

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1324

CA 09-01684

PRESENT: MARTOCHE, J.P., SCONIERS, GREEN, AND PINE, JJ.

VERIZON NEW YORK, INC., CLAIMANT-APPELLANT,

V

MEMORANDUM AND ORDER

STATE OF NEW YORK, DEFENDANT-RESPONDENT.
(CLAIM NO. 112333.)

JAMES C. COSGROVE, BUFFALO, FOR CLAIMANT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (OWEN DEMUTH OF COUNSEL),
FOR DEFENDANT-RESPONDENT.

Appeal from a judgment of the Court of Claims (Jeremiah J. Moriarty, III, J.), entered July 8, 2009. The interlocutory judgment apportioned liability 35% to defendant and 65% to claimant.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Claimant commenced this action alleging that defendant damaged its underground telecommunication line while performing "sidewalk/bridge" repairs in the City of Niagara Falls. After a nonjury trial on the issue of liability, the Court of Claims determined that both parties were negligent and apportioned liability 65% to claimant and 35% to defendant.

We conclude upon our review of the record that the court properly attributed a greater portion of the fault to claimant (*see Denio v State of New York*, 11 AD3d 914, 915, *rearg* granted 13 AD3d 1231, *affd* 7 NY3d 159; *Schmidt v State of New York*, 21 Misc 3d 1114[A], 2005 NY Slip Op 52377[U], *affd* for reasons stated 39 AD3d 1237; *see generally Stewart v Manhattan & Bronx Surface Tr. Operating Auth.*, 60 AD3d 445, 445-446).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court