

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

2010 JAN 26 PM 2: 38

FOURTH JUDICIAL DISTRICT

BY smboles DEPUTY
HENN CO. DISTRICT
COURT ADMINISTRATOR

In Re: Individual 35W Bridge Litigation Order File Number: 27-CV-09-7519

Consortium Injury: 27-CV-09-16994

Consortium Wrongful Death: 27-CV-09-16920

Consortium with PCI Employees: 27-CV-09-16939

Schwebel Personal Injury: 27-CV-09-7274

Schwebel Wrongful Death: 27-CV-08-28245

Subrogated Parties: 27-CV-09-19802

State of Minnesota Bond: 27-CV-09-19443

First Student: 27-CV-09-19561

Miscellaneous Contract/Damages: 27-CV-09-19445

ORDER

The above-entitled matters came before the undersigned Judge of District Court on October 29, 2009, pursuant to the parties' submissions regarding trial sequencing.

Richard Nygaard, Esq., appeared on behalf of the Schwebel Plaintiffs. Chris Messerly, Esq., appeared on behalf of the Consortium Plaintiffs. George Eck, Esq., appeared on behalf of Defendant URS Corporation. Theodore Roberts, Esq., appeared on behalf of Progressive Contractors Incorporated and Travelers Casualty and Surety Company of America. Alan Gilbert, Esq., appeared on behalf of the State of Minnesota. Kirk Kolbo, Esq., appeared on behalf of Jacobs Engineering Group, Inc. Jeffrey Baill, Esq., appeared on behalf of the Subrogated Parties.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

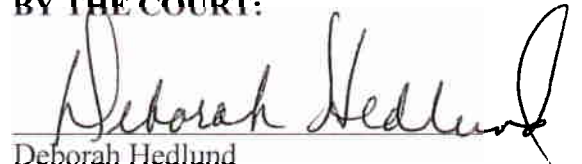
ORDER

IT IS HEREBY ORDERED THAT:

1. The cases involved in this litigation shall proceed to one consolidated trial on liability followed by individual trials on damages and other issues.
2. The attached Memorandum of Law is made a part of this Order.

Dated: 1/26/10

BY THE COURT:



Deborah Hedlund
Judge of District Court

MEMORANDUM OF LAW

On August 1, 2007, the 35W Bridge over the Mississippi River collapsed. In response to the bridge collapse, the legislature established the Compensation Fund. Pursuant to the legislation, the Minnesota Supreme Court appointed a special masters panel to determine the total damages and negotiate a settlement for each injured party. This matter involves 122 lawsuits arising from the 35W Bridge collapse. The majority of cases are personal injury and wrongful death actions by individuals on the bridge at the time of the collapse. All of the personal injury and wrongful death Plaintiffs involved in these cases received settlement payments from the Compensation Fund.

The Court consolidated all of the cases for pre-trial purposes. The parties were unable to reach an agreement regarding trial sequencing. In the Case Management Order filed on September 22, 2009 (“CMO”), the Court directed the parties to “provide to the court by October 16, 2009, their respective positions as to the scheduling of trials.” Defendants URS Corporation (“URS”), Progressive Contractors Incorporated (“PCI”)¹, and Third-Party Defendant Jacobs Engineering Group, Inc. (“Jacobs”)(hereinafter collectively referred to as “Defendants”) requested consolidation of the cases into one trial on liability followed by individual trials on damages. The Plaintiffs represented by Schwebel, Goetz, and Sieben (“Schwebel Plaintiffs”), offered to present two cases together with the Plaintiffs represented by the consortium of attorneys (“Consortium Plaintiffs”) on liability and damages. Since the Consortium Plaintiffs did not agree to that proposal, the Schwebel Plaintiffs seek to try their cases before the Consortium Plaintiffs. The Consortium Plaintiffs oppose bifurcation of liability and damages and request Bellwether trials of representative cases from each category of cases identified in the CMO.

¹ Subsequent to briefing but prior to the hearing, PCI reached a settlement with all Plaintiffs and the State.

Rule 42 of the Minnesota Rules of Civil Procedure governs consolidation and bifurcation.

With respect to consolidation, Rule 42.01 provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Minn. R. Civ. P. 42.01. In these cases arising from a single catastrophic event, the factual and legal issues of Defendants' possible liability do not differ among the Plaintiffs. See Sterling v. Velsicol Chemical Corp., 855 F.2d 1188, 1197 (6th Cir. 1988). All of the cases here involve the same factual evidence of the Defendants' actions or inactions throughout the history of the bridge. While the Plaintiffs' and Defendants' experts may have varying theories on the cause of the bridge collapse, the facts upon which those theories are based need to be found by a single jury in a single case. The trier of fact will be asked to determine the cause of the collapse and apportion fault, if any, among the Defendants. The Court thus has authority to consolidate the cases for trial.

When considering consolidation, the Court must balance convenience against the possibility of prejudice. See Green v. City of Coon Rapids, 485 N.W.2d 712, 716 (Minn. Ct. App. 1992). Consolidation of these cases for trial on liability will result in a significant savings of time and resources. The issue of liability will likely take several weeks to try because it will include evidence spanning the 40-year life of the bridge and the testimony of numerous witnesses, many of them engineering experts with complex concepts, theories, and models. More than one trial on the issue of liability would be burdensome in terms of time, expenses, and resources on the parties, witnesses, jurors, and Court. Plaintiffs' argument that they will be prejudiced if required to try the cases together because the Schwebel Plaintiffs and Consortium Plaintiffs have differing expert opinions on the cause of the collapse is without merit. The purpose of a trial is to present all of the facts along with all of the experts' interpretation of the facts to the jury so that they may evaluate all

of the evidence and determine the cause of the collapse. Differing expert opinions between the Plaintiffs does not mean they will be in direct opposition to each other. Consolidation of the cases for one trial on the issue of liability is especially important to prevent the prejudice to both Plaintiffs and Defendants of inconsistent verdicts. See e.g., Brooks Realty, Inc. v. Aetna Ins. Co., 276 Minn. 245, 149 N.W.2d 494 (1967). Allowing more than one trial on the issue of liability could result in one jury finding a Defendant liable for the collapse of the bridge but another jury determining the same Defendant without fault and one Plaintiff receiving damages while another does not. Such inconsistent verdicts would be unfair and illogical.

The Consortium Plaintiffs' proposal to conduct Bellwether trials does not avoid the risk of inconsistent verdicts. Bellwether trials are more suitable to mass products liability actions where issues of liability are not uniform among all plaintiffs due to factors such as individual interactions and passage of time. Furthermore, determining the damages for a representative case from each category would not assist in assessing damages for other Plaintiffs in the same category because they did not suffer the same injuries and did not need the same treatment. The Plaintiffs here have differing injuries and Bellwether trials will not help in extrapolating damages among an entire group. For all of these reasons, it is appropriate to consolidate the cases for one trial on the issue of liability.

Defendants also request bifurcation of the liability and damages trial. The Court may order separate trials of any issues "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." Minn. R. Civ. P. 42.02. The Court may order severance for trial if undue confusion might result. Fitzer v. Bloom, 253 N.W.2d 395, 402 (Minn. 1977). This is not a situation where bifurcation will shield the Defendants from the effect of Plaintiffs' injuries on the jury because the number and extent of injuries caused by the collapse have

been widely publicized. See e.g., Grosfield v. Clearwater Clinic, 417 N.W.2d 640 (Minn. 1988).

These cases are unique in that all of the Plaintiffs' damages have been evaluated and determined by the special masters panel. This will aid in the determination of damages.² As noted above, allowing each individual Plaintiff a trial on liability and damages, or even a series of Bellwether trials, is burdensome on the parties and Court and runs the risk of inconsistent verdicts. To further convenience and avoid prejudice, liability and damages will be bifurcated. These matters shall proceed to one consolidated trial on the issue of liability, followed by individual trials on the issue of damages. If individual trials on damages are needed, the order in which they will proceed will be decided at a later date.

D.H.

² In the settlement with PCI, the Plaintiffs distributed the settlement proceeds among themselves pursuant to their pro rata share of the Compensation Fund settlement proceeds.