

Cue the lawyers

Next flood from water main break: Insurance claims

BY BRIAN JOHNSON
Staff Writer

Flood damage caused by Thursday's water main break in downtown Minneapolis may be a drop in the bucket compared with the insurance mess that's likely to follow.

On Friday, crews were still repairing damage in the area of Hennepin Avenue and Second Street North, where a water main ruptured Thursday afternoon and flooded the area with 14 million gallons of water, closing streets, disrupting businesses and affecting water service from the Mississippi River to Lake of the Isles, the city said.

Damaged property includes the U.S. Postal Service Building at 100 First Ave. S. near the Hennepin Avenue Bridge.

Matt Lindstrom, a city spokesman, said Friday that he didn't yet have a cost estimate for the damage, but he added that most of the closed streets were reopened as of Friday morning.

"They are working on repairing that main as quickly as possible," he said.

But when it comes to sorting out who is liable and dealing with insurance claims, there's not likely to be a quick fix.

"It could take a lot of time and legal costs to get the claims resolved," said Mark Kulda, vice president of public affairs for the Insurance Federation of Minnesota in Maple Grove.

Kulda speculated that some of the claims could end up in litigation, and it could be a year or two before it's all figured out.

"This is going to be one of those cases where the agreement between the subcontractor and contractor is going to guide what happens in terms of liability issues:



STAFF PHOTO: BILL KLOTZ

Crews were at the scene of a broken water main Thursday in downtown Minneapolis. The water main broke just west of Hennepin Avenue on Second Street North, near the construction site of a new apartment-retail building.

Who is responsible, and who may be on the hook paying claims for people who didn't have their own business insurance," he added.

A city news release said the incident happened at 2:30 p.m. Thursday when private contractors working on a project at Hennepin Avenue and Second Street North "struck and ruptured a 36-inch water main that delivers water to a large portion of the city."

The project, called 222 Hennepin, is a \$70 million, 286-unit apartment-retail development scheduled for completion later this year. Minneapolis-based Ryan Cos. is

the general contractor.

Calls to Ryan Cos. have not been returned.

Scott Beron, Ryan's public safety director, told the Star Tribune that United Sewer and Water, a subcontractor, was connecting utilities to the project when the break happened, and that a crawler hoe may have punctured the main.

General contractors and subcontractors carry general liability insurance policies that cover damage to third-party property, said Dean Thomson, shareholder with Fabyanske, Westra, Hart & Thomson law firm in Minneapolis.

Water ‘A good wake-up call to make sure your liability limits are adequate’

Continued from page 1

Businesses and buildings around the site are likely to have claims for property damage. The “extent of the damage may be such that it will go by the primary layer and get into excess layers of coverage,” Thomson added.

“The question is, will there be enough coverage to satisfy all the claims for damages?”

Kulda said commercial insurance policies are tailored to each business, and coverage amounts vary.

Insufficient coverage would be problematic for anyone held liable. For example, if a contractor is liable for \$5 million in dam-

team may be liable, much of that depends on how the contract was crafted between the general contractor and the subcontractor, Kulda said.

Contract terms, the specifics of what happened and perhaps even the possibility of an equipment malfunction are among the things investigators will look at.

“Usually when something like this happens, everyone points the finger at someone else,” Kulda said.

The water main break gets at the heart of a practice that has annoyed subcontractors for years: Having to sign “broad form” indemnity clauses, which are common in Minnesota construction contracts.

Subcontractors say such clauses can hold them responsible for damages that result when other contractors mess up.

The Minnesota Subcontractors Association, then known as the Minnesota chapter of the American Subcontractors Association, introduced legislation last year to curb the practice, and the group’s executive director said it plans to revisit the issue this year.

Michael Schmaltz, the association’s executive director, said Thursday’s accident brings to mind the case of *Engineering & Construction Innovations Inc. v. Bolduc Co. Inc.*, which is up for consideration by the Minnesota Supreme Court.

L.H. Bolduc Co. worked as a subcontractor for Engineering and Construction Innovations (ECI) on a construction project in the White Bear Lake area. Bolduc was paid \$32,000 for the work and was required to obtain extra insurance that covered ECI, according to court documents.

In 2007, according to court papers, ECI discovered damage to a pipeline that was laid as part of the project, repaired the damage at a cost of \$235,000 and sought reimbursement from Bolduc and its insurance provider, Travelers.

A jury found that Bolduc wasn’t at fault and therefore wasn’t responsible for the damages. But the Minnesota Court of Appeals said Bolduc, though not at fault, was liable for \$202,000 because Bolduc’s and Traveler’s insurance obligations “were not limited to damage attributable to Bolduc’s negligence.”

The Minnesota Subcontractors Association weighed in on Bolduc’s behalf in a “friend of the court” brief.

“The position we have always taken, as subcontractors, is if we are at fault, we are not trying to dodge actual fault,” Schmaltz said. “What we want to see is, whoever is actually responsible is also held financially responsible.”

Buck declined to disclose the identity of the venture capital firm or the amount, since the deal is not yet complete.

Both Buck and Evans said during the panel discussion that the key to securing Asian investments is to have an “Asian story,” – in this case the interest in having an Asian presence and basing some research and development there.

“It’s really what’s in it for the investor,” Buck said.

Assistance from a consulting company such as Tractus Asia – a company that bridges the divide between Eastern and Western cultures – also helps.

Evans acknowledged that there is a risk that some Twin Cities medtech startups could drift to Asia. But he thinks the chance to raise money is well worth the risk, especially since many companies would not get funded otherwise.

Despite the increased presence in Malaysia, Buck very much sees Mardil Medical’s future in Minnesota. If the next round of clinical trials is successful, Buck expects more traction with U.S. investors, and research will expand to Canada and Europe. The company, which has a total four employees in Plymouth and relies on a host of contractors in the metro, will continue to grow in the state.

“This is a Minnesota company,” Buck said.



“Usually when something like this happens, everyone points the finger at someone else.”

—Mark Kulda, vice president of public affairs for the Insurance Federation of Minnesota in Maple Grove

ages but has a \$1 million coverage limit, the contractor could be on the hook for \$4 million, he said.

“For business owners, this is a good wake-up call to make sure your liability limits are adequate,” he said.

Kulda says businesses with damages should pursue claims through their own business policies first, because it’s likely to be faster and less costly than going directly after the responsible party or parties.

In addition to property damage, the accident could result in claims for business interruption, including lost revenue or profit.

Since the broken water main caused flooding, “it could trigger flood insurance coverage,” he added. “Being close to the river, most of the buildings probably have flood coverage.”

As for sorting out who on the project