

Indemnification Case Summary:

Engineering and Construction Innovations, Inc. vs. L.H. Bolduc Co., Inc., A11-159 (Minn. Ct. App. 9/6/11).

Background: Owner Metropolitan Counsel Environmental Services (MCES) hired Frontier Pipeline as the prime contractor for a construction project. Frontier subcontracted with Engineering and Construction Innovations (ECI) to complete a portion of the project. ECI then subcontracted Bolduc to “furnish, drive and remove metal sheeting to and from the project.”

Contract & Insurance: By contract ECI agreed to pay Bolduc \$32,513.29 for its work. In addition, ECI’s Commercial General Liability Policy required Bolduc to carry insurance covering ECI. In order to obtain the job, Bolduc complied and purchased the extra insurance required by ECI.

Damages & Litigation: In 2007, ECI discovered damage to the pipeline laid by Frontier Pipeline. Under ECI’s contract with MCES and Frontier Pipeline, ECI had to repair the damage immediately. ECI completed the repairs for the total cost of \$235,399.89. ECI informed Bolduc and Bolduc’s insurance company (Travelers) of the damage, demanding payment.

Although ECI was required by contract to pay Bolduc \$32,513.39 for its work, instead ECI subtracted the \$32,513.29 it owed Bolduc from the \$235,399.89 that it cost ECI to repair the pipeline. Under this math, ECI insisted that Bolduc in fact owed ECI \$202,826.60.

Travelers refused to pay for the damage, claiming the insurance policy did not cover these damages. ECI then sued Bolduc and Travelers for the pipeline repair costs. The parties went to District Court where, in a bifurcated trial, the issues of fault and damages were decided.

Zero Fault: The jury found that Bolduc was not negligent and that ECI was not entitled to any money for its loss resulting from damage to the pipeline. ECI appealed to the Minnesota Court of Appeals.

Minnesota Statute & The Minnesota Court of Appeals: On appeal, the Minnesota Court of Appeals determined that Bolduc was not negligent. However, the Court found that the MN Stat. § 337.02, designed to prevent the transfer of liability was rendered inapplicable because of MN Stat. § 337.05 – the exception to the rule. Under this ruling and because of Minnesota Statute, Bolduc became 100% responsible for another’s negligence.

Consequence of Ruling: As is typical in construction projects, in this situation liability was effectively transferred downstream between four parties (owner to prime contractor to subcontractor to sub-subcontractor). The result is that the smallest participating subcontractor in the construction project is being forced to insure and indemnify everyone else working on the project.

And even though Bolduc was found 0% negligent by a jury, they are being held 100% liable for damage caused by someone else’s negligence. Bolduc was going to make less than \$33,000 for their work. Now, because of a statutory loophole, they have to pay more than \$235,000 for a mistake that was not theirs.

Today, MN § 337.02’s anti-indemnification protection is totally worthless in preventing Broad Form Indemnification. In fact, the Minnesota Appeals Court acknowledges this flaw when it stated, “that the narrow exception appears to have swallowed the rule.”