

08-2102-CD
Verizon PA Inc. vs City of DuBois

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,

CIVIL DIVISION

Plaintiff,

No. 2008-2102-CD

v.

COMPLAINT IN CIVIL ACTION

CITY OF DUBOIS,

Defendant.

Filed on Behalf of Plaintiff,

VERIZON PENNSYLVANIA INC.

Counsel of Record for this Party:

Kenneth G. Scholtz, Esquire
PA I.D. No. 87467

TUCKER ARENSBERG, P.C.
Firm I.D. No. 287

1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

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FILED ATTY PAID 95.00
M 3:23 P.M. GK
NOV 03 2008 I CC ATTY
William A. Shaw I COMPL. SITFF
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,	)	CIVIL DIVISION
)	
)	
Plaintiff,	)	No. _____
)	
)	
v.)	
)	
)	
CITY OF DUBOIS,)	
)	
)	
Defendant.)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

NORTHWESTERN LEGAL SERVICES
Renaissance Centre
1001 State St.
Suite 1200
Erie, Pennsylvania 16501

1.800.665.6957
814.362.6596

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,	)	CIVIL DIVISION
)	
)	
Plaintiff,	)	No. _____
)	
)	
v.)	
)	
)	
CITY OF DUBOIS,)	
)	
)	
Defendant.)	

COMPLAINT IN CIVIL ACTION

Plaintiff, Verizon Pennsylvania, Inc. ("Verizon") by and through its attorneys, Tucker Arensberg, P.C., files this Complaint in Civil Action and in support thereof, states as follows:

1. Plaintiff, Verizon is a Pennsylvania corporation with its principle place of business at 200 Stanwix Street, Pittsburgh, PA 15222, and is engaged in the business of providing telecommunications services.
2. Defendant, City of DuBois ("Defendant") is a Pennsylvania governmental subdivision, with central offices located at 10 Parkway Drive, City of DuBois, PA 15801.
3. On or about October 4, 2007, agents and/or employees of Defendant were performing excavation work on Parkway Drive, in the City of DuBois, Clearfield County, Pennsylvania. The excavation work included the use of heavy machinery and/or excavation equipment, including use of an underground boring machine.

4. Prior to performing the excavation work, the City of DuBois notified various utility providers of their intention to perform excavation work through the Pennsylvania One Call System.

5. Upon receipt of the One Call notification, agents and/or employees of Verizon marked the location of Verizon underground utility lines pursuant to the requirements of the Pennsylvania One Call Act. 73 P.S. § 176 et seq.

6. It is believed and therefore averred that Defendant ignored, or failed to observe the line location marks left by Verizon employees. As a result, excavation performed by Defendant resulted in damage to Verizon's underground lines. The destroyed and/or damaged equipment that was owned and maintained by Verizon was located beneath the surface of the ground, street or sidewalk along Parkway Drive in the City of DuBois, Clearfield County, Pennsylvania.

7. It is believed and therefore averred that the agents and/or employees of Defendant were acting in the scope of their employment as an agent/or employee of Defendant at the time this incident occurred.

8. The aforementioned incident, and all damages consequent thereto, were caused solely by, and were the direct and proximate result of, the negligence and carelessness of an employee and/or agent of Defendant in the following respects:

- (a) Failure to use caution in performing excavation in an area known to contain underground utilities;
- (b) Failing to comply with the requirements set forth in the Pennsylvania One Call Act, 76 P.S. § 176 et seq.;
- (c) Failing to use the care and caution required of a professional excavator;

(d) Failing to observe and avoid contact with underground utility lines.

9. As a direct and proximate result of Defendant's negligence, Verizon was required to expend \$22,733.27 for material, labor, engineering costs, motor vehicle costs, equipment costs, contracting costs, and other related costs, to repair the Verizon facilities. Such repair work was performed in a reasonable and workmanlike manner.

WHEREFORE, Plaintiff Verizon requests that judgment be entered against the Defendant in the amount of \$22,733.27 together with the interest, fees and costs of filing this Civil Action.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Kenneth G. Scholtz, Esquire
PA I.D. # 87467

Attorneys for Plaintiff,
VERIZON PENNSYLVANIA INC.

1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212
www.tuckerlaw.com

VERIFICATION

I, the undersigned, hereby certify and affirm that I am an authorized agent and employee of VERIZON PENNSYLVANIA INC., with knowledge of the events that give rise to the current action; for purposes of filing the above Complaint in Civil Action, I depose and say that the facts in the foregoing Complaint in Civil Action are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsifications to authorities.

10/24/08
Date

Tonya R. Dahn

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Verizon Pennsylvania, Inc.,

CASE NUMBER: 2008-2102-C

Plaintiff,

ISSUE NUMBER:

v.

PLEADING:

City of DuBois,

PRAECIPE FOR APPEARANCE

Defendant.

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

City of DuBois, Defendant.

COUNSEL OF RECORD:

MARK R. HAMILTON, ESQUIRE
Pa. ID# 29919

PHILIP J. SBROLLA, ESQUIRE
Pa. ID# 90231

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

5 FILED NOCC.
m/11:45pm
NOV 10 2008
(lm)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Verizon Pennsylvania, Inc.,	)	CASE NO:
)	
Plaintiff,)	
)	
v.)	
)	
City of DuBois,)	
)	
Defendant.)	

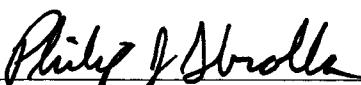
PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Kindly enter the appearance of Mark R. Hamilton, Esquire, Philip J. Sbrolla, Esquire and Cipriani & Werner, P.C. on behalf of the defendant, City of DuBois, in the above-captioned matter.

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: 

MARK R. HAMILTON, ESQUIRE
PHILIP J. SBROLLA, ESQUIRE
Attorney for the Defendant
City of DuBois

A JURY TRIAL IS DEMANDED

CERTIFICATE OF SERVICE

That counsel for the defendant, City of DuBois, hereby certifies that a true and correct copy of its **PRAECIPE FOR APPEARANCE** has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 6th day of November, 2008.

Kenneth G. Scholtz, Esquire
Tucker Arensberg, PC
1500 One PPG Place
Pittsburgh, PA 15222

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: 
MARK E. HAMILTON, ESQUIRE
PHILIP J. SBROLLA, ESQUIRE
Attorney for the Defendant
City of DuBois

A JURY TRIAL IS DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-2102-CD

VERIZON PENNSYLVANIA INC.

vs
CITY OF DUBOIS

SERVICE # 1 OF 1

COMPLAINT

SERVE BY: 12/03/2008 HEARING: PAGE: 104872

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FILED

0/8/31 cm
DEC 15 2008

DEFENDANT: CITY of DUBOIS
ADDRESS: ATTN: SOLICITOR, 10 PARKWAY DRIVE
DUBOIS, PA 15801

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

William A. Shaw
Prothonotary/Clerk of Courts

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT

OCCUPIED

ATTEMPTS

SHERIFF'S RETURN

NOW, 11-24-08 AT 2:04 AM / PM SERVED THE WITHIN

COMPLAINT ON CITY of DUBOIS, DEFENDANT

BY HANDING TO Toni Cherry / SOLICITOR

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 10 Parkway Drive Dubois PA 15801

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT FOR CITY of DUBOIS

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO CITY of DUBOIS

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Jerome Nevius
Deputy Signature

Jerome Nevius
Print Deputy Name

DAY OF 2008

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JAN 26 2009
2/12/09
William A. Shaw
Prothonotary/Clerk of Courts
S NO 4C 60

Verizon Pennsylvania, Inc.,

CASE NUMBER: 2008-2102-CD

Plaintiff,

ISSUE NUMBER:

v.

City of DuBois,

ANSWER AND NEW MATTER

Defendant.

CODE AND CLASSIFICATION:

JURY TRIAL DEMANDED

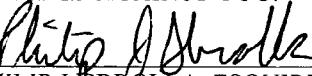
NOTICE TO PLEAD

TO: PLAINTIFF

FILED ON BEHALF OF:

YOU ARE HEREBY NOTIFIED TO FILE A
WRITTEN RESPONSE TO THE WITHIN
ANSWER, NEW MATTER AND
COUNTERCLAIM WITHIN 20 DAYS OF
SERVICE HEREOF OR A JUDGMENT MAY BE
ENTERED AGAINST YOU.

City of DuBois, Defendants.



PHILIP J. SBROLLA, ESQUIRE
ATTORNEY FOR DEFENDANT

COUNSEL OF RECORD:

PHILIP J. SBROLLA, ESQUIRE
Pa. ID# 90231

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Verizon Pennsylvania, Inc.,	)	CASE NO:
)	
Plaintiff,)	
)	
v.)	
)	
City of DuBois,)	
)	
Defendant.)	

ANSWER AND NEW MATTER

AND NOW COMES THE DEFENDANT, City of DuBois, by and through its attorneys, Cipriani & Werner, P.C. by Philip J. Sbrolla, Esquire, and files this Answer and New Matter, which is as follows:

1. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied as stated. To the contrary, Verizon failed to mark the location of Verizon underground utilities in the area where Plaintiff alleges damage occurred.
7. Admitted.
8. The averments contained in paragraph 8 and subparagraphs (a) through (d) constitute multiple legal conclusions to which no response is required. To the extent a

further response is deemed required, said averments are denied in accordance with Pa.R.C.P. 1029(d) and (e).

9. The averments contained in paragraph 9 constitute multiple legal conclusions to which no response is required. To the extent a further response is deemed required, said averments are denied in accordance with Pa.R.C.P. 1029(d) and (e).

WHEREFORE, Defendant, City of DuBois, demands judgment in its favor and against the Plaintiff with costs of suit sustained.

NEW MATTER

10. Paragraph 1 through 9 of this pleading are incorporated herein by reference.

11. Defendant asserts the comparative negligence of the Plaintiff as a defense to Plaintiff's Complaint. Specifically, the mismarking of Plaintiff's telecommunications line/conduit by Plaintiff's agents, servants, employees, contractors and/or subcontractors in a manner which was negligent and not compliant with the Underground Utility Line Protection Law, 73 P.S. §176 et seq.

WHEREFORE, Defendant, City of DuBois, denies any liability to the Plaintiff and respectfully requests judgment to be entered on its behalf.

Respectfully submitted,

CIPRIANI & WERNER, P.C.

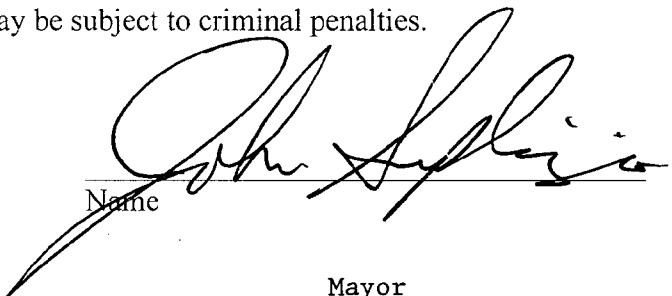
BY: 
PHILIP J. SBROLLA, ESQUIRE
Attorney for the Defendant
City of DuBois

VERIFICATION

I, JOHN SUPLIZIO, hereby certify that the statements in this ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief, including information provided to me by employees of this organization. This statement and verification is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I knowingly make false statements, I may be subject to criminal penalties.

DATE

Name



John Suplizio

Title

CERTIFICATE OF SERVICE

That counsel for the Defendant, City of DuBois, hereby certifies that a true and correct copy of its Answer and New Matter has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 23rd day of January, 2009

Kenneth G. Scholtz, Esquire
Tucker Arensberg, PC
1500 One PPG Place
Pittsburgh, PA 15222

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: Philip J. Sbrolla
PHILIP J. SBROLLA, ESQUIRE
Attorney for the Defendant
City of DuBois

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,

CIVIL DIVISION

Plaintiff,

2102
No. 2008 - 2101 - CD

v.

CITY OF DUBOIS,

PLAINTIFF'S REPLY TO
NEW MATTER

Defendant.

Filed on Behalf of Plaintiff,

VERIZON PENNSYLVANIA INC.

Counsel of Record for this Party:

Kenneth G. Scholtz, Esquire
PA I.D. No. 87467

TUCKER ARENSBERG, P.C.
Firm I.D. No. 287

1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,	)	CIVIL DIVISION
)	
	)	No. 2008 - 2101 - CD
Plaintiff,)	
)	
v.)	
)	
)	
CITY OF DUBOIS,)	
)	
)	
Defendant.)	

PLAINTIFF'S REPLY TO NEW MATTER

Plaintiff Verizon Pennsylvania Inc. ("Verizon") through its counsel, Tucker Arensberg, P.C., files this Reply to New Matter of Defendant City of DuBois and avers as follows:

11. The allegations of Paragraph 11 of PWSA's New Matter constitute a conclusion of law to which no response is required. To the extent that a response is required, such allegation is denied. To the contrary, the damages alleged in Verizon's Complaint were not the result of, and/or were not otherwise caused by the acts or omissions of Verizon and/or a third party. Proof of any such allegation is demanded. To the contrary, Defendant had a duty to use the care and caution a reasonable and prudent excavator would use in the same circumstances, and Defendant breached that duty. Defendant had a duty to abide by the law set forth in the Pennsylvania One Call Act 76 P.S. §176, et seq., and Defendant breached that duty.

WHEREFORE, Plaintiff Verizon requests that Defendant's New Matter be dismissed, and judgment be entered against the Defendant in the amount of \$22,733.27 together with the interest, fees and costs of filing this Civil Action.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Kenneth G. Scholtz, Esquire
PA I.D. # 87467

Attorneys for Plaintiff,
Verizon Pennsylvania, Inc.

VERIFICATION

I, the undersigned, hereby certify and affirm that I am an authorized agent of Verizon, and I depose and say that the facts and statements in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsifications to authorities.

2/9/09
Date

Joya R. Hahn

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served via U.S. mail, first class, postage prepaid, this 10th day of February, 2009, upon the following:

Phillip Sbrolla, Esquire
Cipriani & Werner
Suite 700
650 Washington Road
Pittsburgh, PA 15228



Kenneth G. Scholtz, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104872
NO: 08-2102-CD
SERVICES 1
COMPLAINT

PLAINTIFF: VERIZON PENNSYLVANIA INC.

VS.

DEFENDANT: CITY OF DUBOIS

SHERIFF RETURN

RETURN COSTS

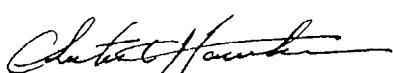
Description	Paid By	CHECK #	AMOUNT
SURCHARGE	ARENSBERG	318283	10.00
SHERIFF HAWKINS	ARENSBERG	318283	40.23

5
FILED
09:00 AM
FEB 13 2009
William A. Shaw
Prothonotary/Clerk of Courts
WM

Sworn to Before Me This

So Answers,

____ Day of _____ 2008



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

VA

VERIZON PENNSYLVANIA INC.
(Plaintiff)

CIVIL ACTION

1500 One PPG Place
(Street Address)

No. 2008-2101 - CD

Pittsburgh, PA 15222
(City, State ZIP)

Type of Case: Civil

Type of Pleading: CERTIFICATE OF READINESS

VS.

Filed on Behalf of:

CITY OF DUBOIS
(Defendant)

Plaintiff
(Plaintiff/Defendant)

10 Parkway Drive
(Street Address)

DuBois, PA 15801
(City, State ZIP)

Kenneth G. Scholtz, Esq.
(Filed by)

1500 One PPG Place
Pittsburgh, PA 15222
(Address)

412-566-1212
(Phone)

K. G. Scholtz
(Signature)

FILED Atty Scholtz
m/11/13/2009 pd. 20.00
APR 20 2009

No CC

S William A. Shaw
Prothonotary/Clerk of Courts

60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Civil Trial Listing/Certificate of Readiness

Plaintiff(s): VERIZON PENNSYLVANIA INC. Case Number: 2008-2101 - CD
1500 One PPG Place
Pittsburgh, PA 15222

Defendant(s): CITY OF DUBOIS
10 Parkway Drive
DuBois, PA 15801

To the Prothonotary:

Arbitration Limit: \$11,733
Type Trial Requested: Jury Non-Jury X Arbitration
Estimated Trial Time:

Jury Demand Filed By: _____
Date Jury Demand Filed: _____

Please place the above-captioned case on the trial list. I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.


(Signature)

4/16/09
(Date)

For the Plaintiff: Kenneth G. Scholtz, Esq. 412-566-1212 Telephone Number

For the Defendant: Johnna Hutnick, Esq. 412-563-2500 Telephone Number

For Additional Defendant: _____ Telephone Number

Certification of Current Address for all parties or counsel of record:

Name: <u>Kenneth G. Scholtz</u>	Address: <u>1500 One PPG Place</u>	City/State/Zip: <u>Pittsburgh, PA 15222</u>
Name: <u>Johnna Hutnick, Esq.</u>	Address: <u>650 Washington Rd</u>	City/State/Zip: <u>Pittsburgh, PA 15228</u>
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,

CIVIL DIVISION

Plaintiff,

2102
No. 2008 - 2401 - CD

v.

CITY OF DUBOIS,

**NOTICE OF SERVICE OF
PLAINTIFF'S RESPONSES
TO DISCOVERY REQUESTS**

Defendant.

Filed on Behalf of Plaintiff,

VERIZON PENNSYLVANIA INC.

Counsel of Record for this Party:

Kenneth G. Scholtz, Esquire
PA I.D. No. 87467

TUCKER ARENSBERG, P.C.
Firm I.D. No. 287

1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

FILED NO CC
MHA:3604
JUN 22 2009
WM
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,	)	CIVIL DIVISION
	)	<i>2102</i>
	)	No. 2008 - 2102 - CD
Plaintiff,)	
)	
v.)	
)	
)	
CITY OF DUBOIS,)	
)	
)	
Defendant.)	

NOTICE OF SERVICE OF PLAINTIFF'S RESPONSES TO DISCOVERY REQUESTS

Plaintiff, Verizon Pennsylvania Inc.'s Responses to Discovery Requests was served on the following counsel this 18th day of June, 2009:

Johnna Hutmick, Esquire
Cipriani & Werner
Suite 700
650 Washington Road
Pittsburgh, PA 15228

TUCKER ARENSBERG, P.C.

By: 

Kenneth G. Scholtz, Esquire
PA I.D. # 87467

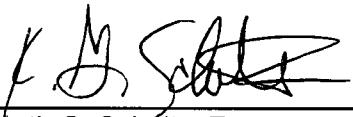
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

Attorneys for Plaintiff,
VERIZON PENNSYLVANIA INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Service of Plaintiff's Responses to Discovery Requests were served via U.S. mail, first class, postage prepaid, this 18th day of June, 2009, upon the following:

Johnna D. Hutnick, Esquire
Cipriani & Werner
Suite 700
650 Washington Road
Pittsburgh, PA 15228



Kenneth G. Scholtz, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

VERIZON PENNSYLVANIA, INC. :
: :
: :
: :
vs. : No. 08-2102-CD
: :
: :
CITY OF DUBOIS

O R D E R

NOW, this 23rd day of July, 2009, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on Tuesday, August 18, 2009 at 9:00 A.M. in the Conference/Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

William Kriner, Esquire, Chairman

Kimberly M. Kubista, Esquire

Warren Mikesell, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

BY THE COURT



FREDRIC J. AMMERMAN
President Judge

FILED
OCT 4 2009
JUL 23 2009
6 CC
CJA
GW
S
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

VERIZON PENNSYLVANIA, INC.,

CASE NUMBER: 2008-²¹⁰²2101-CD

Arb.

Plaintiff,

ISSUE NUMBER:

8/18 @

v.

PLEADING:

9:00

CITY OF DUBOIS,

**DEFENDANT'S ARBITRATION
MEMORANDUM**

AM.

Defendant.

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

CITY OF DUBOIS,
Defendant.

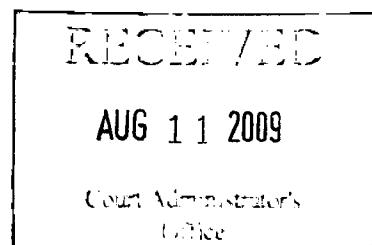
COUNSEL OF RECORD:

PHILIP J. SBROLLA, ESQUIRE
Pa. ID# 90231

ARIELL A. ANTONIO, ESQUIRE
Pa. ID# 206595

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

VERIZON PENNSYLVANIA, INC.,	)	CASE NO: 2008-2101-CD
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF DUBOIS,)	
)	
Defendant.)	

DEFENDANT'S ARBITRATION MEMORANDUM

AND NOW comes the Defendant, CITY OF DUBOIS, by and through its attorneys, Cipriani & Werner, P.C. and files this Arbitration Memorandum:

I. NARRATIVE STATEMENT

This case arises out of the City of DuBois's employees performing road work on Parkway Drive in the City of Dubois on October 4, 2007. On September 26, 2007, Defendant notified PA One Call that they would be performing work on Parkway Drive. Plaintiff sent its employee, Greg Fallara, to mark the site where its utility lines were located. Prior to beginning the road work, Defendant's employees, Steve Swoope (Head of Public Works), Mike Borrelli and Rob Marchioni observed approximately two orange flags denoting that Verizon utility lines were underground, spanning 18 inches in either direction of the flag. Defendant's employees used a vactor truck, a hydro-excavating piece of machinery that acts as a suction with a high powered water hose, at the outset of the road work project. Once Defendant's employees located Plaintiff's utility lines, they moved approximately another five feet past the located lines and began using a backhoe to continue the excavating work. Thereafter, Defendant severed an unmarked Verizon underground utility line. There were no flags or other markings in the area

where the line was severed that would have indicated utility lines were present in that location. Defendant called PA One Call to notify them that a line was severed.

Defendant contends that it is not liable based on the immunity provided by the Political Subdivision Tort Claims Act (“PSTCA”), which provides a political subdivision immunity from liability for damages unless a plaintiff can establish that the cause of action fits within one of the enumerated exceptions. 42 Pa.C.S.A. § 8541 *et seq.* Plaintiff contends the cause of action fits within the Vehicle Liability exception to the PSTCA. “Motor vehicle” is defined as “any vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air.” 42 Pa.C.S.A. § 8542(b)(1). All vehicles that have been found to fit under the Vehicle Liability section of the Motor Vehicle Act are ones that provide transportation to members of the public. There is no case law that extends liability under the Vehicle Liability Exception for use of construction equipment such as a backhoe. A “backhoe,” the equipment used at the time the line was severed, does not provide transportation to members of the public; accordingly, it does not fit within the Vehicle Liability Exception. Therefore, Defendant is immune from liability as a matter of law. Additionally, Defendant contends the severed line was not marked properly as required by the Pa One Call Act, which requires a utility owner to “mark, stake, locate, or otherwise provide the position of the facility owner’s underground lines at the site within eighteen inches horizontally from the outside wall of such line in a manner so as to enable the excavator, where appropriate, to employ prudent techniques . . . to determine the precise position of the underground facility owner’s lines.” 73 P.S. § 177(5)(i).

II. WITNESSES

Defendant may call some and/or all of the following witnesses on the issues of liability and/or damages.

A. Liability and Damage Witnesses

1. Steve Swoope
442 South Church St.
Dubois, PA 15801
2. Mike Borrelli
541 Lincoln Dr.
Dubois, PA 15801
3. Rob Marchioni
520 Patterson Avenue
Dubois, PA 15801
4. Any witnesses identified by Plaintiff in its Arbitration Memorandum.

JURY TRIAL DEMANDED

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY:



Philip J. Sbrolla, Esquire
Ariell A. Antonio, Esquire
Counsel for the Defendant
City of DuBois

CERTIFICATE OF SERVICE

That counsel for the Defendant, City of DuBois, hereby certifies that a true and correct copy of its Defendant's Arbitration Memorandum has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 10th day of August, 2009.

Kenneth G. Scholtz, Esquire
Tucker Arensberg, PC
1500 One PPG Place
Pittsburgh, PA 15222

Daniel Nelson, Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830

William C. Kriner, Esquire - Chairman
219 E. Market Street
P.O. Box 1425
Clearfield, PA 16830

Kimberly M. Kubista, Esquire - Arbitrator
Belin, Kubista & Ryan LLP
15 North Front Street
P.O. Box 1
Clearfield, Pennsylvania 16830

Warren B. Mikesell, II, Esquire - Arbitrator
Mikesell & Mikesell
115 East Locust Street
Clearfield, PA 16830

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY: 
Philip J. Sbrolla, Esquire
Ariell A. Antonio, Esquire
Counsel for the Defendant
City of DuBois

8/18 Arbitration

TUCKER ARENSBERG
Attorneys

Kenneth G. Scholtz 412.594.3903
kscholtz@tuckerlaw.com

July 29, 2009

Office of Court Administrator
Clearfield Courthouse
230 East Market Street
Clearfield, PA 16830

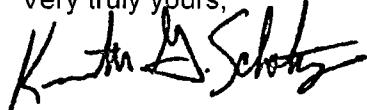
Re: Verizon Pennsylvania Inc. v. City of DuBois
No. 2008-2101 - CD, Clearfield County

To Whom It May Concern:

Enclosed please find the original of Plaintiff's Pre-Trial Statement in the above-captioned matter.

Thank you for your assistance.

Very truly yours,



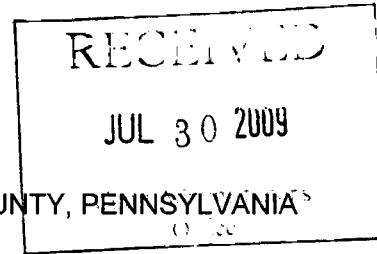
Kenneth G. Scholtz

KGS/mjd
Enclosures

c: Johnna Hutnick, Esquire (w/enc.)
William Kriner, Esquire (w/enc.)
Kimberly M. Kubista, Esquire (w/enc.)
Warren Mikesell, Esquire (w/enc.)
Tonya Hahn (w/enc.)
Kelly Meyers (w/enc.)

LIT:462465-1 000002-137395

RECEIVED
JUL 31 2009
U.S. DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA



VERIZON PENNSYLVANIA INC.,

CIVIL DIVISION

Plaintiff,

No. 08 - 2102 - CD

v.

**PLAINTIFF'S PRE-TRIAL
STATEMENT**

CITY OF DUBOIS,

Defendant.

Filed on Behalf of Plaintiff,

VERIZON PENNSYLVANIA INC.

Counsel of Record for this Party:

Kenneth G. Scholtz, Esquire
PA I.D. No. 87467

TUCKER ARENSBERG, P.C.
Firm I.D. No. 287

1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VERIZON PENNSYLVANIA INC.,	)	CIVIL DIVISION
)	
	)	No. 08 - 2102 - CD
Plaintiff,)	
)	
v.)	
)	
CITY OF DUBOIS,)	
)	
)	
Defendant.)	

PLAINTIFF'S PRE-TRIAL STATEMENT

Plaintiff, Verizon Pennsylvania, Inc. ("Verizon") by and through its attorneys, Tucker Arensberg, P.C., files this Pre-Trial Statement and in support thereof, states as follows:

I. FACTUAL BACKGROUND

This is a claim for property damage to Verizon underground cable. On or about October 4, 2007, agents and/or employees of Defendant were performing excavation work on Parkway Drive, in the City of DuBois, Clearfield County, Pennsylvania. The excavation work included the use of heavy machinery and/or excavation equipment; Plaintiff's Complaint states that the Defendant was using an underground boring machine - discovery revealed that the damage occurred while Defendant was operating a backhoe, not an underground boring machine.

Prior to performing the excavation work, the City of DuBois notified various utility providers of their intention to perform excavation work through the Pennsylvania One Call System. Upon receipt of the One Call notification, agents and/or employees of Verizon marked the location of Verizon underground utility lines pursuant to the requirements of the Pennsylvania One Call Act. 73 P.S. § 176 et seq. It is believed and therefore averred in Plaintiff's Complaint in Civil Action that Defendant ignored, or failed to observe the line location

marks left by Verizon employees. As a result, excavation performed by Defendant resulted in damage to Verizon's underground lines. The destroyed and/or damaged equipment that was owned and maintained by Verizon was located beneath the surface of the ground, street or sidewalk along Parkway Drive in the City of DuBois, Clearfield County, Pennsylvania.

As set forth in the Complaint in Civil Action, it is believed and therefore averred that the agents and/or employees of Defendant were acting in the scope of their employment as an agent/or employee of Defendant at the time this incident occurred. The aforementioned incident, and all damages consequent thereto, were caused solely by, and were the direct and proximate result of, the negligence and carelessness of an employee and/or agent of Defendant in the following respects:

- (a) Failure to use caution in performing excavation in an area known to contain underground utilities;
- (b) Failing to comply with the requirements set forth in the Pennsylvania One Call Act, 76 P.S. § 176 et seq.;
- (c) Failing to use the care and caution required of a professional excavator;
- (d) Failing to observe and avoid contact with underground utility lines.

As set forth in Plaintiff's Complaint in Civil Action, as a direct and proximate result of Defendant's negligence, Verizon was required to expend \$22,733.27 for material, labor, engineering costs, motor vehicle costs, equipment costs, contracting costs, and other related costs, to repair the Verizon facilities. Such repair work was performed in a reasonable and workmanlike manner.

WHEREFORE, Plaintiff Verizon requests that judgment be entered against the Defendant in the amount of \$22,733.27 together with the interest, fees and costs of filing this Civil Action.

II. APPLICABLE STATUTES AND CASES

1. Pennsylvania One Call Act, 76 P.S. § 176 et seq.
2. Verizon Co. v. Ronald A. Ripple, Verizon Company v. Thomas Harter, 329 Pa. Super. 289, 478 A.2d 472 (1984) (In order to maintain a constant open communication line, telephone companies, like electric companies, must call upon skilled workers to make necessary repairs to damaged poles and/or wires. In emergency situations, these workers must be available at a moments notice, 24 hours a day, 7 days a week, to repair the damage and restore communications. In order to maintain this mobile workforce, utility companies must employ in-house repair workers, and must provide those workers with vehicles, equipment and supplies to perform their vital tasks. "If the utility were to employ an independent contractor to replace damaged poles, the contractor would most certainly consider and include overhead costs in determining the amount to be charged for his work." Id. at 473).
3. Younger v. Appalachian Power Co., 214 Va. 662, 664, 202 S.E.2d 866, 868 (1974), Ohio Power Co. v. Johnston, 18 Ohio Misc. 55, 247 N.E.2d 338 (1968) ("Overhead expenses incurred by a utility company which makes its own repairs are as much the natural and proximate result of a wrongful act as if such costs had been passed along to the utility by an independent contractor." Included in a utility company's overhead expenses are such factors as "operating and maintenance costs for all vehicles used in the utility's business, including labor, depreciation, gasoline, tires, repairs, parts, insurance and overhead related to vehicle maintenance."))

III. WITNESS LIST

A. LIABILITY

1. Chris Connor
Verizon Pennsylvania Inc.
334 Watson Highway
Dubois, PA 15801
2. Greg Fallara
Verizon Pennsylvania Inc.
334 Watson Highway
Dubois, PA 15801

B. DAMAGES

1. Kelly Meyers
Verizon Services Operations
Credit, Recoveries and Special Projects Billing
13100 Columbia Pike, B31
Silver Spring, MD 20904

C. RESERVATION OF RIGHTS

Defendant reserves the right to call as a witness any person named, mentioned or otherwise referred to in the Pre-trial Statement of any other party.

IV. STATEMENT OF DAMAGES

Verizon is claiming \$22,733.27 in money damages for the incident described in the Complaint in Civil Action. See attached bill/invoice; a copy of which was previously provided to Defendant's counsel.

V. RESERVATION OF RIGHTS

1. Plaintiff reserves the right to amend, alter or supplement this Pre-trial Statement.
2. Plaintiff reserves the right to amend, alter, or supplement this Pre-trial Statement.
3. Plaintiff reserves the right to introduce testimony or exhibits for rebuttal or impeachment purposes.

4. Plaintiff reserves the right to call as a witness any person named, mentioned or otherwise referred to in the Pre-trial Statement of any other party.

5. Plaintiff reserves the right to introduce any exhibits or testimony referred to, either directly or indirectly in this matter, including, but not limited to, prior pleadings, discovery or in the Pre-trial Statement of Defendant.

6. Plaintiff reserves the right to call as a witness anyone that it becomes aware of through any form of discovery or inquiry in any manner up to and including the date of trial.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Kenneth G. Scholtz, Esquire
PA I.D. # 87467

Attorneys for Plaintiff,
VERIZON PENNSYLVANIA INC.

1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-3903



BILLING STATEMENT

Mail Correspondence to:
CMR Claims Department
PO Box 60770
Oklahoma City, OK 73146

Billing Date: 03/21/2008
Bill Number: 215MP26940308
Bill Type: DC0
Work Order: 004P2694

Questions? Call: (800) 321-4158

DESCRIPTION OF DAMAGE

TYPE OF FACILITY: Plant Facilities
LOCATION: PARKWAY DR., DU BOIS

Damage Claim Number: PAPR073118
Date of Damage/Discovery: 10/04/2007

Charge Description	Hours	Amount
LABOR	87.50	\$ 8,194.33
ADMINISTRATIVE COST		\$ 1,770.31
ENGINEERING	3.25	\$ 516.00
MATERIAL		\$ 6,333.23
SALVAGE		\$ -227.92
MOTOR VEHICLE COSTS		\$ 286.50
CONTRACTOR COSTS	27.50	\$ 5,136.82
LOSS OF USE LOCAL COPPER EXCHANGE LOOP		\$ 724.00

Total Amount Due Upon Receipt \$ 22,733.27

Please write the bill number on your check. Mail bottom stub with your payment to address below.

In the event your check for payment of your Verizon Communications bill is returned by your bank for insufficient or uncollected funds, Verizon may resubmit your check electronically to your bank for payment from your checking account.



SPECIAL PROJECTS BILLING

DUBOIS CITY OF

10 PARKWAY DR
DUBOIS, PA 15801

Claim Number PAPR073118
Bill Number 215MP26940308
Total Amount Due \$ 22,733.27
Please Pay Upon Receipt

\$

Verizon c/o CMR Claims Dept
P.O. Box 60553
Oklahoma City, OK 73146

513215MP26940308DC01032120081000000000227332739

VZDuB 001

CERTIFICATE OF SERVICE

I hereby certifies that a true and correct copy of the foregoing were served via U.S. mail, first class, postage prepaid, this 29th day of July, 2009, upon the following:

Office of Court Administrator
Clearfield County Courthouse
230 E. Market Street, Suite 228
Clearfield, PA 16830-2448

Johnna D. Hutmick, Esquire
Cipriani & Werner
Suite 700
650 Washington Road
Pittsburgh, PA 15228

William Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Kimberly M. Kubista, Esquire
Belin & Kubista
P.O. Box 1
15 North Front Street
Clearfield, PA 16830

Warren Mikesell, Esquire
115 East Locust Street
Clearfield, PA 16830



Kenneth G. Scholtz, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Verizon Pennsylvania Inc.

vs.

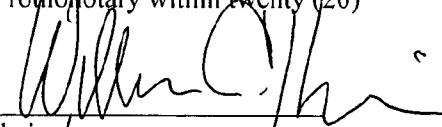
City of DuBois

No. 2008-02102-CD

OATH OR AFFIRMATION OF ARBITRATORS

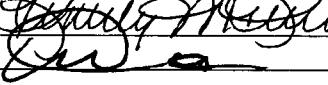
Now, this 18th day of August, 2009, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

William Kriner, Esq.

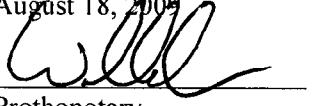

Chairman

Kimberly M. Kubista, Esq.

Warren Mikesell, Esq.


~~Kimberly M. Kubista~~

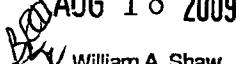
Sworn to and subscribed before me this
August 18, 2009


Prothonotary

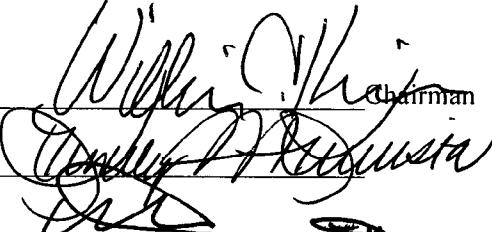
AWARD OF ARBITRATORS

Now, this 18th day of August, 2009, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

*Award for the Defendant on the
Plaintiff's Complaint.*

FILED 8/18/09 Notice of
01:40 PM Award mailed to
08/18/2009 Atty Scholtz and
Atty Sbrolla/Hamilton

William A. Shaw
Prothonotary/Clerk of Courts

(Continue if needed on reverse.)


Chairman

ENTRY OF AWARD

Now, this 18th day of August, 2009, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT


Prothonotary
By _____

OPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Verizon Pennsylvania Inc. :

Vs. :

City of DuBois

: No. 2008-02102-CD

:

NOTICE OF AWARD

TO: Kenneth G. Scholtz, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on August 18, 2009, and have awarded:

Award for the Defendant on the Plaintiff's Complaint.



William A. Shaw
William A. Shaw, Prothonotary

August 18, 2009

Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on August 18, 2009, at 1:46 p.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal:
\$825.00.

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Verizon Pennsylvania Inc. :

Vs. :

City of DuBois :

NOTICE OF AWARD

TO: Philip J. Sbrolla, Esq.
Mark R. Hamilton, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on August 18, 2009, and have awarded:

Award for the Defendant on the Plaintiff's Complaint.



William A. Shaw, Prothonotary

August 18, 2009

Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on August 18, 2009, at 1:46 p.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal:
\$825.00.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

VERIZON PENNSYLVANIA, INC.,

CASE NUMBER: 2008-²¹⁰²2101-CD

Plaintiff,

ISSUE NUMBER:

v.

PLEADING:

CITY OF DUBOIS,

**PRAECIPE TO REDUCE AWARD TO
JUDGMENT**

Defendant.

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:

CITY OF DUBOIS,
Defendant.

COUNSEL OF RECORD:

PHILIP J. SBROLLA, ESQUIRE
Pa. ID# 90231

ARIELL A. ANTONIO, ESQUIRE
Pa. ID# 206595

CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
(412) 563-2500

JURY TRIAL DEMANDED

FILED ⁶⁰
110:59 AM
SEP 24 2009
S William A. Shaw
Prothonotary/Clerk of Courts
Atty Antonio
Atty Antonio
pd. 20.00
Notice to
Atty K. Scholtz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

VERIZON PENNSYLVANIA, INC.,	)	CASE NO: 2008-2101-CD
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF DUBOIS,)	
)	
Defendant.)	

PRAECIPE TO REDUCE AWARD TO JUDGMENT

Kindly reduce the Award entered on August 18, 2009 to Judgment pursuant to the Award entered on August 18, 2009 in favor of Defendant, City of Dubois, and against Plaintiff, Verizon Pennsylvania, Inc.

JURY TRIAL DEMANDED

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY:


Philip J. Sbrolla, Esquire
Ariell A. Antonio, Esquire
Counsel for the Defendant
City of DuBois

CERTIFICATE OF SERVICE

That counsel for the Defendant, City of DuBois, hereby certifies that a true and correct copy of its Praeclipe to Reduce Award to Judgment has been served on all counsel of record, by first-class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 22nd day of September, 2009.

Kenneth G. Scholtz, Esquire
Tucker Arensberg, PC
1500 One PPG Place
Pittsburgh, PA 15222

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY:

Ariell A. Antonio
Philip J. Sbrolla, Esquire
Ariell A. Antonio, Esquire
Counsel for the Defendant
City of DuBois

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

OPY

CIVIL DIVISION

VERIZON PENNSYLVANIA, INC.,) CASE NO: 2008-2102-CD
Plaintiff,)
v.)
CITY OF DUBOIS,)
Defendant.)

NOTICE

Kindly take notice that the award of the Board of Arbitrators in favor of Defendant was reduced to judgment on the 24th day of September, 2009.



Prothonotary of Clearfield County, Pennsylvania