

No. _____
BCC 08-20-13
2:05 P.M. Futch/SCHMIDT

#22 Settlement authorized in the case of Bright House Networks, LLC versus Pinellas County, et al. – Circuit Civil Case No. 10-5384-CI-7 – in accordance with the confidential memorandum from County Attorney James L. Bennett dated August 20, 2013.

Attorney Bennett presented background information regarding the item, and related that although the members retain the option of taking public comment, there is no legal requirement to do so on every item; whereupon, he recommended that the members not engage in discussion or answer questions regarding the confidential memorandum, and Chairman Welch provided input.

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At this time, 3:38 P.M., Commissioner Seel returned to the meeting.

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Responding to the Chairman’s call for citizens wishing to be heard, Michael Markham, Johnson, Pope, Bokor, Ruppel & Burns, LLP, Clearwater, representing Bright House Networks, appeared and stated his concerns regarding the agreement, the settlement, and the overall process; whereupon, in response to queries by Chairman Welch, Attorney Bennett related that a final agreement has been reached with all of the defendants and is in accord with the confidential memorandum that has been provided to the members.

During discussion and in response to queries by Commissioner Long, Attorney Bennett, with input by Senior Assistant County Attorney Jack A. Powell, related that during the legal process, Bright House will have the opportunity to voice its objections before a Judge; and that the contents of the settlement agreement will be made public once the litigation has concluded.

Thereupon, Commissioner Latvala moved, seconded by Commissioner Justice and carried, that the settlement agreement be approved.

Motion - Commissioner Latvala
Second - Commissioner Justice
Vote - 7 – 0

COMMISSION AGENDA:

8/20/13 - # 22

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

FROM: James L. Bennett, County Attorney *JLB*


SUBJECT: Approval of Settlement By and Between All Defendants in the Case of
Bright House Networks, LLC v. Pinellas County, et al.
Circuit Civil Case No. 10-5384-CI-7

DATE: August 20, 2013

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY
COMMISSIONERS AUTHORIZE SETTLEMENT IN THE ABOVE-REFERENCED CASE
AS OUTLINED IN THE CONFIDENTIAL MEMORANDUM.

JLB:JAP

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

FROM: James L. Bennett, County Attorney 

SUBJECT: Approval of Settlement By and Between All Defendants in the Case of
Bright House Networks, LLC v. Pinellas County, et al.
Circuit Civil Case No. 10-5384-CI-7

DATE: August 20, 2013

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE THE SETTLEMENT REACHED BY AND BETWEEN THE DEFENDANTS IN THE ABOVE-REFERENCED CASE.

DISCUSSION: This case arose from the construction project undertaken by Pinellas County, through its General Contractor, Johnson Brothers-Misener Marine Joint Venture, to replace the Belleair Beach Causeway Bridge. On August 22, 2007, and again on August 8, 2008, during the course of the construction, the contractor struck the conduit through which ran the utility lines of Progress Energy and the Plaintiff. Bright House Networks, LLC, brought this lawsuit against Pinellas County, Johnson Brothers-Misener Marine Joint Venture, Johnson Bros. Corporation, and Misener Marine Construction, Inc., for the damages alleged to have been caused by these strikes. Progress Energy (now Duke Energy) is not a party to this lawsuit.

The main issue of the case centers on the accuracy, or inaccuracy, of the "as built" plans provided by Bright House to Pinellas County, which were then given to the contractor, which purported to show precisely where the conduit was buried. Bright House's claim for damages exceeds \$367,000.00.

Bright House's claims against Pinellas County are contained in Counts II and III, which allege negligence and trespass, respectively. Bright House alleges that Pinellas County is vicariously liable for the acts and omissions of the other defendants because they are the agents of Pinellas County.

Each of the Defendants has asserted counter claims against Bright House Networks, LLC. All the defendants maintain that the "as built" plans provided by Bright House were negligently drawn and inaccurate. The "as built" plans were relied upon by the County and the contractor as being accurate. The conduit was not located as depicted on the "as built" plans. As a result of Bright House's own negligence, the contractor struck the conduit on both occasions.

Pinellas County asserted counter claims against Bright House that allege Bright House is liable to the County for any claims of damages asserted by the co-defendants against the County on the grounds of contractual and common law indemnification. The bases for the contractual claims asserted by Pinellas County arise from the right-of-way permit ("ROW") granted the utility to operate its conduit on Pinellas County property. That ROW requires that the utility defend and indemnify the County for claims asserted against the County by reason of the utility operator's negligence. The County alleges that Bright House has failed and refused to defend and indemnify the County for the claims asserted against the County by the other defendants.

Johnson Bros., Misener Marine, and the Joint Venture have asserted cross claims against the County for the damages they allege to have sustained as a result of the second of the two incidents.

Pursuant to the contract between the County and the contractor, any dispute for claims of damages between the parties was to be presented to a Dispute Resolution Board (“DRB”), as provided for in the contract between the County and the contractor. The contractor’s claim for damages arising out of both of the strikes was submitted to the DRB. In late August 2010, the DRB issued its findings. The co-defendants do not contend that the claims asserted against the County pertain to the first of the two strikes. The co-defendants’ claims arise from the second of the two strikes. In the DRB findings pertaining to the second of the two strikes, it found that the County was liable to the contractor for the damages sustained as a result of the second incident. The County disputes that finding.

The contractor, and its component entities, have cross claimed against the County for those damages that the DRB found the County liable to the contractor. The amount of damages sought by the contractor exceeds \$830,000.00. That cross claim forms the basis for the counter claim asserted by the County against Bright House.

The co-defendants have asserted counter claims against Bright House for those same damages on the grounds that Bright House was negligent by providing inaccurate “as built” plans showing the location of its underground utilities.

At a mediation conference a settlement agreement was reached by and between the County and the co-defendants, which would resolve all claims brought by all defendants against one another. The agreement is subject to the approval of the Board of County Commissioners, and then is subject to approval by the Court.

This type of settlement agreement is frequently referred to as a “Coblentz Agreement.” This form of settlement has its genesis in the case of *Coblentz v. American Surety Co. of New York*, 416 F.2d 1059 (5th Cir. 1969). Such agreements have been approved by the courts of Florida. See *Hyatt Legal Services v. Ruppitz*, 620 So.2d 1134 (2d DCA 1993). The agreement provides a mechanism for relief for a party when that party has an agreement to be defended and indemnified, but the entity which is supposed to provide the defense and indemnification has failed and refused to do so. The party, in good faith, enters into a reasonable settlement agreement with the injured party. The party agrees to the entry of a judgment against it for a specific amount. The other party agrees never to execute upon that judgment. Rather, it seeks to recover its damages from the party that refused to defend and indemnify the first party.

In the instant case, the County has agreed, subject to the Board’s and the Court’s approval, in exchange for the payment of the sum of \$20,000.00 by the County to the co-defendants, to the entry of a judgment in favor of the co-defendants, against the County, in the amount of \$694,889.00. The co-defendants agree not to execute upon the judgment, in exchange for: 1) an assignment of the County’s counter claims against Bright House to the co-defendants; and 2) the payment of the first \$200,000.00 that may be recovered from Bright House on the County’s counter claims. Should the co-defendants recover from Bright House on the County’s counter claims an amount in excess of \$200,000.00, the next \$20,000.00 would be distributed to the County to reimburse the County for the sum paid for the settlement agreement. Should the

co-defendants recover in excess of \$220,000.00 from Bright House on the County's counter claims, the excess sums would be paid to the co-defendants. Upon the payment of any sums recovered from Bright House, whether by compromised settlement of those claims or from a judgment in favor of the co-defendants, the co-defendants have agreed to execute and record a Satisfaction of Judgment. In the event the co-defendants fail to recover any sums from Bright House, the co-defendants have agreed to execute and record a Satisfaction of Judgment. In no event will the County be liable to the co-defendants for more than the \$20,000.00 paid by the County to the co-defendants upon the approval of the settlement agreement by the Board and the Court. In no event will the co-defendants execute upon the judgment agreed to be entered against the County.

It is therefore recommended that the Board of County Commissioners authorize the settlement agreement reached at the mediation conference, and authorize the County Attorney's Office to negotiate, draft, and the County Administrator to execute, the settlement agreement according to the terms set forth above and present the settlement agreement to the Court for approval.

JLB:JAP

H:\USERS\ATYKB02\WPDOCS\LITIGATION - JAP\Bright House Networks\Board Memo\BCC Confidential Memo 082013.docx

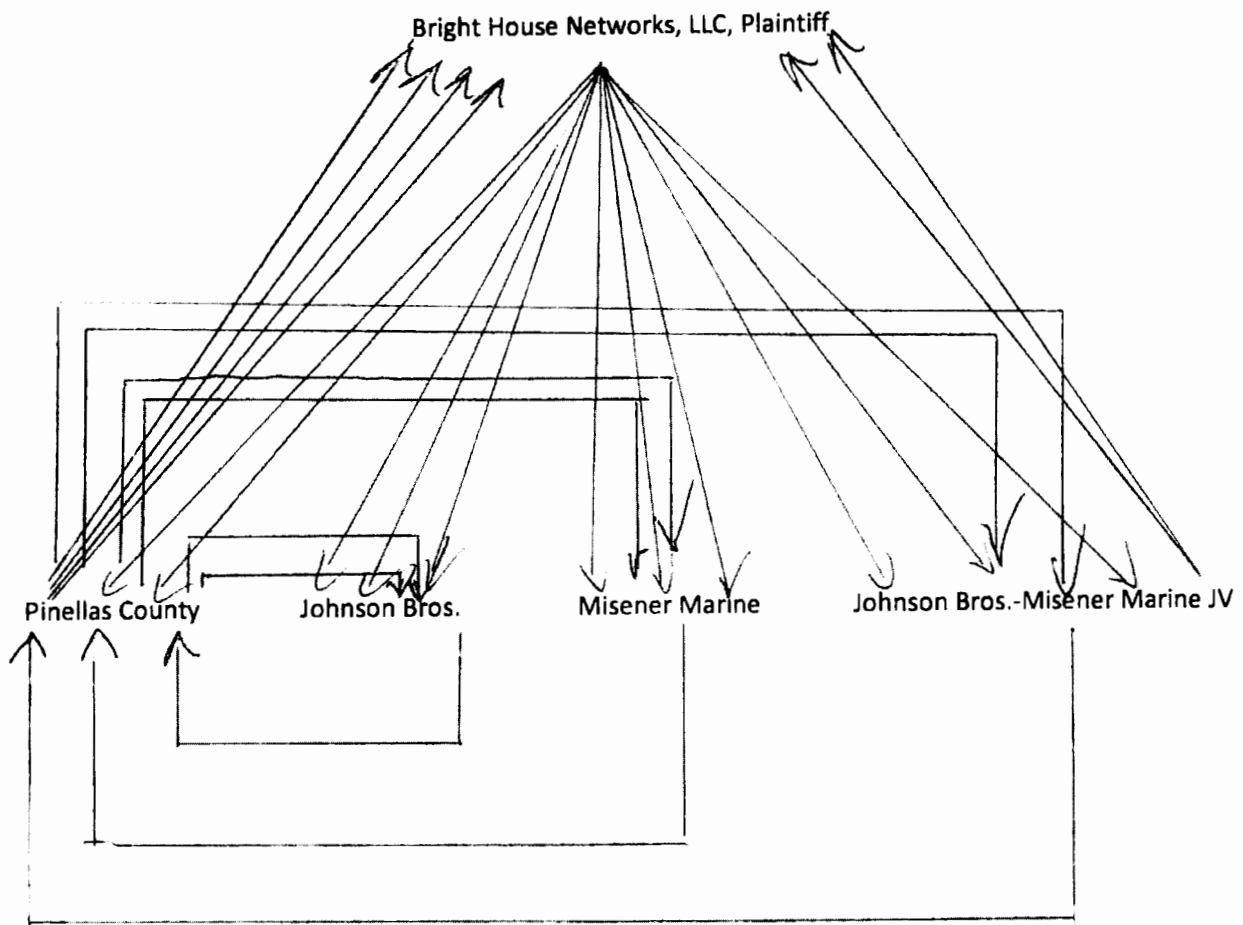
BRIGHT HOUSE NETWORKS, LLC

Vs.

PINELLAS COUNTY, JOHNSON BROS. CORPORATION, MISENER MARINE CONSTRUCTION, INC., and

JOHNSON BROS.-MISENER MARINE-A JOINT VENTURE

Diagram of Claims



Loy, Norman

From: Estrada, Sue M
Sent: Wednesday, April 01, 2015 2:15 PM
To: Loy, Norman
Subject: RE: ITEMS BEING HELD IN LOCK-UP.xls

The Item numbers below can be released:

8/20/13 #22
6/24/14 #21
3/10/15 #16

~ Sue

Susan M. Estrada, Assistant to
James L. Bennett, County Attorney and
Jewel White, Chief Assistant County Attorney
Pinellas County Attorney's Office
315 Court Street, 6th Floor
Clearwater, FL 33756
Phone: (727) 464-3354
Fax: (727) 464-4147
sestrada@pinellascounty.org

All government correspondence is subject to the public records law.

From: Loy, Norman
Sent: Monday, March 16, 2015 8:12 AM
To: Estrada, Sue M
Subject: ITEMS BEING HELD IN LOCK-UP.xls

Hi Sue:

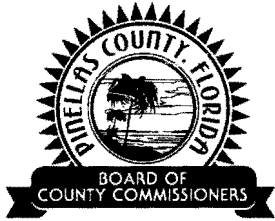
Could you please have the attached list reviewed and advise if any of the items being held in lock up can be released for public view yet.

Thanks,

Norm

Norman D. Loy, BAM, CPM
Manager, Board Records Department
(727) 464-3463 | Fax (727) 464-4716

Office of Ken Burke, Clerk of the Circuit Court and Comptroller
Pinellas County, Florida
315 Court St., 5th Floor, Clearwater, FL 33756
www.mypinellasclerk.org



REGULAR AGENDA & PUBLIC HEARING COMMENT CARD

Agenda date 8/20/13
Agenda item number (NOT case number) 22
Support _____ Oppose
Undecided _____

The Board of County Commissioners values your participation

If you want to speak about a Regular Agenda item or a Public Hearing item, please fill out this **blue card at the beginning of the meeting and give it to a staff member at the Agenda Staff Table**. **NOTE:** In the **upper right hand corner**, complete the agenda date, agenda item number (**NOT** the case number), your position on the proposal outlined in the agenda and, at the bottom of the card, your contact information and some key words to help identify the agenda item. **Copies of the agenda** are available in the shelf at the front of the podium located on the 5th floor outside of the Assembly Room. Copies of the agenda items are numerically filed by agenda item number (**NOT** by case number) in the black binder on top of the podium and are available for public review. Please adhere to the guidelines noted in the Public Participation and Decorum Rules and those noted on the reverse side of this card.

PLEASE PRINT ALL OF YOUR INFORMATION BELOW

NAME Michael Markham Attorney for Bright House

ADDRESS 911 Chestnut St. CITY Clearwater FL ZIP 33756

TOPIC Bright House EMAIL mikem@jpfirm.com