

33.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
2009-0212	Claim	Claim Report
Midwest Fiber Networks communication regarding damage to the aerial strand and fiber optic cable at 19000 W. Lincoln Avenue in New Berlin allegedly sustained on February 11, 2009.		
Introduced: 4/21/2009		Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

POF

ACTION DATE:
AUG 04 2009

MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
		Barczak				
		Czaplewski				
X		Kopplin	✓			
		Lajsic	✓			
		Narlock				✓
	X	Reinke	✓			
		Roadt				
		Sengstock				
		Vitale	✓			
		Weigel				
TOTAL			4			1

SIGNATURE OF COMMITTEE MEMBER

[Signature]
 Chair _____ Vice-Chair _____ Member _____

COMMON COUNCIL ACTION *paid + placed on file*

ACTION DATE:
AUG 04 2009

MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
		Barczak				✓
		Czaplewski	✓			
✓		Kopplin	✓			
		Lajsic	✓			
		Narlock				✓
		Reinke	✓			
		Roadt	✓			
		Sengstock	✓			
	✓	Vitale	✓			
		Weigel	✓			
TOTAL			8	1		2



OFFICE OF THE CITY ATTORNEY

July 13, 2009

Scott E. Post
City Attorney

Common Council
City of West Allis

Sheryl L. Kuhary
Jeffrey J. Warchol
Jenna R. Merten
Assistant City Attorneys

RE: City Attorney's Report of Claim

Dear Council Members:

The enclosed claim has been referred to this office in accordance with Section 3.05(8) of the Revised Municipal Code. This office has examined the facts of the claim and the applicable law. Our Opinion regarding liability is as follows:

It is the recommendation of this office that the following claim be paid and placed on file:

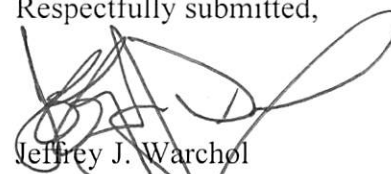
Midwest Fiber Networks – Amount \$21,528.55

This is a claim by Midwest Fiber Networks for damage to its fiber optic cable on February 11th, 2009, when an on duty city employee, while operating a City of West Allis dump truck and exiting the premises at 19000 West Lincoln Avenue, failed to lower the dump truck bed, which in turn caught the aerial strand and fiber optic cable bending the poles inward and ultimately snapping the fiber optic line. As a result of the incident, 1,000 feet of fiber optic cable had to be tested and replaced at the scene. On April 6th, 2009, the claimant filed a claim against the City for repairs to the fiber optic system in the amount of \$21,528.55.

Our investigation of this claim indicated that the City employee was at fault for the accident by failing to lower the dump truck bed prior to leaving the premises and operating the vehicle in such a manner while attempting to drive east on Lincoln Avenue. The employee at fault was disciplined by the superintendent of his division. Furthermore, the amount to repair the fiber optic cable was reasonable given the nature of the accident and the length of actual cable needed to be repaired. On June 16th, 2009, this matter came before the Administration & Finance Committee of the City of West Allis and was approved for payment.

To date, the City paid the claim in the amount stated above and obtained a Property Damage Only Release signed by an authorized personnel of the claimant. Based upon the above, it is the recommendation of the City Attorney's Office to place this claim on file.

Respectfully submitted,



Jeffrey J. Warchol
Assistant City Attorney

JJW:da

PROPERTY DAMAGE ONLY RELEASE

KNOW ALL MEN BY THESE PRESENTS that MIDWEST FIBER NETWORKS, for and in consideration of Twenty-one Thousand Five Hundred Twenty-eight and 55/100 Dollars (\$21,528.55) the receipt whereof is hereby acknowledged, do hereby forever release, acquit and discharge the City of West Allis, Wisconsin, a municipal corporation, its departments, commissions, officials, agents and employees, his, her, its or their successors and assigns and all others directly or indirectly liable, from any and all claims and demands, actions and causes of action, damages, both known and unknown, including future developments thereof, costs, loss of service and compensation on account of, or in any way growing out of, any and all known and unknown property damage resulting or to result from that certain accident on or around February 11th, 2009, when a City of West Allis dump truck, while leaving the driveway at 19000 West Lincoln Avenue with the dump bed raised, caught the aerial strand and fiber optic cable crossing the driveway and under the force of the truck bending the poles inward, pulled the fiber line down until it ultimately broke.

I agree that this settlement is in full compromise of a doubtful and disputed claim both as to the question of liability and damages and that the payment is not to be construed as an admission of liability.

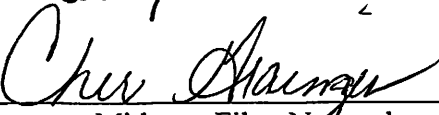
I agree that this is a complete release of property damage only and it is understood and agreed that it doesn't constitute a release for any bodily injury resultant from this accident as there were no bodily injuries as a result of this accident.

I further agree that this release and payment pursuant thereto is not to be construed as a waiver by or an estoppel of any party released to prosecute a claim or action against the undersigned for any damages sustained.

This Release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this Release are contractual and not a mere recital.

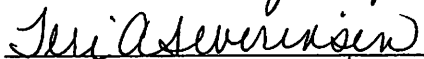
I HAVE READ THE FOREGOING RELEASE AND FULLY UNDERSTAND IT. I FURTHER UNDERSTAND THAT I HAVE THE OPPORTUNITY TO DISCUSS AND NEGOTIATE THE TERMS OF THIS RELEASE WITH THE WEST ALLIS CITY ATTORNEY AND SPECIFICALLY WAIVE SUCH OPPORTUNITY.

Signed and sealed this 6th day of July, 2009.



Midwest Fiber Networks
(Authorized Personnel)

Subscribed and sworn to before me
this 6th day of July, 2009.


(TERI A SEVERINSEN)
Notary Public, State of Wisconsin
My Commission Expires: 2-10-13
JJW: da
L/Jeff/Claims/Releases/PD OnlyMidwest Fiber Networks



MIDWEST FIBER NETWORKS

3701 W. Burnham Street, Milwaukee, WI 53215, ph 414-672-5612, toll 866-831-1661

March 11, 2009

RECEIVED

APR 06 2009

CITY OF WEST ALLIS
CLERK/TREASURER

Attention: Common Council
West Allis City Hall
7525 W. Greenfield Ave
West Allis, WI 53214

Common Council Members:

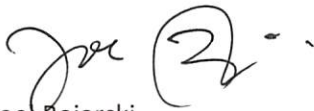
On February 11, 2009, at approximately 11:00 am, Midwest Fiber Networks experienced an outage to our fiber optic plant. Troubleshooting the cause of the outage revealed our aerial strand and fiber optic cable crossing the driveway to Certified Products located at 19000 W Lincoln Ave in New Berlin had been torn down. An employee at Certified Products, Jamie Kowalski, witnessed the incident and reported that at approximately 11:00 am on February 11th a City of West Allis dump truck was leaving the driveway with the dump bed raised which caught the aerial strand and fiber and pulled it down. She witnessed the fiber being pulled down by the truck and the poles bending inward under the force of the truck pulling the fiber line until the fiber ultimately broke. The City of West Allis dump truck did not stop and drove away.

The damage required new strand to be placed, the damaged strand to be removed, 1,000 feet of existing 192 count fiber relocated to the damaged area, the existing fibers were tested to identify damaged sections where the fiber was stretched and cut, re-tensioning of the existing strand and fiber, and prepping and splicing the 192 count fiber to their original state.

The charge associated with the repairs is \$21,528.55. Please remit your payment to Midwest Fiber Networks at the address listed below.

Please call should you have questions regarding this matter.

Sincerely,



Joel Bojarski
Midwest Fiber Networks (MWFN)
Operations Manager
3701 W Burnham Street, Suite C
Milwaukee, WI 53215
(414) 672-5612

cc: Cheri Grainger

cc. Attorney
Public Works



**MIDWEST FIBER NETWORKS
STRAND AND FIBER CABLE**

**VERIFYING MIDSPAN CLEARANCE OF
STRAND AND FIBER OVER DRIVEWAY
TO CERTIFIED PRODUCTS**



POLE ATTACHMENT SPECIFICATIONS REQUIRES MIN. OF CLEARANCE OF 15.5 FT OVER DRIVEWAYS, FIBER WAS 18 FT OVER DRIVEWAY TO CERTIFIED PRODUCTS

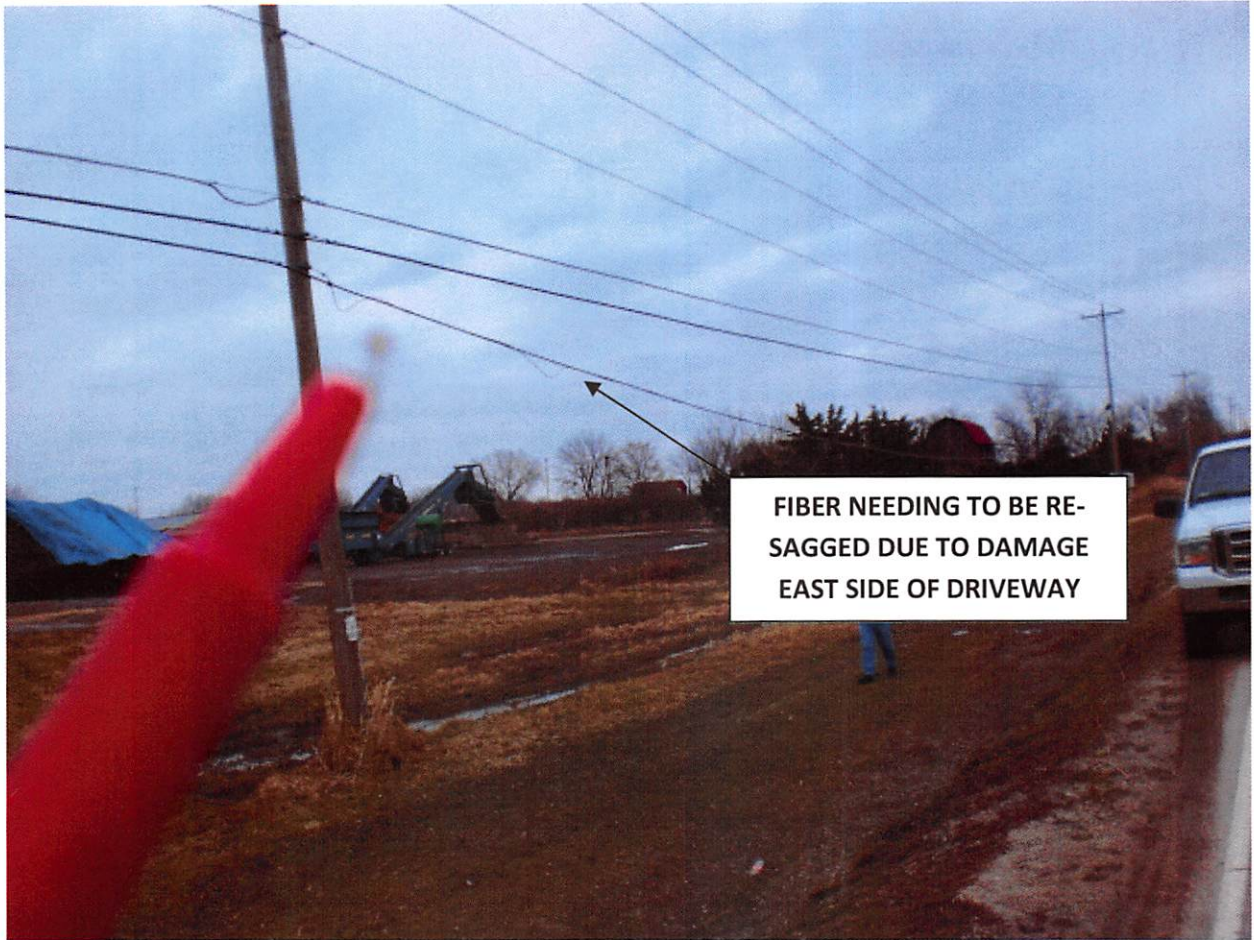
WARNING

SERIOUS OR FATAL INJURY MAY OCCUR IF THIS TOOL IS USED NEAR POWER LINES WHEN USED WITH CONDUCTIVE ACCESSORIES SUCH AS CORDS OR TAPES.



**NEW SPLICE CASE INSTALLED
DUE TO DAMAGE, WEST SIDE
OF DRIVEWAY**

**FIBER NEEDING TO BE RE-
SAGGED DUE TO DAMAGE
WEST SIDE OF DRIVEWAY**



FIBER NEEDING TO BE RE-SAGGED DUE TO DAMAGE EAST SIDE OF DRIVEWAY



**FIBER STRETCHED, PULLED
FROM STRAND DUE TO
DAMAGE EAST SIDE OF
DRIVEWAY**



CITY CLERK/TREASURER'S OFFICE
414/302-8200 or 414/302-8207 (Fax)
www.ci.west-allis.wi.us
Paul M. Ziehler
City Admin. Officer, Clerk/Treasurer
Monica Schultz
Assistant City Clerk
Rosemary West
Treasurer's Office Supervisor

April 7, 2009

Mr. Joel Bojarski, Operations Manager
Midwest Fiber Networks
3701 W. Burnham Street
Suite C
Milwaukee, WI 53215

Dear Mr. Bojarski:

This letter acknowledges receipt of your communication regarding damage to the aerial strand and fiber optic cable at 19000 W. Lincoln Avenue in New Berlin allegedly sustained on February 11, 2009.

The original document will be submitted to the Common Council at its meeting of April 21, 2009.

It is not anticipated that a decision regarding this matter will be made on this date. Generally, all communications are directed to the City Attorney's office for investigation. Common Council action regarding your communication will not be taken until the City Attorney's investigation is completed. Any questions you may have regarding this matter should be directed to their attention.

Sincerely,

Monica Schultz
Assistant City Clerk

/jl

cc: City Attorney

From: Origin ID: MKEA (414) 226-2205
CableCom, LLC

3701 W. Burnham Street
Suite C
MILWAUKEE, WI 53215



Ship Date: 03APR09
ActWgt: 1.0 LB
CAD: 5339342/INET9011
Account#: S *****

Delivery Address Bar Code



Ref # Joel B - MWFN
Invoice #
PO #
Dept #

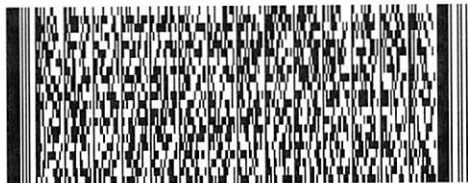
SHIP TO: (414) 225-2206 X 274 BILL SENDER

Common Council
West Allis City Hall
7525 W GREENFIELD AVE

WEST ALLIS, WI 53214

TRK# 7964 8868 2479
0201

MON - 06APR A1
STANDARD OVERNIGHT



56 RRLA

53214
WI-US
MKE



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

[Global Home](#) | [FedEx Mobile](#) | [Service Info](#) | [About FedEx](#) | [Investor Relations](#) | [Careers](#) | [fedex.com Terms of Use](#) | [Privacy Policy](#) | [Site Map](#) |
This site is protected by copyright and trademark laws under US and International law. All rights reserved. © 1995- 2009 FedEx



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

Sheryl L. Kuhary
Jeffrey J. Warchol
Jenna R. Merten
Assistant City Attorneys

July 16, 2009

Common Council
City of West Allis

RE: City Attorney's Report of Claims/Lawsuits

Dear Council Members:

The enclosed claims/lawsuits have been referred to this office in accordance with Section 3.05(8) of the Revised Municipal Code. This office has examined the facts of each claim/lawsuit and the applicable law. Our Opinion regarding liability is attached to each claim/lawsuit.

The following claims/lawsuits have been paid and placed on file:

Spoerl Trucking, Inc. (\$1,763.82)
Midwest Fiber Networks (\$21,528.55)

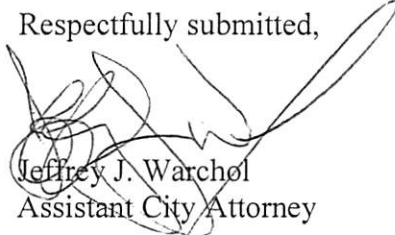
The following claims/lawsuits have been denied:

Kelly Loehle (\$1,194.97)
Tri City National Bank (\$891.00)

The following claim/lawsuit has been placed on file:

Taylor, Bean & Whitaker Mortgage Corp. v. Jose Mercado-Garcia & Maria Mercado, et al., Milw. County Case #08-CV-015904 (Foreclosure)

Respectfully submitted,


Jeffrey J. Warchol
Assistant City Attorney

JJW:da
Enclosures

cc: Thomas E. Mann, CVMIC