).

### **Section 58-36-110 (Exemptions)**

A person is exempt from the requirements of Section 58-36-60(A) when an excavation is performed under the following conditions:

- (1) by the owner of a single-family residential property on his own land when the excavation:
  - (a) does not encroach on any operator's known right-of-way, easement, or permitted use;
  - (b) is performed with nonmechanized equipment; and
  - (c) is less than ten inches in depth;
  
- (2) tilling or plowing of soil when less than twelve inches in depth for agricultural purposes;
  
- (3) for excavation with nonmechanized equipment by an operator or an agent of an operator for the following purposes:
  - (a) locating for a valid notification request, or for the minor repair, connecting or routine maintenance of an existing facility; or
  - (b) underground probing to determine the extent of gas or water migration.
  
- (4) when the Department of Transportation, a local government, special purpose district, or public service district is carrying out maintenance activities within its designated right-of-way, which may include resurfacing, milling, emergency replacement of signs critical for maintaining safety, or the reshaping of shoulder and ditches to the original road profile.

### **Section 58-36-120 (Penalties)**

Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed one thousand dollars for

each violation. Actions to recover the penalty provided for in this section shall be brought by the Attorney General at the request of the injured party in the proper forum in and for the county in which the cause, or some part thereof, arose or in which the defendant has its principal place of business or resides. All penalties recovered in any such actions shall be equally divided between the state's general fund and the Office of the Attorney General.

This chapter does not affect any civil remedies for personal injury or property damage except as otherwise specifically provided for in this chapter. The penalty provisions of this chapter are cumulative to, and not in conflict with, provisions of law with respect to civil remedies for personal injury or property damage.”

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#### Repeal

SECTION 2. Chapter 35, Title 58 of the 1976 Code is repealed.

#### Severability clause

SECTION 3. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act. The General Assembly hereby declares that it would have passed this act irrespective of the fact that any of one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid or otherwise ineffective.

#### Time effective

SECTION 4. The provisions of this chapter become effective one year after approval by the Governor.

Ratified the 1st day of June, 2011.

Approved the 7th day of June, 2011.

# OSHA REGULATION

## 1926.651

### b) Underground installations:

(1) The estimated location of utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be determined prior to opening an excavation.

(2) Utility companies or owners shall be contacted within established or customary local response times, advised of the proposed work, and asked to establish the location of the utility underground installations prior to the start of actual excavation. When utility companies or owners cannot respond to a request to locate underground utility installations within 24 hours (unless a longer period is required by state or local law), or cannot establish the exact location of these installations, the employer may proceed, provided the employer does so with caution, and provided detection equipment or other acceptable means to locate utility installations are used.

(3) When excavation operations approach the estimated location of underground installations, the exact location of the installations shall be determined by safe and acceptable means.

(4) While the excavation is open, underground installations shall be protected, supported or removed as necessary to safeguard employees.





**Know what's below.  
Call before you dig.**

**www.sc811.com**

**or Click before you dig**

**SC811 LOCATE NOTICE REQUEST # 2002183846 Normal**

Created By: lkb                      Created Date: 2/18/2020 4:55:41 PM  
 Source: Web                         Work Date: 2/21/2020 11:59:00 PM  
 Type: Normal                        Update On: 03/10/20 11:59 PM  
     Good Through: 03/13/20 11:59 PM

**NOTIFIED MEMBER RESPONSES AS OF Wednesday, April 29, 2020 7:49 AM**

<u>Code</u>	<u>Name</u>	<u>Facilities</u>	<u>Phone</u>
NCSD72	<b>**Not AfterHours – N Charleston Sewer District</b> • February 19, 2020 4:04 PM – 10 – No Conflict – by lbrown@ncsd-sc.com <i>Comment:</i>	Sewer	(843) 764-3072
BSZT29	<b>AT&amp;T/D – BSZT29</b> • February 21, 2020 2:30 PM – 20 – Marked – by USICMemberPR <i>Comment:</i>	Phone	(843) 536-7203
360	<b>CHANDLER CONSTRUCTION SERVICES, INC.</b> • March 14, 2020 2:10 AM – LE – System close after ticket expires. – by AutoClose <i>Comment: Closed by the system process for excessive age.</i>	360	
CPWZ69	<b>Charleston Water System</b> • February 21, 2020 2:30 PM – 20 – Marked – by USICMemberPR <i>Comment:</i>	Water	(843) 536-7203
CPWZ69	<b>Charleston Water System</b> • February 21, 2020 2:30 PM – 10 – No Conflict – by USICMemberPR <i>Comment:</i>	Sewer	(843) 536-7203
COMZ41	<b>Comcast Cablevision-Low Country – COMZ41</b> • February 21, 2020 2:30 PM – 10 – No Conflict – by USICMemberPR <i>Comment:</i>	Cable	(843) 536-7203
SCEWZ80	<b>Dominion Energy Electric – SCEWZ80</b> • March 13, 2020 4:02 PM – 20 – Marked – by norfield_scpr <i>Comment:</i> • March 13, 2020 3:59 PM – 20 – Marked – by UTIL-PAL <i>Comment:</i> • February 22, 2020 1:13 AM – 999 – Member has not responded by the required time – by AutoClose <i>Comment: Closed by the system process for excessive age.</i>	Electric	(803) 791-3929
SCGZ90	<b>Dominion Energy Gas – SCGZ90</b> • March 13, 2020 4:02 PM – 20 – Marked – by norfield_scpr <i>Comment:</i> • March 13, 2020 3:59 PM – 20 – Marked – by UTIL-PAL <i>Comment:</i> • February 22, 2020 1:15 AM – 999 – Member has not responded by the required time – by AutoClose <i>Comment: Closed by the system process for excessive age.</i>	Gas	(803) 791-3929
KNO45	<b>Wide Open West (W.O.W.) (formerly Knology of the Low Country)</b> • February 21, 2020 8:40 AM – 20 – Marked – by scott.ward@wowinc.com <i>Comment:</i>	Cable	(843) 901-6632

**Company Information**

Company Name: CHANDLER CONSTRUCTION SERVICES, INC.  
 Company Address: 1511 Ninety Six Highway  
 Ninety Six, SC 29666

Caller: Samuel Kraebber  
 Caller Phone: (843) 439-9255  
 Caller Email: sckraebber@chandlerconstruction.com

Site Contact: Samuel Kraebber  
 Site Phone: (843) 439-9255  
 Callback:  
 Site Contact: sckraebber@chandlerconstruction.com  
 Email:

**Work Information**

State:	SC	Type:	WATER AND SEWER	Explosives:	False
County:	CHARLESTON		INSTALL/REPAIR	Drilling/Boring:	False
Place:	NORTH	Done By:	Chandler	Premarked:	False
	CHARLESTON		Construction	Near Railroad:	True
Subdivision:			Services		

Street: MCMILLAN AVE

Intersection: ST. JOHNS AVENUE

Extent: 1 month

**Instructions**

STARTING AT ST. JOHNS AVE, MARK  
 BOTH SIDES OF MCMILLAN TO

INCLUDE THE ROADWAY ITSELF FOR 1200FT GOING IN A NORTHEAST DIRECTION

**Directions**

Starting from St. Johns Ave going towards Noisette. Mark both roadways of McMillan and the northern grassed right of way. Southern right of way not needed

**Remarks**

Color Code marking used by SC811 facility members are:

Red – Electric  
Yellow – Gas  
Orange – Communication  
Telephone, Cable TV  
Blue – Water  
Green – Sewer

Per section 58-36-20:21 of the South Carolina Underground Facility Damage Prevention Act 'Tolerance zone' means:

- (a) if the diameter of the facility is known, the distance of one-half of the known diameter plus twenty-four inches on either side of the designated center line;
- (b) if the diameter of the facility is not marked, twenty-four inches on either side of the outside-edge of the mark indicating a facility; or
- (c) for subaqueous facilities, a clearance of fifteen feet on either side of the indicated facility.

When the excavation site cannot be clearly and adequately identified within the area described in the notice, the excavator must designate the route, specific area to be excavated, or both, by pre-marking before the operator performs a locate. Pre-marking must be made with white paint, flags or stakes.

If any damage result from excavation or demolition where the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, or electricity or endangers life, health or property, immediately notify emergency services, including 9-1-1, the notification center and the operator, if known.

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Remember: If this involves a damage, please contact the facility owner/operator and fill out your damage report on SC811 website at <http://www.sc1pups.org/Excavators/DamageReportingTool.aspx>

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**Recommended Marking Guidelines  
For Underground Utilities**

**Adopted by APWA Board of Directors  
September 12, 2001**

# Recommended Marking Guidelines For Underground Utilities

## The APWA Marking Recommendations Committee

The APWA Marking Recommendations Committee was organized and operated under guidelines similar to those used by the Common Ground: Best Practices committees.

- Anyone on the committee could propose or recommend existing marking practices.
  - Only those practices receiving a consensus of all committee members were included in the final recommendations.
  - ~~The committee felt that the original name for the committee: "APWA-Marking Standards Committee" be changed to the "APWA Marking Recommendations Committee", this change was agreed to by all committee members. Henceforth, all proposals from the committee will be referred to as *recommendations* versus *standards*.~~
1. **"Utility lines will be indicated by markings using current APWA color codes. Markings should be 18"-24" in length and 2" in width."**
  2. **"The owner of a facility should be indicated by initials or by name in letters 6" high at the beginning and end of the locate. On long locates the facility owner should be indicated every 100'."**
  3. **"When known, the total number of lines within the ground will be indicated."** The number of lines indicated should be based on the physical lines "that you could place your hands on". Multiple cables twisted together to form a single facility, as in the case of electric lines, would be considered one cable for locate purposes.
  4. **"If a facility is known to be present but the total number of lines for a facility cannot be determined a corridor marker may be used. The corridor marker should indicate the approximate width of the facility."** A marking resembling the letter "H" lying on its side will indicate the corridor marker.
  5. **"When known, the size of the line being located will be indicated. Line size will indicate the outside diameter of the pipe or structure. The oversized utility marking should indicate the approximate size of pipe or structure."** A mark resembling the letter "H" lying on its side, bisected by line extending along its length will indicate the oversized utility marking. The committee discussions centered on indicating sizes of single physical structures such as gas lines, sewer lines, water lines, and storm drains.

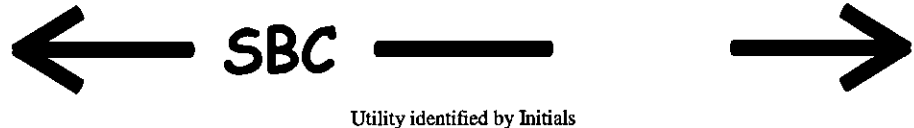
6. **“Duct structures, whether a single duct or multiple ducts, will be indicated by duct symbol indicating the approximate width of the duct structure.”** The duct marker will be indicated by a marking resembling a diamond bracketed by two parallel lines. The committee did not state whether indicating size should extend to indicating size of duct structures (telecommunications, electric) or indicating pair count for telephone lines.
7. **“When known, the pressure of a gas facility will be indicated.”** Gas pressure will be indicated as either low pressure, intermediate high pressure or high pressure. The committee did not determine whether gas pressure would be indicated in instances of high pressure only or for all pressures. The committee did not determine whether the type of pipe should be indicated (plastic, steel, cast iron, etc.).
8. **“When known, termination points, dead ends and stub outs should be indicated.”** The committee reviewed NULCA’s recommendation, which resembles the letter “T” with drop downs.
9. **“When there is a strong likelihood that marks may be destroyed offsets should be used.”** Offsets are indicated on a permanent surface and are placed parallel to the running line of the facility. The offset should indicate the distance from the offset to the facility and should identify the facility owner and if necessary size of the facility.

***The following issues were discussed but either a consensus could not be reached or further discussion was considered necessary:***

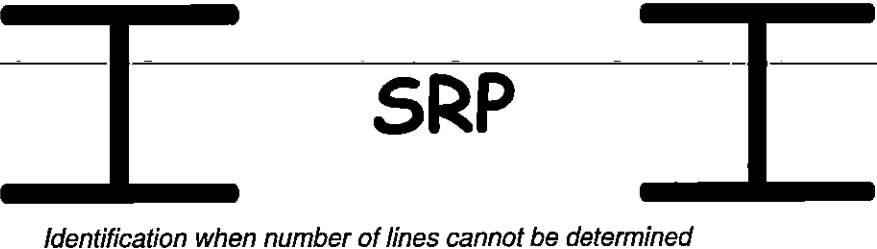
1. How does a locator indicate that access could not be gained to a yard or location and the locate request could not be completed. This is usually due to locked fences, dogs or other physical obstructions. The committee felt that a marking standard for this issue would not be developed. Suggestions that would be acceptable included the use of door hangers (indicating that the locator needed access to the property) and/or telephone calls to the requestor.
2. How and when do we indicate the presence of buried, abandoned facilities? Excavators felt that the utilities should indicate ALL facilities in the ground regardless of status. Utility records often do not indicate the presence of abandoned facilities. Access may not be available to abandoned facilities or those facilities may not be capable of being located. An additional issue is whether the abandoned facility should be identified as abandoned.
3. How to indicate the presence of electronic markers (EM's).
4. How to indicate the presence of buried splices, valves and manholes.

The following are samples on how the above suggestions would look:

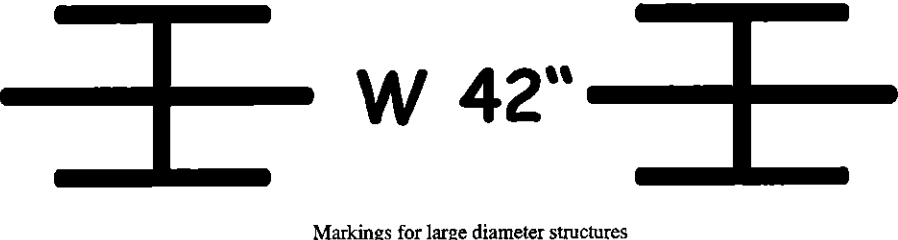
**Line Markings**



**Corridor Markings**



**Oversized Utility Markings**



**Conduit Markings**



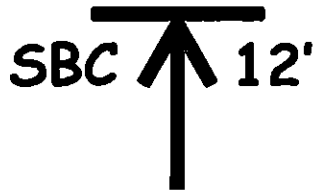
**Marking Gas Lines – High Pressure**



**Marking Termination Point, Dead End, Stub Outs**



**Marking Offsets**



*Indicate – Facility owner, direction to utility and distance to facility*

**No Conflict (No utilities within the requested area)**

**NO/MCI**

**NO/EPG**

**Proposed Markings – Consensus not reached by committee**

**Electronic Marker**

**EM**

**Marking Buried Splices, Valves, Manholes**



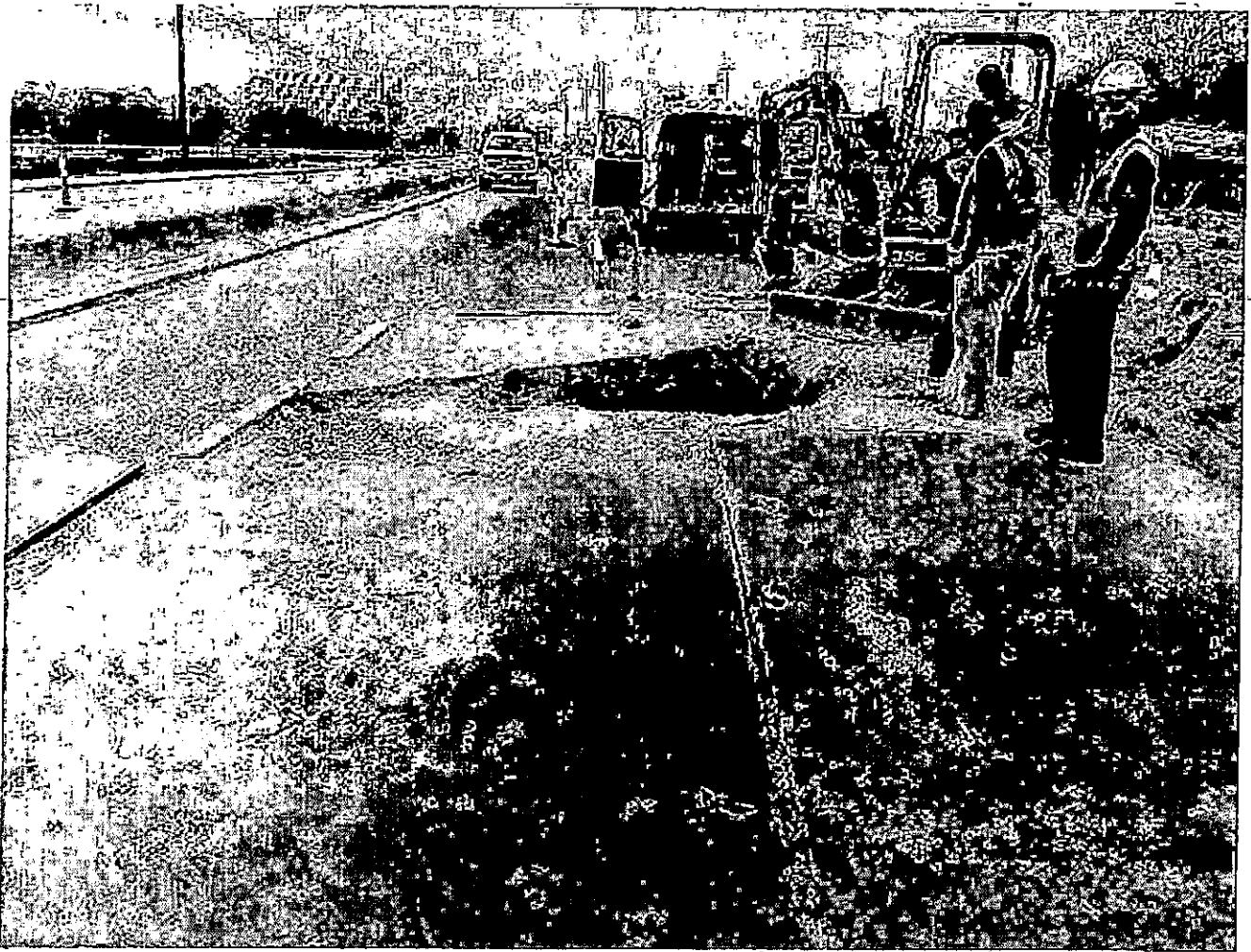
D-3

1/31



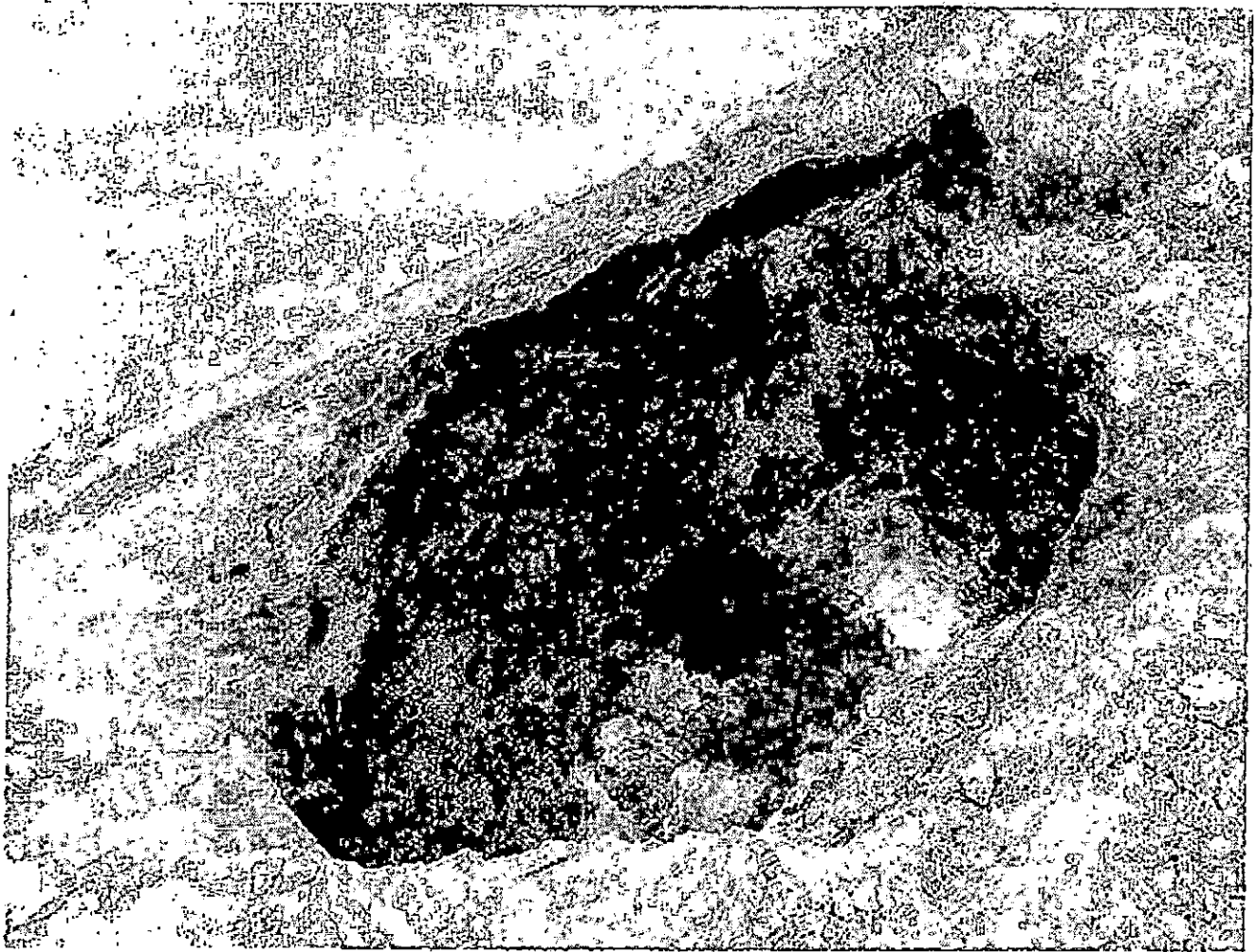
Property of United States Infrastructure Corporation  
Photo created on 03/16/2020 14:08:23 PM EDT

2/31



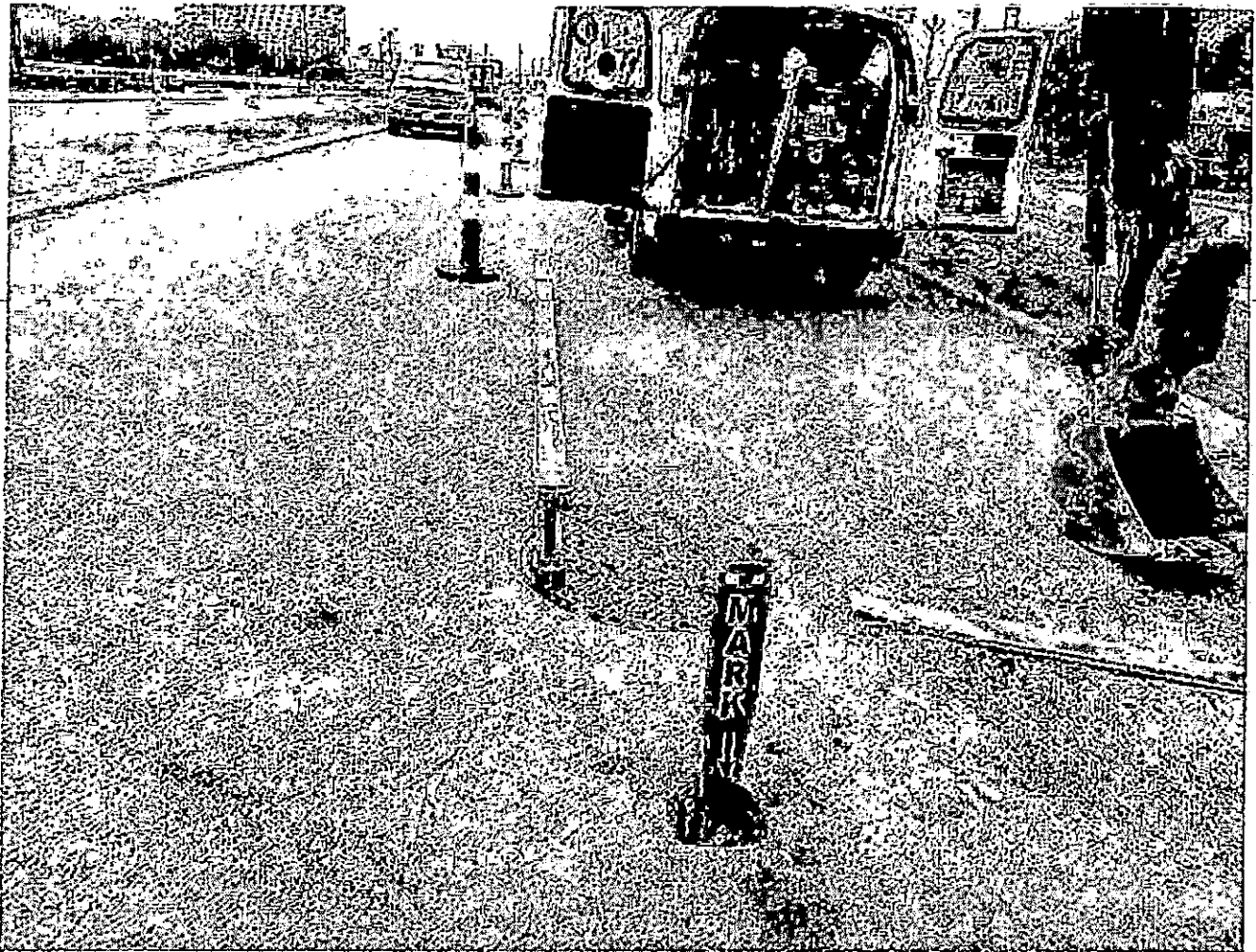
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Photo created on 03/16/2026 14:08:28 EDT

3/31



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Photo created on 03/16/2020 14:08:33 PM EDT

4/31



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Photo created on 03/16/2020 14:08:38 PM EDT

5/31



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Photo created on 03/16/2020 14:09:05 PM EDT

6/31



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Photo taken on 3/9/2020 8:53:16 AM

7/31



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Photo taken on 3/9/2020 8:53:53 AM

8/31



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9/31



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10/31



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Photo created on 03/16/2020 7:40:34 PM EDT

11/31



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12/31



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Photo created on 03/16/2020 14:09:07 PM EDT

13/31



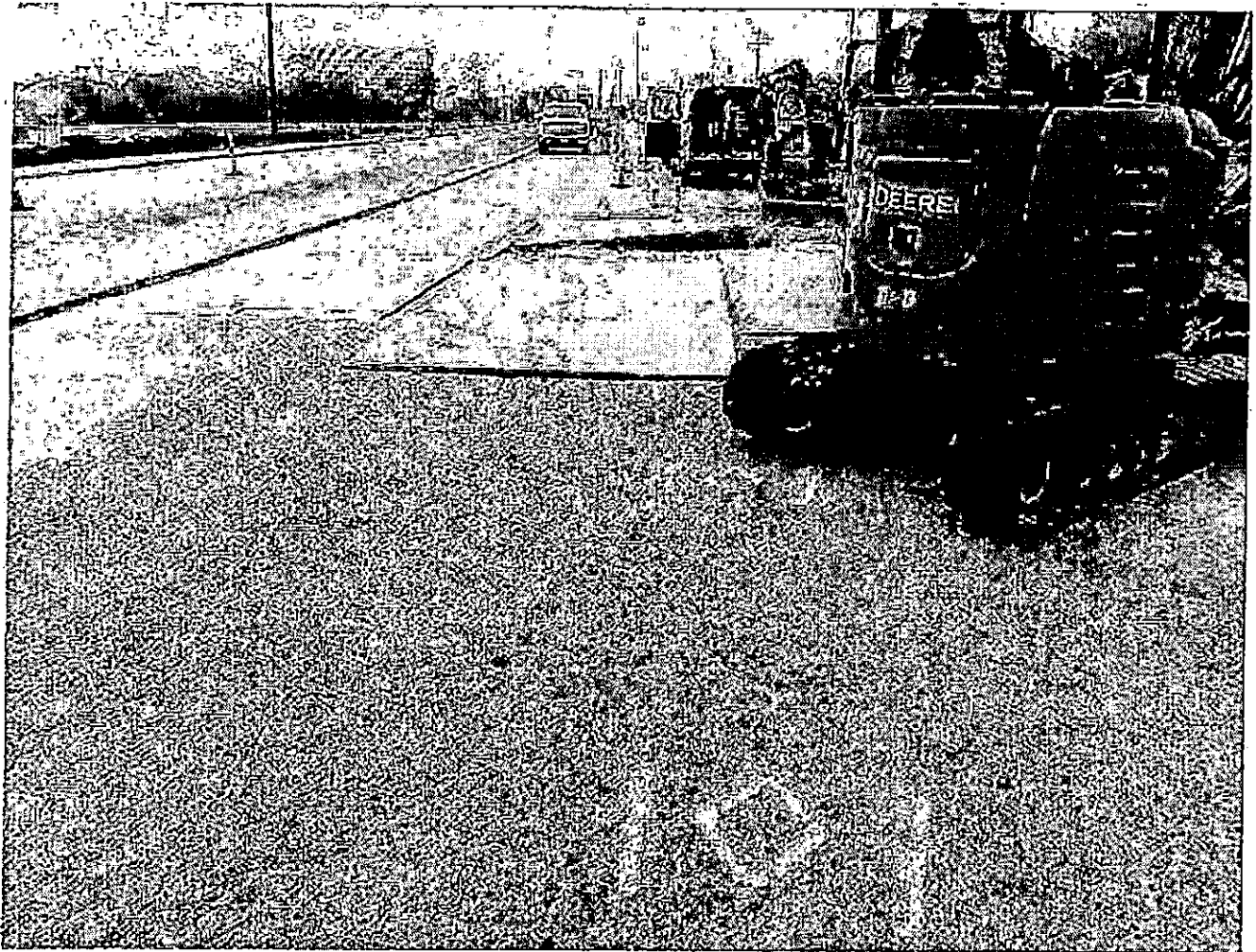
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Photo taken on 3/9/2020 8:53:47 AM

14/31



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Photo taken on 3/9/2020 8:53:55 AM

15/31



Property of United States Infrastructure Corporation  
Photo created on 03/16/2020 14:08:22 PM EDT

16/31



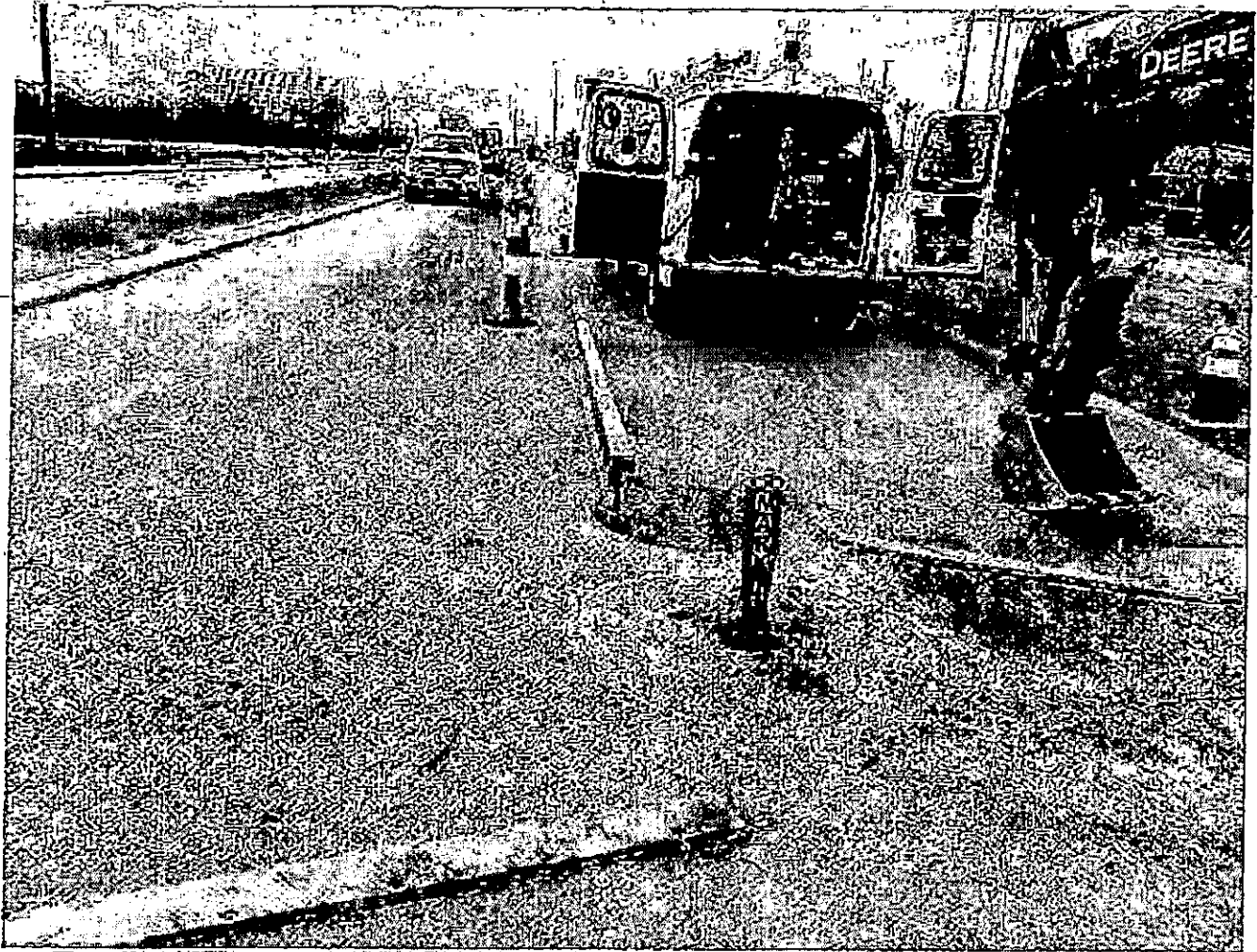
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Photo created on 03/16/2020 14:08:27 P.M. EDT.

17/31



Property of United States Infrastructure Corporation  
Photo created on 03/16/2020 14:08:31 PM EDT

18/31



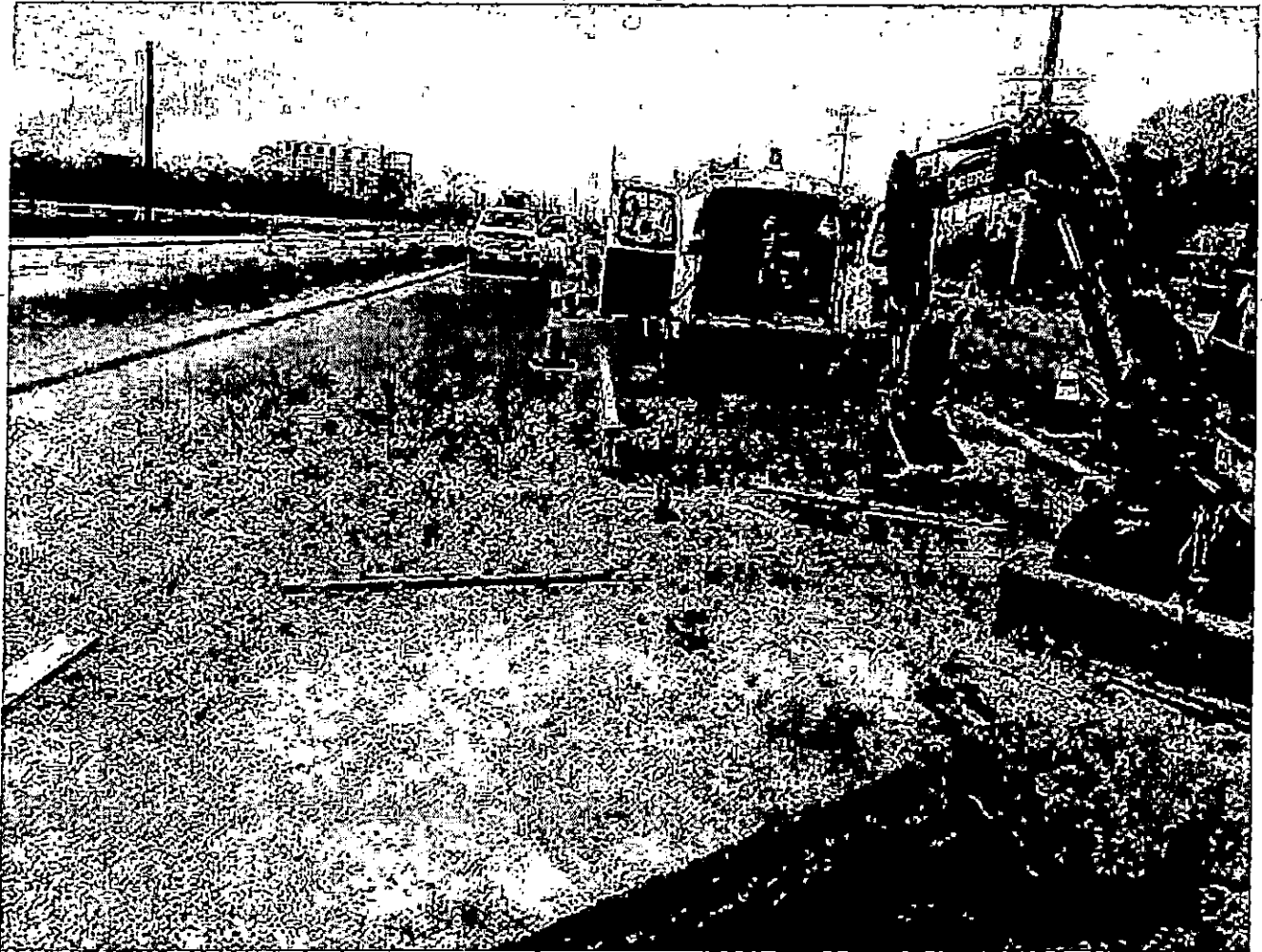
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19/31



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Photo created on 03/16/2020 14:09:03 P.M EDT

20/31



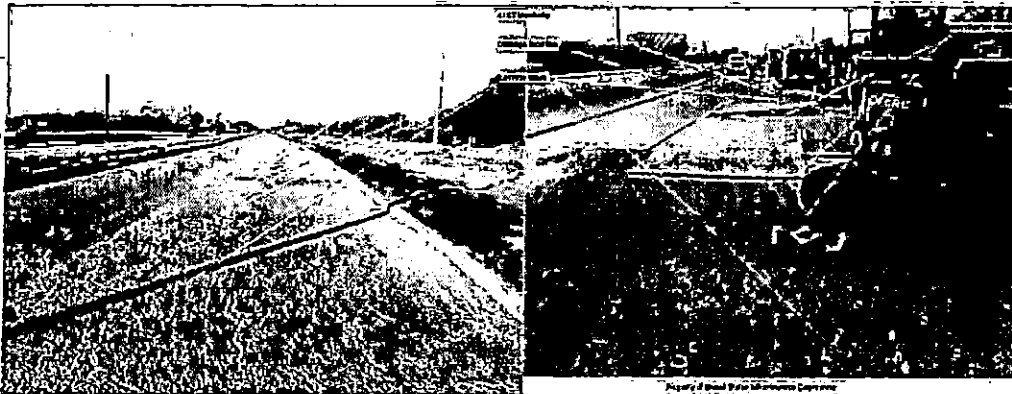
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Photo created on 03/16/2020 14:09:09 PM EDT

21/31



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Photo taken on 3/9/2020 8:53:51 AM

22/31



Property of [illegible] [illegible] [illegible]  
Photo taken on 11/19/2019 11:57 AM

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Photo taken on 11/19/2019 11:57 AM

23/31



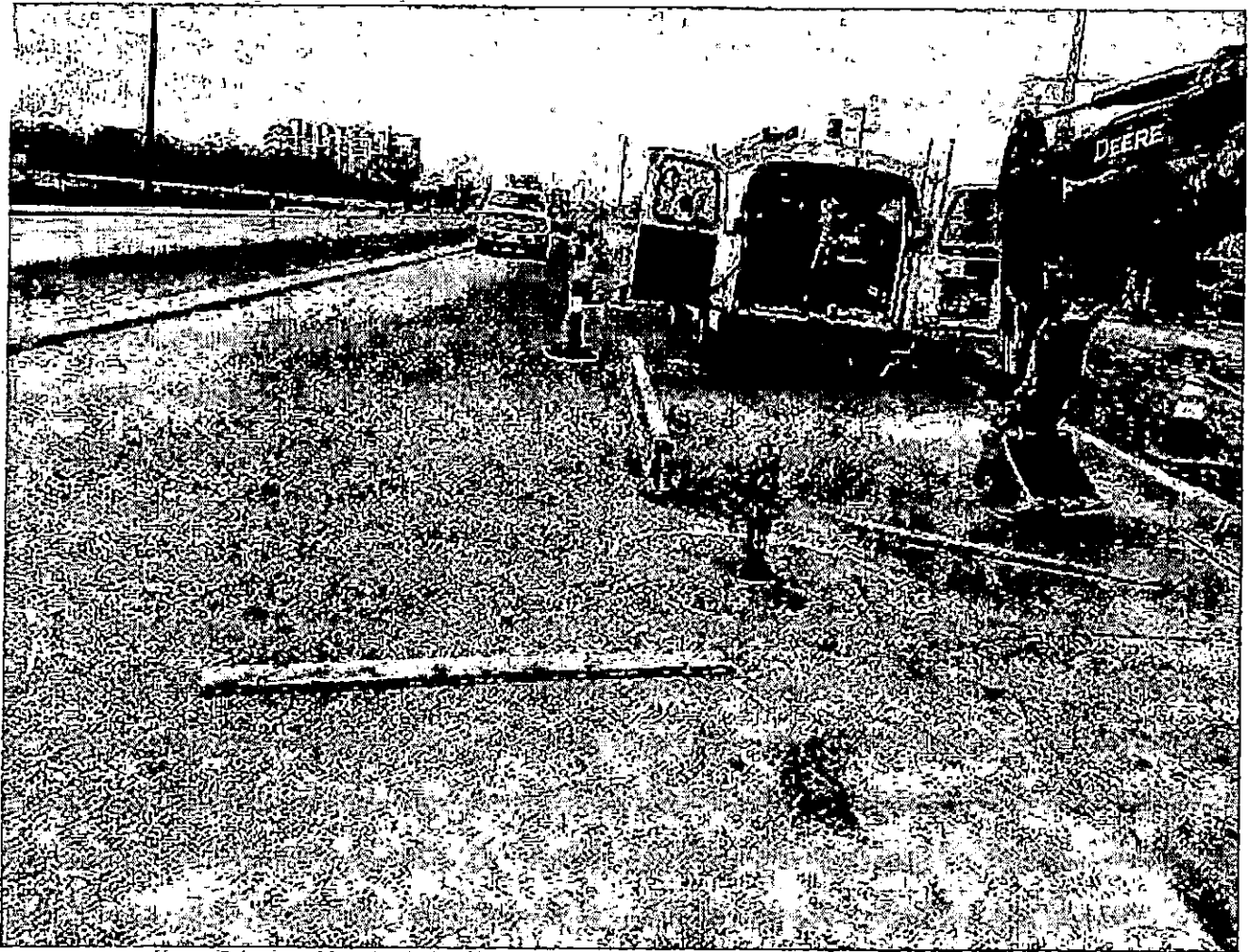
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Photo created on 03/16/2020 14:08:26 PM EDT

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Photo created on 03/16/2020 14:08:30 PM EDT

25/31



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Photo created on 03/16/2020 14:08:36 PM EDT

26/31



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2-7/31



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28/31



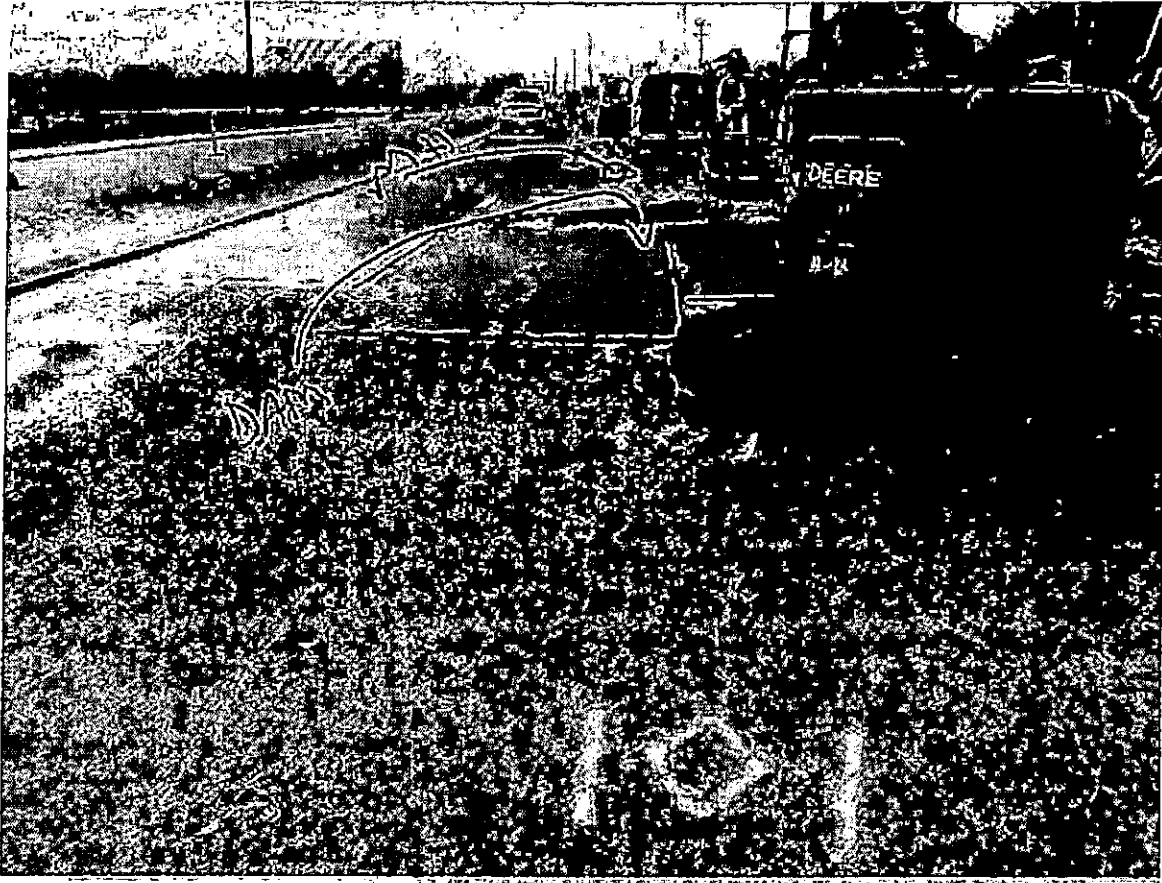
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Photo taken on 3/9/2020 8:53:50 AM

29/31



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Photo taken on 3/9/2010 8:53:36 AM

30/31



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Photo created on 03/16/2020 14:05:22 PM EDT

Thanks,  
Kelly Crews  
AT&T Sr. Risk Specialist GA, AL, SC, FL  
[kelly.howard@att.com](mailto:kelly.howard@att.com)  
404-863-8730

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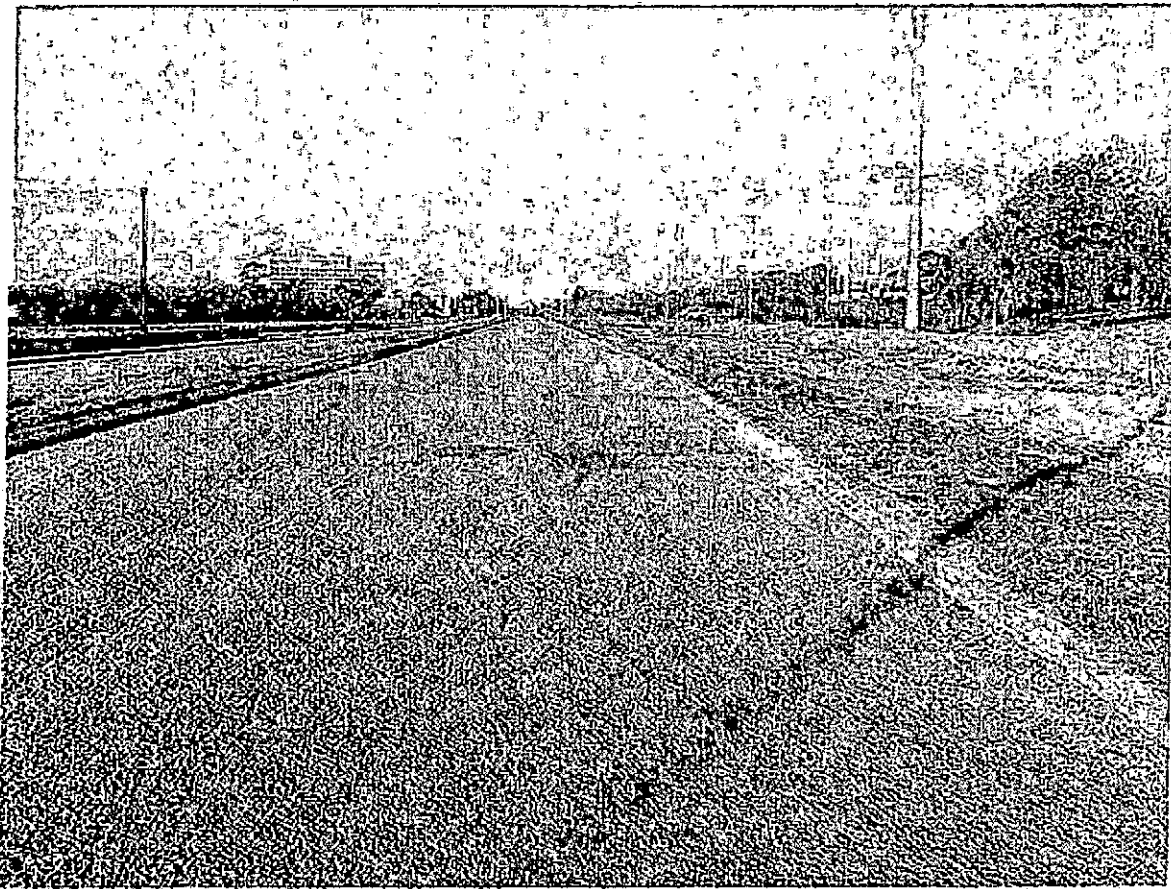
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D := 31/3

**Cheryl**

**From:** CREWS, KELLY A <kh4354@att.com>  
**Sent:** Wednesday, January 26, 2022 3:00 PM  
**To:** WEBB, THURSTON H (Legal)  
**Cc:** Cheryl  
**Subject:** Chandler Case  
**Attachments:** FBI\_1\_for\_DOTS\_1976488\_Claim\_BLST64202003550062.msg

The locate investigation contains pre-excavation photos taken 4 days prior to the damage. The damaged duct containing the 2400pr was clearly marked and the marking indicate a duct and the manhole is also in line of sight of the dig. Sending tech photos in next email.



Property of United States Infrastructure Corporation  
Photo taken on 3/9/2020 8:53:53 AM

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ROSEN HAGOOD, LLC

By: */s/ Elizabeth F. Nicholson*  
Elizabeth F. Nicholson (SC Bar 102334)  
James A. Bruorton, IV (SC Bar 71300)  
40 Calhoun Street, Suite 450  
Charleston, SC 29401  
(843) 577-6726  
ATTORNEYS FOR APPELLANT

April 26, 2023

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**RECEIVED**

APR 28 2023

SC Court of Appeals