

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

FILED
PSL
JUL 29 2009
HENNEPIN COUNTY DISTRICT COURT
BY _____ COURT DEPUTY

Case Type: Personal Injury

State of Minnesota,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

URS Corporation,

Defendant.

The State of Minnesota as and for its Complaint against Defendant URS Corporation (“URS”) alleges and states as follows:

INTRODUCTION

1. This lawsuit relates to the August 1, 2007 collapse of the Interstate 35W Bridge (“the Bridge”) in Minneapolis. The collapse of the Bridge killed thirteen people and injured 145 others. The State has paid survivors in excess of \$37 million. The National Transportation Safety Board determined that the probable cause of the collapse of the Bridge was the inadequate load capacity of the gusset plates at the U10 nodes.

2. Defendant URS Corporation (“URS”) is a foreign, for profit corporation licensed to do business in the State of Minnesota. URS is an engineering firm with more than 50,000 employees working in approximately 370 offices and job sites in more than 30 different countries. It was retained by the State for its expertise in regards to bridges similar to the 35W Bridge. From 2003 through the time of the collapse, URS performed engineering services for the State intended to evaluate the structural integrity of the Bridge and to help develop a repair strategy for potential future repairs.

THE COMPENSATION FUND LEGISLATION

3. The Minnesota Legislature found that the collapse of the Bridge on August 1, 2007, was a catastrophe of historic proportions. *See* Minn. Stat. § 3.7391, subd. 1 (2008).

4. The legislature provided for compensation to be paid to survivors of the collapse as a remedy for the survivors “while avoiding the uncertainty and expense of potentially complex and protracted litigation to resolve the issue of the liability of the state, a municipality, or their employees for damages incurred by survivors.” *See* Minn. Stat. § 3.7391, subd. 2. The legislation provided for immediate payments from an emergency relief fund and a process under section 3.7393 for other compensation to be paid to survivors.

5. Under the compensation fund legislation, the chief justice of the Supreme Court established a special master panel to consider survivors’ claims, make offers of settlement, and enter into releases with survivors on behalf of the State. *See* Minn. Stat. § 3.7393, subd. 1.

6. The special master panel made settlement offers to 179 survivors. All of those survivors accepted the offers of settlement and signed settlement agreements with the State, releasing the State, its municipalities, and their employees from liability.

7. Section 3.7393, subd. 5(a) of the compensation fund legislation provides that the “state is entitled to recover from any third party, including an agent, contractor, or vendor retained by the state, any payments made from the emergency relief fund or under section 3.7393 to the extent the third party caused or contributed to the catastrophe.”

8. The compensation fund legislation also provides that the State is “subrogated to all potential claims against third-party tortfeasors of a survivor receiving payment from the emergency relief fund or under section 3.7393 to the extent the claims relate to, involve, or arise out of the catastrophe. The subrogation right of the state . . . is limited to

the amount paid to the survivor from the emergency relief fund and under section 3.7393.”
Minn. Stat. § 3.7394, subd. 5(b).

9. The compensation fund legislation also provides that the State is entitled to be reimbursed for payments made to survivors regardless of whether the survivor is fully compensated. Minn. Stat. § 3.7394, subd. 5(a).

10. The State has paid to survivors a total of \$36,640,000.00 through the compensation fund legislation. The State also has paid to survivors \$398,984.36 from the emergency relief fund.

11. All survivors, who made claims with the State and received payment, signed a settlement agreement and release reserving the causes of action pled on this Complaint.

CONTRACTS BETWEEN THE STATE AND URS

12. The State entered into three contracts with URS based on a Proposal sent by URS in response to the State’s Request for Interest, dated March 7, 2003. The Request for Interest outlined anticipated work tasks, but provided that final work tasks would be determined during contract negotiations.

13. In its Proposal, URS emphasized its familiarity with the Bridge, its work in evaluating similar bridges, and its expertise in evaluating the criteria for member failure, including member sections and connections. The State decided to hire URS based on its Proposal, including URS’s professed engineering expertise in inspecting, analyzing, and evaluating the Bridge. Contracts were entered in or about May, 2003 (No. 85169), October, 2003 (No. 85809) and December, 2003 (No. 85907) (collectively “the Contracts”). The latter contract was amended five times.

14. The first contract principally involved inspection of the Bridge. The contract states that URS's "participation during annual inspections will allow a preliminary assessment of the bridge's structural condition." Included amongst the specified tasks were the explicit requirements that URS "review bridge plans, inspection data, and past research reports to determine specific bridge elements to be inspected" and that "[URS] will document the condition of the structure with notes and photographs."

15. The second contract was a continuation of the first. The contract, in Exhibit A, clearly describes the work, in part, as follows: "[URS] should inspect critical members, connections and fatigue details prior to starting the fatigue study, and inspect the bearings for movement based on the previous inspection . . . and perform an assessment of the bridge's current structural condition." Included in URS's tasks was the express requirement that it was to perform a "review of as-built plans and available data."

16. The third contract and its five amendments cost the State \$635,840. The contract's recitals include the following:

The State is in need of a comprehensive study to evaluate the truss-arch superstructure for bridge 9340. This bridge is a major I-35W structure that spans the Mississippi River in Minneapolis. In the past various structural components of the truss-arch have exhibited cracking that required repairs. Results of this study will allow the State to develop a repair strategy for potential future repairs.

17. The third contract defined the scope of work to include the following:

The project goal is to identify structural members of the truss-arch spans that are most susceptible to cracking, identify the most critical members, and evaluate how the bridge will perform if any one of those critical members were removed. The project will evaluate how dead and live loads are redistributed on the bridge when failure occurs in the critical members and if/how adjacent members will fail when the loads are redistributed. The project will identify repairs to critical members and identify a preferred deck replacement staging in the truss-arch spans.

18. Exhibit A to the third contract specifies the scope of work and deliverables, which are enumerated in various tasks. Task 2.1 explicitly provides that URS shall “inspect critical members, connections, and fatigue details based on review of available data.” (Emphasis added.) Task 8.1 clearly requires URS to “develop tension and compression failure criteria for truss members and connections based on ultimate failure state as originally designed.” (Emphasis added.) The term “connections” as used in the Contracts includes gusset plates. Among the “key works” to be done in this contract is to “evaluate performance of expansion bearings and joints through visually monitoring and recording the movements of specifically made marks at different temperatures.”

19. In an internal memorandum of URS, dated March 15, 2006, URS wrote as follows regarding URS’s evaluation of connection capacities:

“Here is how we decided to proceed. We will not calculate actual capacities of all of the connections since that is too much work, although that provides the most accurate results. Instead, we will do some approximate but conservative adjustments to the member capacities per AASHTO design specifications”

20. In connection with an inspection of the Bridge, URS took photographs of the U70 gusset plates and described them to be in “good condition.”

21. A note from an internal URS meeting held September 6, 2005 on the subject of an “Evaluation of I-35W Bridge” states “Gusset Plate Buckling - If this occurs, it is not catastrophic.”

22. When the Bridge collapsed, URS was still working on its final report required by the third contract.

STATUTORY REQUIREMENTS

23. The State's counsel has provided an affidavit of expert review, attached hereto, to initiate this action against URS in accordance with Minn. Stat. § 544.42, subd. 3(a)(1).

COUNT I - BREACH OF CONTRACT

24. The State repeats the allegations in the paragraphs above and incorporates them as if fully stated herein.

25. Defendant URS, in its performance of the Contracts, failed to adequately inspect, analyze, and evaluate the structural condition of the Bridge, which should have led to discovery of the substantially compromised and urgent hazardous condition of the Bridge, including but not necessarily limited to, the under-designed gussets at the U10 node.

26. Defendant URS, in its performance of the Contracts, failed to adequately review original plans/shop drawings, inspection data and past research reports pertaining to the Bridge and accurately document and communicate to the State the structural condition of the Bridge.

27. Defendant URS, in its performance of the Contracts, failed to ascertain that the half-inch gusset plates at the U10 node were under-designed and not adequate in size or strength.

28. As a direct and proximate result of URS's breaches of the Contracts, the State suffered damage, including but not limited to expenses for emergency response, traffic rerouting, and forensic work, and other costs, in an amount in excess of \$50,000.

COUNT II - NEGLIGENCE

29. The State repeats the allegations in the paragraphs above and incorporates them as if fully stated herein.

30. In its Proposal, Defendant URS represented that it had specialized knowledge and expertise in the evaluation of truss bridges, including bridges like the Bridge. Additionally, URS

knew that the State had serious concerns about the fracture critical nature of the Bridge and its lack of redundancy should failure occur.

31. URS violated the applicable engineering standard of care and was negligent in its inspection, analysis, and evaluation of the structural condition of the Bridge and its documentation and communication to the State of the accurate structural condition of the Bridge.

32. Defendant URS, with its specialized knowledge and expertise, was negligent in failing to warn the State of the substantially compromised and urgent hazardous condition of the Bridge including, but not necessarily limited to, the under-designed gussets at the U10 node.

33. Defendant URS was negligent in its failure to adequately review the original plans, as-built drawings, shop drawings, inspection data and past research reports. A careful review of this data should have led to the realization that some of the Bridge's gusset plates, including at the U10 node, were under-designed.

34. Defendant URS's negligence was a contributing cause in the sequence of events that led to the Bridge's collapse, and the resulting monetary loss to the State.

35. As a direct and proximate result of URS's negligence, the State suffered damage, including but not limited to expenses for emergency response, traffic rerouting, and forensic work, and other costs, in an amount in excess of \$50,000.

COUNT III - STATUTORY REIMBURSEMENT

36. The State repeats the allegations in the paragraphs above and incorporates them as if fully stated herein.

37. As described above, URS's contractual breaches and negligence were a contributing cause in the sequence of events that led to the collapse of the Bridge. As a result, under Minn. Stat. § 3.7394, subd 5(a), the State has a right of reimbursement from URS for the

payments the State made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393.

COUNT IV - SUBROGATION

38. The State repeats the allegations in the paragraphs above and incorporates them as if fully stated herein.

39. As described above, URS's negligence was a contributing cause in the sequence of events that led to the collapse of the Bridge. As a result, under Minn. Stat. § 3.7394, subd 5(b) and the settlement agreement and release executed by survivors, the State has a right of subrogation against URS for the payments the State made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393.

COUNT V - CONTRACTUAL CONTRIBUTION AND INDEMNITY

40. The State repeats the allegations in the paragraphs above and incorporates them as if fully stated herein.

41. The Contracts between the State and URS contain an agreement by URS to indemnify the State from all liability. The Contracts state, in pertinent part:

Contractor [URS] must indemnify, save, and hold State, its agents, and employees harmless from any and all claims or causes of action, including attorney's fees incurred by State, arising from a negligent or otherwise wrongful act, or omission in the performance of this contract by contractor or contractor's agents or employees. This clause will not be construed to bar any legal remedies contractor may have for State's failure to fulfill its obligations pursuant to this contract.

42. Pursuant to the provisions of the Contracts, if the State of Minnesota is found liable to other parties for damages arising from the Bridge collapse, the State is entitled to contribution and indemnity from URS as a matter of contract.

43. In the event the State is found liable for any damages to third parties, including but not limited to Progressive Contractors Incorporated ("PCI"), the State demands judgment in

the same amount against URS, together with the costs, disbursements and attorneys' fees incurred, to the extent such damages were caused by URS's negligent or otherwise wrongful acts or omissions.

44. In addition, the State is entitled to contribution and/or indemnity as a matter of contract against URS for the payments it made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393 and for any other payments made or costs incurred by the State arising out of the collapse of the Bridge.

COUNT VI - COMMON LAW CONTRIBUTION AND INDEMNITY

45. The State repeats the allegations in the paragraphs above and incorporates them as if fully stated herein.

46. If the State is found liable to third parties for damages arising from the Bridge collapse, including but not limited to PCI, the State is entitled to contribution and indemnity from URS as a matter of common law.

47. In the event the State is found liable for any damages to third parties, the State demands judgment in the same amount against URS, together with the costs, disbursements and attorneys' fees incurred, to the extent such damages were caused by URS's negligent or otherwise wrongful acts or omissions.

WHEREFORE, the State prays as follows:

1. That the State be awarded damages against URS for amounts paid, or other economic injury suffered, by the State as a result of the collapse, in an amount in excess of \$50,000;

2. That the State be awarded judgment by way of subrogation, reimbursement, and contractual contribution and/or indemnity against URS for payments made by the State under the emergency relief fund and section 3.7393;

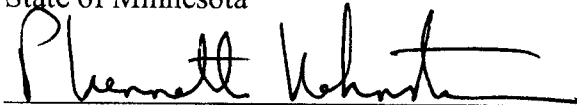
3. That in the event the State is adjudged liable to any third party, including but not limited to PCI, in any respect, that judgment be entered against URS entitling the State to contractual and common law contribution and/or indemnity.

4. That the State be awarded its attorney fees, costs, and disbursements herein;

5. That the State be awarded any other and further relief as justice requires.

Dated: 27 July 2009

LORI SWANSON
Attorney General
State of Minnesota



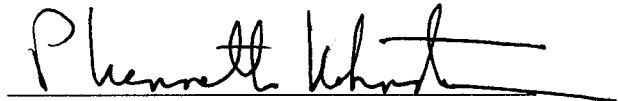
ALAN I. GILBERT
Solicitor General
Atty. Reg. No. 0034678
P. KENNETH KOHNSTAMM
Assistant Attorney General
Atty. Reg. No. 005740X
KRISTYN ANDERSON
Assistant Attorney General
Atty. Reg. No. 0267752
GARY CUNNINGHAM
Assistant Attorney General
Atty. Reg. No. 0186210
445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2127
(651) 282-5700 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR PLAINTIFF STATE OF
MINNESOTA

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: 27 July 2009



ALAN I. GILBERT
Solicitor General
Atty. Reg. No. 0034678
P. KENNETH KOHNSTAMM
Assistant Attorney General
Atty. Reg. No. 005740X
KRISTYN ANDERSON
Assistant Attorney General
Atty. Reg. No. 0267752
GARY CUNNINGHAM
Assistant Attorney General
Atty. Reg. No. 0186210
445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2127
(651) 282-5700 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR PLAINTIFF STATE OF
MINNESOTA