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## **WHAT WE HAVE HERE IS A FAILURE TO COMMUNICATE** **The Anatomy of A Utility Damage Incident**

*By Jim Proszek*

Damages to underground facilities are usually preventable and most frequently occur due to a breakdown in the damage prevention process.

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At the heart of damage prevention is improved information accuracy and **CONSISTENCY IN COMMUNICATION BETWEEN EXCAVATORS AND OPERATORS OF UNDERGROUND FACILITIES.**

“COMMON GROUND: Study of One-Call Systems and Damage Prevention Best Practices” (Aug. 1999), at § 1.1 (emphasis added).

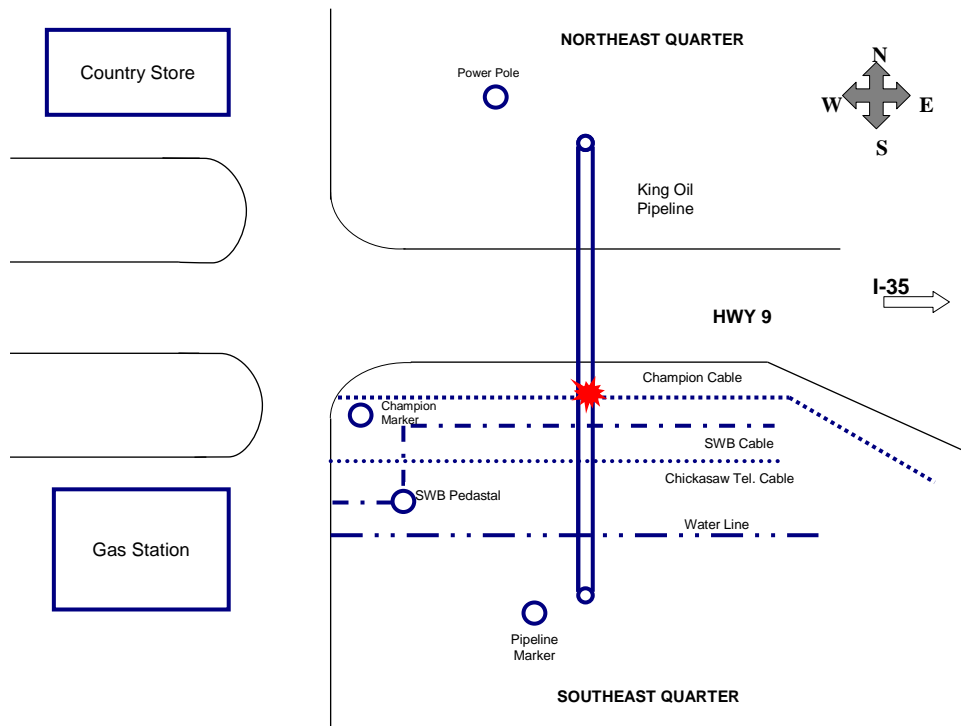
In April 2002, Jones Construction Company began work on a project to lower a King Oil Company pipeline for a road-widening project in rural Oklahoma. On June 10, 2002, Jones severed a Champion Telecommunications Company underground fiber-optic telecommunications cable while digging with a trackhoe to tie in the end of the pipeline. The severance of Champion's cable left a substantial number of Champion customers completely without service until Champion was able to repair the cable.

This incident, which ultimately resulted in a lawsuit by Champion against Jones, provides a textbook example of how the lack of communication at a number of different levels, both internally and externally, caused a utility damage incident.

### **The Area of The Damage**

In the area of the incident, King Oil's pipeline ran in a north-south direction across Highway 9. Highway 9 is the dividing line between the Northeast and Southeast quarter sections.

The work first required Jones to dig up the pipeline on the north side of Highway 9, and was thus in the Northeast quarter section. Jones then bored a path under Highway 9 for, and installed, a new, lower section of pipe. Finally, Jones dug up the pipeline on the south side of Highway 9, and thus in the Southeast quarter section, to tie the new, lower section of pipe into the existing pipeline on the south side of Highway 9.



Champion’s cable ran in an east-west direction, and across the pipeline, on the south side of Highway 9. So, the cable was in the Southeast quarter section.

### **Jones' First Communication With One-Call**

On April 4, 2002, Jones faxed a notice of excavation to the Oklahoma One-Call System, Inc. (“Call Okie”). While the notice did reference both the Northeast and Southeast quarter sections, it described the specific area in which Jones intended to dig as “FROM I-35 & HWY 9 JUNCTION GO APPROX ¼ MILE WEST, TURN NORTH INTO LOVES COUNTRY STORE. WILL BE DIGGING ON THE EAST SIDE OF THE EAST DRIVE ON STATE RIGHT OF WAY” (emphasis added). Jones described the work as “LOCATE 12” HIGH PRESSURE LINE.” Finally, Jones stated that the work would last **for only one day**.

On April 8, 2002, Jones dug up the north end of the pipeline. This notice did accurately describe the work Jones was performing **at that time**. It did not, however, accurately describe the scope of the entire project.

### **Champion's Response to the April 4, 2002 Notice of Excavation**

When Call Okie forwarded Jones’ April 4, 2002 notice of excavation to Champion, it went to Champion’s Cable Protection Center (“CPC”), which was in Texas. The CPC, in turn, sent it to the Champion field tech who was responsible for this specific area in Oklahoma.

The Champion field tech went to the area described in the notice and observed Jones digging on the north side of Highway 9. **He did not, however, communicate with Jones regarding the scope of the entire project.** Rather, he simply made an entry in Champion’s

computer system stating that because Champion's cable was on the opposite side of Highway 9 and "200 feet south of [Jones'] work," the work did not conflict with Champion's cable.

### **Jones' May 23, 2002 Notice of Excavation**

In May 2002, Jones was ready to begin work on the south side of Highway 9. On May 23, 2002, Jones faxed a second notice of excavation to Call Okie. **Jones did not, however, change the description of the work area. Rather, Jones simply changed the work date on the previous notice which described the specific area of work as being on the north side of Highway 9.**

### **Champion's Response to the May 23, 2002 Notice of Excavation**

Call Okie forwarded Jones' May 23, 2002 notice of excavation to Champion's CPC which, in turn, sent it to the field tech. **Because this notice contained the exact same description of the work which the field tech had already observed as being on the opposite side of Highway 9 and 200 feet from Champion's cable, he did not go to the site again. Rather, he simply made another entry in Champion's computer system that because the work area described in the notice was north, while Champion's cable was south, of the highway, the work did not conflict with Champion's cable.**

### **Jones' May 28, 2002 Contacts With Champion**

On May 28, 2002, Jones' crew saw a permanent marker sign for Champion's cable on the south side of Highway 9. The foreman of the crew called Champion's CPC at the telephone number on the permanent marker and informed the CPC that he did not see any paint marks or flags for the Champion cable.

Champion's CPC immediately notified the Champion field tech in Oklahoma of Jones' call. The Champion field tech called Jones, went to the site, and marked Champion's cable with orange paint and flags. He then monitored Jones' work until it no longer posed a threat to Champion's cable. Before leaving the site, he gave the Jones foreman his business cards and asked Jones to contact him if Jones intended to dig again on the south side of Highway 9. **He did not, however, notify Champion's CPC that, contrary to the description in the notice of excavation and his previous two entries in Champion's computer system, Jones was digging on the south side of Highway 9 and Jones' work did, in fact, conflict with Champion's cable.**

### **Jones' June 6, 2002 Notice of Excavation**

On June 6, 2002, while Jones was still working on the south side of Highway 9, Jones faxed Call Okie with an update of its May 23, 2002 locate request. **Jones did not, however, change the description of the work area in its excavation notice. Rather, Jones once again simply changed the work date from the previous two notices which described the specific area of work as being on the north side of Highway 9.**

### **Champion's Handling of Jones' June 6, 2002 Notice of Excavation**

**Because Champion's Oklahoma field tech had twice responded to notices of excavation containing this same work area description by noting in Champion's computer system that the work was on the north side of Highway 9 and did not conflict with Champion's cable, the CPC did not even send this notice to its Oklahoma field tech.** He was therefore not aware that Jones intended to continue digging on the south side of Highway 9 in June 2002, and did not go to the site after Champion received this notice.

### **Jones' June 10, 2002 Communications Regarding an Unmarked Electric Line**

On June 10, 2002, Jones' crew returned to the site to tie in the new section of pipe on the south side of Highway 9. The foreman of this crew, however, was different from the one who had been in charge of Jones' crew during the May 2002 work. Upon arrival, the new foreman saw evidence of an unmarked underground electric line on the south side of Highway 9. He contacted Jones' office and asked the office personnel to call the electric company.

Upon receipt of the call from Jones' office, the electric company notified its contract locating company, CB&S, of this situation. **When the CB&S locator arrived at the site, he showed Jones' foreman a copy of the notice of excavation and told the Jones' foreman that the notice did not cover the south side of Highway 9.** Jones' foreman disagreed and continued working.

### **Jones' Severance of Champion's Cable**

On the morning of June 10, 2002, Jones' new foreman also saw the permanent marker sign for Champion's cable on the south side of Highway 9. **The foreman who had been in charge of the crew on May 28, 2002, however, had not told the new foreman of his communications with Champion regarding the warning sign and Champion's cable, and the new foreman did not contact Call Okie or Champion to ask that the cable be marked after seeing the permanent marker on June 10, 2002.** Two hours later, Jones severed Champion's cable while excavating with a track hoe on the south side of Highway 9.

### **Conclusion**

This incident illustrates the critical importance of accurate communication on at least three separate levels: (1) with the One-Call Center; (2) between the excavator and the utility owner; and (3) within the companies themselves, and the consequences of failing to do so. It will also be the focus of the mock trial, "You the Jury," at the CGA Conference in Orlando, in March 2011. During this mock trial, the audience will have the opportunity to see practicing trial attorneys and expert witnesses present a trial of an underground damage case. The audience will also have the opportunity to participate themselves by asking questions of the judge, the lawyers and the witnesses, and then rendering a verdict based on the evidence, testimony and arguments they hear and see during the trial.