

## Court rules subcontractor isn't liable for damages

BY BRIAN JOHNSON

Staff Writer

In a closely watched decision, the Minnesota Supreme Court on Wednesday ruled in favor of a local subcontractor that was held responsible for damages it didn't cause on a construction project.

The Supreme Court reversed a Court of Appeals decision that said Anoka-based L.H. Bolduc Co. and its insurance provider had to pay out on a \$202,000 insurance claim for damage on a construction project, even though a jury said Bolduc wasn't at fault.

In its decision, the Supreme Court ruled that Bolduc could not be required to indemnify Engineering and Construction Innovations (ECI), another contractor on the project, without violating state law.

"We are obviously very happy that Bolduc is not going to be held liable for something it didn't do," said Curtis Smith, an attorney with the Minneapolis firm Moss & Barnett, which weighed in on behalf of Bolduc and the Minnesota Subcontractors Association. "The result is exactly what we were looking for and hoping for."

The case relates to the use of "broad form indemnity" clauses, which are common in construction contracts. Essentially, it's a form of insurance coverage that can put one construction company on the hook for damage caused by another.

The Minnesota Subcontractors Association and other critics of broad form indemnity say the practice raises insurance costs, creates unnecessary litigation and is unfair to specialty contractors.

Critics say the practice unfairly holds innocent parties responsible for the negligence of others, but others say it makes sense because it eliminates the need for competing or duplicative insur-

ance coverage on a project.

"The case is held up as an egregious example, but our position is that it is an anomaly and should not be seen as a reason to jettison a provision of construction law that has worked well for 30-plus years," said Tim Worke, director of the Associated General Contractors of Minnesota's highway division, in an email.

Last year, the Minnesota Subcontractors Association unsuccessfully pushed for a legislative fix on the issue and the association intends to take up that fight again this year.

Michael Schmaltz, executive director of the association, said the Legislature has been hesitant to take action while the matter was still in the courts. Now that hurdle has been cleared.

"We will be moving ahead with legislation. The question, from what I am seeing, does not appear to be cleanly resolved," he said.

The issues were laid out in the case of Engineering & Construction Innovations Inc. v. L.H. Bolduc Co. and Travelers Indemnity Co. of America.

According to court documents, Bolduc was working as a subcontractor for ECI on a construction project in White Bear Lake, White Bear Township and Hugo.

The project paid Bolduc about \$32,000. As part of the contract, Bolduc was required to obtain extra insurance that covered ECI.

In 2007, ECI discovered damage to a pipeline that was laid as part of the project. ECI repaired the \$235,000 worth of damage and asked for reimbursement from Bolduc and its insurance provider, Travelers.



Tim Worke



Michael Schmaltz

A Ramsey County jury ruled that Bolduc was not at fault and not responsible for the damages.

On appeal, the Minnesota Court of Appeals agreed that Bolduc wasn't at fault but found the defendant liable for about \$202,000 because Bolduc's and Travelers' insurance obligations "were not limited to damage attributable to Bolduc's negligence."

The Minnesota Supreme Court disagreed. The court ruled that ECI "did not qualify as an "additional insured" with respect to the pipe damage and that Bolduc cannot be re-

quired to indemnify ECI" without violating state law (Minnesota Statute 337.02).

The Supreme Court's decision is considered a victory for subcontractors.

While the decision addressed specific contract language in a non-standard-form contract, it leaves open some unanswered questions about required insurance coverage and indemnification.

"While there is some broad brush language here, it's also very narrowly tailored," Smith said. "How broad it will be interpreted and used going forward, by trial courts and the court of appeals, is yet to be seen."

