

Aftermath of bridge's collapse: Here come the lawyers

The failure of I-35W could end up pinned on those least responsible for it

Once the shock of the Interstate 35W bridge collapse in Minneapolis subsides and a brief mourning period is observed, the next thing to expect is for trial lawyers to pounce.

In our litigious society, there is no such thing as a nonrecourse accident or disaster. An aftermath of claims and litigation is as predictable as the political grandstanding that will

occur over the causes of and responses to the collapse.

Given the magnitude of catastrophe, though, the legal recourse for those damaged may be quite limited. Of course, those involved with the accident will have first-party property damage insurance coverage for their cars and personal property, and those injured in the course of their employment will have workers' compensation claims. Some companies may have business interruption coverage due to property damage or other effects of the accident. However, the ability to pursue litigation may be surprisingly constrained.

One obvious target defendant is the Minnesota Department of Transportation. However, it's difficult to sue a public body in a situation like this. Inevitably, public bodies claim they enjoy immunity under the "discretionary immunity" doctrine, which grants protections from liability for decisions that involve the making of policy as opposed to policy's implementation. Well-established in Oregon, the doctrine prevents suits in which there is a balance of policy considerations in determining what actions should be taken. One can well imagine the Minnesota DOT would argue the failure to repair or replace the bridge resulted from policy decisions driven by inadequate funding.

Even if the DOT were found guilty of negligence or other fault and were not protected by the discretionary immunity doctrine, the state of Minnesota – just as the state of Oregon does – enjoys a total cap of tort liability for claims. (In Minnesota, the tort limit arising from the accident is \$1 million; in Oregon, the tort limit is even less.) Thus, the recourse against the most logical and probably most culpable party, the state of Minnesota, looks questionable or at least limited.



CONSTRUCTIVE ADVICE

Guy Randles

Limitation of liability clauses are unusual in public works contracts, so it is unlikely the contractors involved with the bridge will have such protections. It could very well turn out the parties least involved and least culpable will face the greatest risk.

Perhaps stymied in pursuing claims against the Minnesota DOT, what is a trial lawyer to do? Most likely, claims will be directed to those less culpable but who do not enjoy immunity or damage caps: the contractors, engineers and inspectors who worked on the bridge over the 40 years it has been in use.

Recent contractors could fare worst

Given the statute of limitations, it is unlikely the original bridge designer (assuming it was not an in-house DOT designer) and the original contractor could be brought to task in a lawsuit even if the original design or construction were faulty and the cause of the accident. Therefore, the focus will likely be on those who have worked on the bridge more recently.

Although the causes of the collapse are at present unknown – at least publicly – one can expect claims that inspectors, engineers and others missed obvious signs that the bridge was unsafe or failed to give adequate notice of the impending disaster. Even those who reportedly opined that the bridge was "structurally deficient" before the collapse may be at risk if they did not warn a collapse was imminent or even just possible. One can also certainly expect claims that the contractors working on the bridge contributed to the collapse by their methods or that they failed to detect and warn of defects in the bridge. (Even if by contract the contractors bore no responsibility for detecting or reporting defects, they may find themselves forced to explain to lay jurors or judges the typical allocation of risks in the construction industry.) Justified or not, it is easy to envision a wholesale roundup of all the parties involved in any way with the bridge by

Continued on next page

Continued from Page 1

trial lawyers desperate to find some deep pockets.

On private projects, design professionals and contractors may have some success in limiting their claims exposure through limitation of liability clauses or waivers of consequential damages. However, such provisions are very unusual in public works contracts, so it is unlikely the private parties involved with the bridge will have such protections. It could very well turn out the parties least involved and least culpable will face the greatest risk.

It is truly fortunate that the loss of lives and property from the bridge collapse was as small as it appears. As a result, the total potential claim amount will be far less than it could have been. However, even if the claim total is manageable, the repercussions in the industry could be profound. With recourse against bridge owners limited, those private companies involved with bridge inspections, maintenance and repair will certainly take

note of the I-35W bridge collapse in making their assessments and recommending action to the public owners.

What bridge inspector will want to have rendered a rosy assessment of the condition and longevity of any bridge if it might face huge exposure in the event of a collapse? What bridge maintenance or repair company will not paper its files and reports to the owner with dire assessments of the need for more repairs if this might protect the company from future claims? At a minimum, one can certainly expect very conservative and self-protective reports on the condition of the bridges inspected. Public owners may soon be presented with dire assessments calling for the immediate replacement of scores of bridges when funding for such projects is simply unavailable.

Guy A. Randles is the chairman of the Construction and Design section of Stoel Rives LLP and a member of the Washington and Oregon bars. Contact him at 503-294-9288 or garandles@stoel.com.