

No. 24
BCC 05-18-10
03:01 P.M. Burgess/SCHMIDT

#24 Reports – Notices of new lawsuits and defense of the same by the County Attorney in the cases of:

- a. Catherine H. Barber and Robert Barber versus Pinellas County Board of County Commissioners – Circuit Civil Case No. 10-006074-CI-015 – Allegations of Personal Injury as a Result of Negligence.
- b. Bright House Networks, LLC, a Florida Corporation versus Johnson Bros., LLC, a Florida Limited Liability Company, Misener Marine Construction, Inc., a Florida Corporation, and Pinellas County, Florida – Circuit Civil Case No. 10-005384-CI-007 – Allegations of Negligence by a County Contractor.

Attorney Bennett advised that the items require no Board action.

COMMISSION AGENDA

5.18.10 # 24a

TO: The Honorable Chairman and Members of the Board of County Commissioners

FROM: James L. Bennett, County Attorney



SUBJECT: Notice of New LawsUIT and Defense of the Same by the County Attorney in the Case of Catherine H. Barber and Robert Barber v. Pinellas County Board of County Commissioners
Circuit Civil Case No. 10-006074-CI-015

DISTRIBUTION: Beth Wininger, Bureau Director, Risk Management

DATE: May 18, 2010.

NOTICE: THIS IS TO ADVISE THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE-REFERENCED LAWSUIT WAS FILED AGAINST THE COUNTY AND THE COUNTY ATTORNEY'S OFFICE WILL DEFEND THE SAME.

DISCUSSION: This is a lawsuit arising as a result of an incident occurring at the North County facility located at 29582 U.S. 19 N., Clearwater, FL. Mrs. Barber was exiting the building when the hollow aluminum cover above the recently installed automatic doors to the entrance of the building fell. Mrs. Barber alleges that the Pinellas County employee working on the doorway was negligent resulting in the cover falling and striking Plaintiff on the head. Plaintiff declined treatment at the scene.

Mrs. Barber claims personal injuries including, but not limited to, traumatic optic neuropathy of the right eye, visual field defect, visual disc asymmetry, head trauma, and neck and low back pain, as well as pain and suffering, lost wages, and future medical expenses. Mr. Barber requests compensation for the loss of society and companionship of his wife.

A copy of the Complaint, without attachments is attached hereto.

JLB:CDP
Attachment

IN THE CIRCUIT COURT IN AND FOR PINELLAS COUNTY, FLORIDA
Circuit Civil No.: _____

CATHERINE H. BARBER and
ROBERT BARBER, her husband,

Plaintiffs,

vs.

PINELLAS COUNTY BOARD OF
COUNTY COMMISSIONERS, a political
subdivision of the State of Florida,

Defendant.
_____ /

COMPLAINT

Plaintiffs, CATHERINE H. BARBER and ROBERT BARBER, her husband, sue the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, and allege as follows:

General Allegations

1. This is an action for damages that are in excess of the sum of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00).
2. That at all times material to this action, the Plaintiffs, CATHERINE H. BARBER and ROBERT BARBER, were and are husband wife.
3. That at all times material to this action, the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, was and is a political subdivision existing in the State of Florida, and has waived its sovereign immunity in tort actions to the extent of Section 768.28, Florida Statutes.
4. That the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, owned and/or operated and/or maintained and/or serviced the North County Branch office of the Pinellas County Courthouse located at 29582 U.S. Highway 19 North, Clearwater, Pinellas County, Florida, where the accident occurred.

5. At all times material to this cause of action, Frank Beardsley was employed by Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, acting within the course and scope of his employment for the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS.

6. That on or about Tuesday, February 24, 2009, at approximately 1:40 P.M., the Plaintiff, CATHERINE H. BARBER, was walking out of the North County Branch of the Pinellas County Courthouse located at 29582 U.S. Highway 19 North, Clearwater, Pinellas County, Florida, through the automatic double door opening when Frank Beardsley, a Pinellas County employee, acting within the course and scope of his employment for Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, was working on the doorway, and dropped a large, heavy, 8 ft. metal beam from above the doors, and struck the Plaintiff on her head resulting in serious and permanent injuries more particularly described below.

7. Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, is vicariously responsible for the negligent acts of its employee, Frank Beardsley, who injured Plaintiff during the course and scope of his employment under the doctrine of respondeat superior

8. That at all times material to this action, the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, owed the following duties under Florida law:

- (a) The duty to maintain the premises in a reasonably safe condition;
- (b) The duty to correct a dangerous condition which the Defendant either knew or should have known by the use of reasonable care;
- (c) The duty to warn of a dangerous condition which the Defendant had, or should have had knowledge greater than that of the Plaintiff.

9. That all of the aforementioned duties were owed to the Plaintiff, CATHERINE H. BARBER.

10. That as a direct and proximate result of the negligence of the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, the Plaintiff, CATHERINE H. BARBER, has sustained serious and permanent injuries more particularly described below.

11. That the Pinellas County employee, Frank Beardsley, acting within the course and scope of his employment for Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, who was working on the automatic double doorway, negligently failed to secure and stabilize the large, heavy, 8 ft. metal beam above the doorway, which constituted a dangerous condition which the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, knew or should have known about and which was not open and obvious to the Plaintiff, CATHERINE H. BARBER.

12. That the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, breached its aforementioned duties in one or more of the following ways:

- (a) by its employee, Frank Beardsley, who was operating in the course and scope of his employment for Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, failing to secure and stabilize the large, heavy, 8 ft. metal beam, above the doorway of the North County Branch of the Pinellas County Courthouse, located at 29582 U.S. Highway 19 North, in Clearwater, Pinellas County, Florida, in a reasonably safe condition;
- (b) by failing to correct dangerous conditions which Defendant either knew or should have known by the use of reasonable care; and/or
- (a) by failing to warn of a dangerous condition which the Defendant had or should have had knowledge greater than that of Plaintiff.

13. The negligent condition was known to Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, or had existed for a sufficient length of time so that Defendant should have known of it.

14. That Notice of Tort Claim pursuant to Florida Statute §768.28 was given to the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, and the Department of Insurance on August 17, 2009, a copy of which is attached hereto and marked as Exhibit "A" and made a part hereof by this reference, and more than six months has elapsed since giving said notice.

15. On August 19, 2009, the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, by and through its agent, Gregory J. D'Amario, Senior Claims Adjuster, acknowledged receipt of the above-mentioned Notice of Tort Claim by correspondence. A copy of said correspondence dated August 19, 2009, is attached hereto and marked as Exhibit "B" and made a part hereof by this reference.

16. All conditions precedent to bringing suit against the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, have occurred, and service of process of this Complaint will be made on the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, as well as the Department of Insurance.

17. That as a direct and proximate result of the negligence of the Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, the Plaintiff, CATHERINE H. BARBER, has sustained serious and permanent injuries as hereinafter more particularly set forth.

Count I

18. Plaintiff, CATHERINE H. BARBER, realleges paragraphs 1 through 17 above as if fully set forth herein.

19. As a direct and proximate result of the negligent actions of Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, the Plaintiff, CATHERINE H. BARBER, has received serious personal injuries, some or all of which are permanent; as a result of this, Plaintiff, CATHERINE H. BARBER, has suffered continuous physical pain and suffering and mental distress and anguish, has suffered disability, physical impairment, inconvenience, aggravation of a pre-existing condition; has suffered a permanent diminished capacity to enjoy life; has incurred medical bills for

treatment and care, and will continue to do so in the future; and has sustained an aggravation of a pre-existing condition. Plaintiff has also suffered a loss of earnings in the past as a result of her injuries and has incurred a diminishment of her earning capacity which will continue in the future. The Plaintiff has incurred economic damages for medical expenses in the past and will incur expenses for medical treatment in the future. Plaintiff is entitled to collect those economic damages, past and future, from the Defendant even if the Plaintiff does not have a permanent injury.

WHEREFORE, Plaintiff, CATHERINE H. BARBER, sues Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, and demands judgment for damages in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of costs and further requests trial by jury of all issues triable as of right by jury.

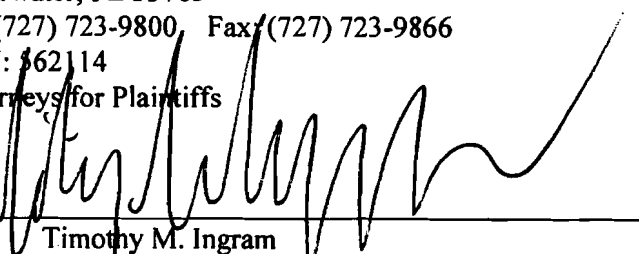
Count II

20. Plaintiff, ROBERT BARBER, realleges paragraphs 1 through 17 above as if fully set forth herein.

21. As a direct and proximate result of the negligence of the Defendant. PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, Plaintiff, ROBERT BARBER, has and will suffer the loss of his wife's services, consortium, and the care and comfort of her society because of her injuries and disability.

WHEREFORE, Plaintiff, ROBERT BARBER, sues Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, and demands judgment for damages in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of costs and further requests trial by jury of all issues triable as of right by jury.

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Attorneys for Plaintiffs

By: 
Timothy M. Ingram

TO: The Honorable Chairman and Members of the Board of County Commissioners

COMMISSION AGENDA
5.18.10 #246

FROM: James L. Bennett, County Attorney

JLB

SUBJECT: Notice of New LawsUIT and Defense of the Same by the County Attorney in the Case of Bright House Networks, LLC, a Florida Corporation v. Johnson Bros., LLC, a Florida Limited Liability Company, Misener Marine Construction, Inc., a Florida Corporation, and Pinellas County, Florida
Circuit Civil Case No. 10-005384-CI-007

DISTRIBUTION: Beth Wininger, Bureau Director, Risk Management

DATE: May 18, 2010

NOTICE: THIS IS TO ADVISE THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE-REFERENCED LAWSUIT WAS FILED AGAINST THE COUNTY AND THE COUNTY ATTORNEY'S OFFICE WILL DEFEND THE SAME.

DISCUSSION: This is a civil action, brought by Bright House Networks, LLC, against the County and the two contractors retained to construct the Belleair Beach Causeway Bridge. It is alleged that on two occasions, during the construction of the bridge, the contractors damaged the underground facilities installed by Bright House. The Plaintiff contends that the County is vicariously liable for the negligence of the contractors' failure to use reasonable care in driving sheet piles during the construction of a temporary bridge, and is vicariously liable for the trespass committed by its agent(s), the contractors.

We have tendered the defense of the suit, and demanded indemnification from the two liability insurance carriers that issued policies of insurance to Johnson Bros.-Misener Marine, Joint Venture, the contractor on the Project. There were a total of four (4) policies over the course of the Project, and two (2) separate carriers issued policies covering the dates of loss alleged by Bright House. We have not received a response to date.

Bright House's counsel has advised that they are going to amend the Complaint, and an agreement has been reached between our office and Bright House's counsel to refrain from serving any responsive pleadings while we await the responses from the insurance carriers and the amending of the Complaint. We will respond to the Amended Complaint to protect the interests of the County should the insurance carriers fail to respond to our tender of the defense in a timely fashion.

Johnson Bros.-Misener Marine has served a written demand that its claim for delay damages, occasioned by the two breachings of the Bright House utility lines, be submitted to the Dispute Resolution Board, as provided in the Construction Contract. Johnson Bros.-Misener Marine claims \$534,467.93 in costs for the delays encountered.

JLB:JAP

Attachment

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

BRIGHT HOUSE NETWORKS, LLC,
a Florida corporation,

Plaintiff,

CASE NO.: 10-5384-CI-07

vs.

JOHNSON BROS., LLC, a Florida limited
liability company, MISENER MARINE
CONSTRUCTION, INC., a Florida corporation,
and PINELLAS COUNTY, FLORIDA

Defendants.

COMPLAINT

Plaintiff, BRIGHT HOUSE NETWORKS, LLC ("Bright House"), by and through its undersigned counsel hereby sues defendants, JOHNSON BROS. LLC ("Johnson"), MISENER MARINE CONSTRUCTION, INC. ("Misener"), and PINELLAS COUNTY, FLORIDA ("Pinellas County") and states:

GENERAL ALLEGATIONS

1. Bright House is a Florida limited liability company doing business in Pinellas County, Florida.
2. Johnson is a Florida limited liability company doing business in Pinellas County, Florida.
3. Misener is a Florida corporation doing business in Pinellas County, Florida.
4. Pinellas County is a political subdivision located in Pinellas County, Florida.

5. Pinellas County contracted with Johnson and Misener (collectively, the "Contractor") to construct a new bridge known as the Belleair Beach Causeway Construction Project ("Project").

6. Contractor was acting as Pinellas County's agent for the construction of the Project.

7. In connection with the Project, Bright House was required to relocate its underground facilities.

8. Bright House relocated its underground facilities consistent with permits and as-built plans provided to Contractor and the County.

9. During the course of construction, Contractor damaged Bright House's underground facilities on two occasions.

10. On or about August 22, 2007, Contractor damaged Bright House's underground facilities on the East end of the bridge Project.

11. On or about August 11, 2008, Contractor damaged Bright House's underground facilities on the West end of the bridge Project.

12. All conditions precedent to this action have occurred or have been waived.

COUNT I
Violation of Chapter 556

13. This is an action for violation of Florida Statutes Chapter 556 against Johnson and Misener for damages in excess of \$15,000.

14. Bright House hereby incorporates the General Allegations as if fully set forth herein.

15. Chapter 556 provides a system for notifying owners of underground facilities before an excavation project begins.

16. Pursuant to Florida Statute §556.105, excavators are required to notify owners of underground facilities before beginning excavation.

17. The Contractor did not comply with the requirements of §556.105.

18. Pursuant to Florida Statute §556.106, the Contractor is presumed negligent.

19. Bright House was damaged as a proximate result of Contractor's violation of Chapter 556.

WHEREFORE, Bright House demands judgment against Johnson and Misener for damages, interest, costs and other relief this Court deems appropriate.

Count II
Negligence

20. This is an action for negligence against Johnson, Misener and Pinellas County for damages in excess of \$15,000.

21. Bright House hereby incorporates the General Allegations as if fully set forth herein.

22. Johnson, Misener and Pinellas County had a duty to exercise reasonable care while constructing the Project.

23. Johnson, Misener and Pinellas County breached their duty on the first hit at the East end of the Project when the Contractor drove sheet piles to a depth where Bright House's facilities were located.

24. At the time of the first hit, the Contractor had as-built plans showing that Bright House's facilities were located at a depth of 21 feet.

25. The Contractor drove sheet piles to a depth of 23 feet, which cut Bright House's facilities.

26. On the second hit on the West end of the Project, Johnson, Misener and Pinellas County breached their duty by driving pilings for a temporary bridge into Bright House's facilities.

27. During construction on the West end of the bridge, the Contractor built a temporary bridge that was not originally called for in the plans.

28. The Contractor attempted to straddle Bright House's facilities in order to put in the temporary bridge.

29. While driving pilings for the temporary bridge, the Contractor drove pilings down through Bright House's facilities.

30. Furthermore, the Contractor failed to vibrate the pilings down before driving them.

31. Pinellas County is responsible for damages caused by its agent, Contractor.

32. Bright House was damaged as a result of Johnson, Misener and Pinellas County's breach of duty.

WHEREFORE, Bright House demands judgment against Johnson, Misener and Pinellas County for damages, interest, costs and such other relief as this Court deems appropriate.

Count III
Trespass

33. This is an action for trespass against Johnson, Misener and Pinellas County for damages in excess of \$15,000.

34. Bright House hereby incorporates the General Allegations as if fully set forth herein.

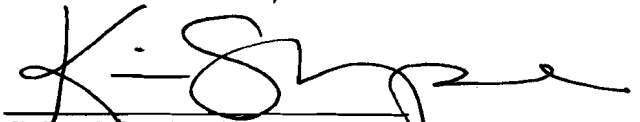
35. Contractor injured Bright House's property (its underground facilities) without the authority or right to do so.

36. Pinellas County is responsible for damages caused by its agent, Contractor.

37. Bright House was damaged as a result of Johnson, Misener and Pinellas County's trespass.

WHEREFORE, Bright House demands judgment against Johnson, Misener and Pinellas County for damages, interest, costs and such other relief as this Court deems appropriate.

JOHNSON, POPE, BOKOR
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