

**In The
Supreme Court of the United States**

JACOBS ENGINEERING GROUP INC.,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

**On Petition For A Writ Of Certiorari
To The Minnesota Supreme Court**

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

LORI SWANSON
Attorney General
STATE OF MINNESOTA

ALAN I. GILBERT
Counsel of Record
Solicitor General

P. KENNETH KOHNSTAMM
KRISTYN ANDERSON
GARY R. CUNNINGHAM
JACOB CAMPION
Assistant Attorneys General

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1450 (Voice)
(651) 296-1410 (TTY)
al.gilbert@ag.state.mn.us

Attorneys for Respondent

QUESTIONS PRESENTED

1. Whether the decision of the Minnesota Supreme Court affirming the district court's denial of a motion to dismiss is a "final judgment" for the purpose of conferring certiorari jurisdiction upon this Court.
2. Whether, under substantive due process, the Minnesota Legislature may retroactively change a statute of repose if there is a rational basis for doing so.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE.....	1
A. Factual Background	1
B. Procedural History.....	4
REASONS FOR DENYING THE PETITION	6
I. The Decision Of The Minnesota Supreme Court Is Not A Final Judgment For The Purpose Of Certiorari Review	7
II. The Minnesota Supreme Court's Decision Does Not Conflict With <i>William Danzer & Co. v. Gulf & Ship Island R.R. Co.</i> , Or Decisions Of Any Circuit Courts Of Appeals Or A State Court Of Last Resort	11
A. <i>Danzer</i> Does Not Control The Analysis Of This Case	12
B. The Minnesota Supreme Court's Decision Conforms To This Court's Authority And Correctly Concludes That The State Reimbursement Statute Is Rationally Based	15
C. There Is No Conflict Among Federal Circuit Courts Or State Courts Of Last Resort With Respect To The Federal Question Presented In This Case	20

TABLE OF CONTENTS – Continued

	Page
III. The Minnesota Supreme Court’s Decision Has Limited Application Because It In- volves An Extraordinary Matter, And In Any Event, The Public Policy Underlying The Statute In Question Is Properly De- termined By The Minnesota Legislature....	24
CONCLUSION	28

APPENDIX

Third Party Defendant State Of Minnesota, Department Of Transportation’s Amended Answer To Third Party Plaintiff Progressive Contractors Incorporated’s Third Party Com- plaint, Counterclaim Against Third Party Plaintiff Progressive Contractors Incorpo- rated, And Cross-Claim Against Third Party Defendant Jacobs Engineering, Inc.	R. App. 1
--	-----------

TABLE OF AUTHORITIES

Page

FEDERAL CASES

<i>B & G Constr. Co., Inc. v. Dir., Off. of Work.</i> <i>Comp. Progs.</i> , 662 F.3d 233 (3d Cir. 2011)	20
<i>Campbell v. Holt</i> , 115 U.S. 620 (1885)	23
<i>Chase Sec. Corp. v. Donaldson</i> , 325 U.S. 304 (1945)	6, 13, 14
<i>City of Cuyahoga Falls, Ohio v. Buckeye Cmty.</i> <i>Hope Found.</i> , 538 U.S. 188 (2003)	18
<i>Cox Broad. Corp. v. Cohn</i> , 420 U.S. 469 (1975) ...	8, 9, 10
<i>Dodge v. Bd. of Educ. of Chicago</i> , 302 U.S. 74 (1937)	26
<i>Florida v. Thomas</i> , 532 U.S. 774 (2001)	9, 10
<i>Flynt v. Ohio</i> , 451 U.S. 619 (1981)	6, 9, 10, 11
<i>Franklin Cnty. Convention Facilities Auth. v.</i> <i>Am. Premier Underwriters, Inc.</i> , 240 F.3d 534 (6th Cir. 2001)	21
<i>Gen. Motors Corp. v. Romein</i> , 503 U.S. 181 (1992)	15, 17, 20, 21, 22
<i>Harris v. Owens</i> , 264 F.3d 1282 (10th Cir. 2001), <i>cert. denied</i> , 535 U.S. 1097 (2002)	21
<i>Int'l Union of Elec., Radio & Mach. Workers,</i> <i>AFL-CIO, Local 790 v. Robbins & Myers,</i> <i>Inc.</i> , 429 U.S. 229 (1976)	13, 14
<i>Jefferson v. City of Tarrant, Ala.</i> , 522 U.S. 75 (1997)	8
<i>Johnson v. California</i> , 541 U.S. 428 (2004)	9, 10

TABLE OF AUTHORITIES – Continued

Page

<i>Keene v. Consolidation Coal Co.</i> , 645 F.3d 844 (7th Cir. 2011).....	21
<i>Local No. 438 Constr. & Gen. Laborers' Union, AFL-CIO v. Curry</i> , 371 U.S. 542 (1963)	10, 11
<i>Lundeen v. Canadian Pac. Ry. Co.</i> , 532 F.3d 682 (8th Cir. 2008), <i>cert. denied</i> , 129 S. Ct. 2379 (2009).....	21
<i>Lyon v. Augusta S.P.A.</i> , 252 F.3d 1078 (9th Cir. 2001)	21
<i>Maine Cent. R.R. Co. v. Bhd. of Maint. of Way Emps.</i> , 835 F.2d 368 (1st Cir. 1987).....	20
<i>Mercantile Nat'l Bank at Dallas v. Langdeau</i> , 371 U.S. 555 (1963).....	10, 11
<i>Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.</i> , 470 U.S. 451 (1985).....	18, 26
<i>Pension Benefit Guar. Corp. v. R.A. Gray & Co.</i> , 467 U.S. 717 (1984).....	<i>passim</i>
<i>Pers. Adm'r of Mass. v. Feeney</i> , 442 U.S. 256 (1979).....	26
<i>Pierce Cnty., Wash. v. Guillen</i> , 537 U.S. 129 (2003).....	8
<i>Roberts v. Galen of Va., Inc.</i> , 525 U.S. 249 (1999).....	12
<i>Rojas-Reyes v. I.N.S.</i> , 235 F.3d 115 (2d Cir. 2000)	20

TABLE OF AUTHORITIES – Continued

	Page
<i>Shadburne-Vinton v. Dalkon Shield Claimants Trust</i> , 60 F.3d 1071 (4th Cir. 1995), <i>cert. denied</i> , 516 U.S. 1184 (1996).....	15, 21, 24, 25
<i>Swisher Int’l, Inc. v. Schafer</i> , 550 F.3d 1046 (11th Cir. 2008).....	21
<i>Travelers Ins. Co. v. Marshall</i> , 634 F.2d 843 (5th Cir. 1981)	21
<i>United States v. United Foods, Inc.</i> , 533 U.S. 405 (2001).....	12
<i>Usery v. Turner Elkhorn Mining Co.</i> , 428 U.S. 1 (1976).....	<i>passim</i>
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977).....	27
<i>Wesley Theological Seminary of the United Methodist Church v. U.S. Gypsum Co.</i> , 876 F.2d 119 (D.C. Cir. 1989), <i>cert. denied</i> , 494 U.S. 1003 (1990).....	15, 20, 25
<i>William Danzer & Co. v. Gulf & Ship Island R.R. Co.</i> , 268 U.S. 633 (1925)	<i>passim</i>

STATE CASES

<i>Colony Hill Condo. I Ass’n v. Colony Co.</i> , 320 S.E.2d 273 (N.C. Ct. App. 1984), <i>rev. denied</i> , 325 S.E.2d 485 (N.C. 1985).....	22
<i>Dua v. Comcast Cable of Md., Inc.</i> , 805 A.2d 1061 (Md. 2002).....	21, 22

TABLE OF AUTHORITIES – Continued

Page

<i>Farber v. Lok-N-Logs, Inc.</i> , 701 N.W.2d 368 (Neb. 2005)	23
<i>Givens v. Anchor Packing, Inc.</i> , 466 N.W.2d 771 (Neb. 1991)	23
<i>Haase v. Sawicki</i> , 121 N.W.2d 876 (Wis. 1963)	21
<i>Kelly v. Marcantonio</i> , 678 A.2d 873 (R.I. 1996)	23
<i>Lougren v. Peoples Elec. Co., Inc.</i> , 380 N.W.2d 791 (Minn. 1986)	15
<i>Miracle v. N.C. Local Gov't Emps. Ret. Sys.</i> , 477 S.E.2d 204 (N.C. App. 1996), <i>rev. denied</i> , 485 S.E.2d 57 (N.C. 1997)	22
<i>Pac. Indem. Co. v. Thompson-Yaeger, Inc.</i> , 260 N.W.2d 548 (Minn. 1977)	2
<i>Peterson v. City of Minneapolis</i> , 173 N.W.2d 353 (Minn. 1969)	19
<i>Sch. Bd. of Norfolk v. U.S. Gypsum Co.</i> , 360 S.E.2d 325 (Va. 1987)	23, 24
<i>Smith v. Westinghouse Corp.</i> , 291 A.2d 452 (Md. 1972)	21
<i>Theta Props. v. Ronci Realty Co., Inc.</i> , 814 A.2d 907 (R.I. 2003)	22, 23

FEDERAL STATUTES

28 U.S.C. § 1257(a)	6, 7, 10
42 U.S.C. § 1983	8

TABLE OF AUTHORITIES – Continued

	Page
42 U.S.C. § 2000e-5	14
42 U.S.C. § 2000e-5(d)	14

STATE STATUTES

1965 Minn. Laws ch. 564, § 1	2, 14
1980 Minn. Laws ch. 518, §§ 2-4	2, 14
1986 Minn. Laws ch. 455, § 92	2
1988 Minn. Laws ch. 607, § 1	2
2007 Minn. Laws ch. 140, art. 8, § 29	2
2008 Minn. Laws ch. 288, §§ 2-7	3, 14
Minn. Stat. § 3.7391, subd. 1	3, 5, 7, 18
Minn. Stat. § 3.7391, subd. 2	3, 19
Minn. Stat. § 3.7392, subd. 8	3
Minn. Stat. § 3.7394, subd. 5(a)	4, 19, 25
Minn. Stat. § 541.051	2, 14

STATE RULES AND REGULATIONS

Minn. R. Civ. App. P. 103.03(j)	5, 10
---------------------------------------	-------

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Nat'l Transp. Safety Bd., <i>Accident Report: Collapse of I-35W Highway Bridge, Minneapolis, Minnesota, August 1, 2007</i> at ix (Nov. 14, 2008), http://www.dot.state.mn.us/i35wbridge/ntsb/finalreport.pdf	2
Charles B. Hochman, <i>The Supreme Court and the Constitutionality of Retroactive Legislation</i> , 73 HARV. L. REV. 692 (1960).....	25

STATEMENT OF THE CASE

This case arises out of the horrific collapse of the Interstate 35W Bridge (the “Bridge”) over the Mississippi River in Minneapolis, Minnesota. Respondent State of Minnesota alleges that the designer of the Bridge grossly underdesigned a critical part of the Bridge which ultimately caused the Bridge to collapse. Petitioner challenges on substantive due process grounds the Minnesota law which requires persons who caused or contributed to the collapse to reimburse the State, to the extent of their culpability, for payments the State made to victims of the collapse, and in particular the impact of the law on Petitioner’s assertion of a statute of repose defense. The Minnesota Supreme Court properly determined, in accordance with this Court’s substantive due process jurisprudence, that the law was rationally based and therefore constitutional.

A. Factual Background

In 1962, the State of Minnesota entered into a contract with Sverdrup & Parcel and Associates, Inc., Petitioner’s predecessor,¹ for the design of the Bridge. R. App. 10-12, ¶¶ 3, 11, 13. Petitioner certified the final design plans in March 1965. *Id.* 12, ¶ 14. Although the Bridge’s design was to conform to the applicable American Association of State Highway Officials’ Standard Specifications for Highway

¹ Collectively referred to herein as “Petitioner” or “Jacobs.”

Bridges, Petitioner designed gusset plates of half the thickness required by the Specifications. *Id.* 12, ¶¶ 12, 15, 16. The gusset plates are critical components of the Bridge which connect the main members in the Bridge's superstructure. Nat'l Transp. Safety Bd., *Accident Report: Collapse of I-35W Highway Bridge, Minneapolis, Minnesota, August 1, 2007* at ix (Nov. 14, 2008), <http://www.dot.state.mn.us/i35wbridge/ntsb/finalreport.pdf> ("NTSB Report"). Unaware of Petitioner's improper design, the State constructed the Bridge as Petitioner designed it. R. App. 12-13, ¶¶ 17, 18.

Three years after the State and Petitioner contracted for the Bridge's design, and two months after Petitioner completed its work on the contract, the Minnesota Legislature enacted a ten-year statute of repose with respect to improvements to real property, codified as Minn. Stat. § 541.051. 1965 Minn. Laws ch. 564, § 1. The statute of repose was declared unconstitutional, and therefore void, in 1977. *Pac. Indem. Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548, 555 (Minn. 1977). In 1980, the Legislature enacted a fifteen-year statute of repose for improvements to real property. 1980 Minn. Laws ch. 518, §§ 2-4, codified as Minn. Stat. § 541.051. The statute of repose was thereafter amended several times. *See, e.g.*, 1986 Minn. Laws ch. 455, § 92, 1988 Minn. Laws ch. 607, § 1, 2007 Minn. Laws ch. 140, art. 8, § 29.

On August 1, 2007, the Bridge collapsed, killing 13 people and injuring more than 145 other individuals. R. App. 14, ¶¶ 22, 24. In response to this

catastrophe, the Minnesota Legislature enacted compensation fund legislation, Minn. Stat. § 3.7391, *et seq.*, appropriating approximately \$37 million to settle the claims of the Bridge collapse victims against the State. 2008 Minn. Laws ch. 288, §§ 2-7. In passing the statute, the Minnesota Legislature stated:

The legislature finds that the collapse of the Interstate Highway 35W bridge over the Mississippi River in Minneapolis on August 1, 2007, was a catastrophe of historic proportions. The bridge was the third busiest in the state, carrying over 140,000 cars per day. Its collapse killed 13 people and injured more than 100. No other structure owned by this state has ever fallen with such devastating physical and psychological impact on so many.

Minn. Stat. § 3.7391, subd. 1. The express purpose of the legislation was to “further the public interest by providing a remedy for survivors² while avoiding the uncertainty and expense of potentially complex and protracted litigation to resolve the issue of the liability of the state, a municipality, or their employees for damages incurred by survivors.” Minn. Stat. § 3.7391, subd. 2.

² The legislation defines “survivors” as natural persons present on the Bridge at the time of the collapse, parents, legal guardians (for minors) and legally appointed representatives of survivors, and surviving spouse and next of kin. Minn. Stat. § 3.7392, subd. 8.

An important part of the compensation fund legislation was a mechanism through which the State could later recoup the public money paid to the victims from those who caused or contributed to the collapse. Minn. Stat. § 3.7394, subd. 5(a) (the “reimbursement statute”). The reimbursement statute provides as follows:

Notwithstanding any statutory or common law to the contrary, the state is entitled to recover from any third party, including an agent, contractor, or vendor retained by the state, any payments made from the emergency relief fund or under section 3.7393 to the extent the third party caused or contributed to the catastrophe.

Minn. Stat. § 3.7394, subd. 5(a).

B. Procedural History

The State brought a cross-claim Complaint against Jacobs pursuant to the reimbursement statute,³ asserting that Jacobs’ negligence in designing the gusset plates caused or contributed to the collapse. R. App. 12, 14, 24, ¶¶ 17, 22, 64. Jacobs moved to dismiss the State’s Complaint on several grounds, including that the reimbursement statute violated federal substantive due process by retroactively eliminating a statute

³ The State also sought reimbursement under the statute from two other entities which performed work on the Bridge. Those claims were settled.

of repose defense. The district court denied Jacobs' motion. Pet. App. 84a. The Minnesota Court of Appeals, which granted interlocutory review pursuant to Minnesota common law and Minn. R. Civ. App. P. 103.03(j), Pet. App. 54a-57a, affirmed the district court. *Id.* 50a.

The Minnesota Supreme Court also affirmed. *Id.* 26a. It determined that Jacobs had a property interest in a statute of repose defense. *Id.* 16a-18a. The court held, however, under basic U.S. Supreme Court precedent, see, e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15-16 (1976) and *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729-30 (1984), that the reimbursement statute satisfied due process because it was rationally related to a legitimate government interest. Pet. App. 18a-20a. In reaching this conclusion, the court referred to the purposes of the compensation fund legislation, including the reimbursement statute. *Id.* 19a-20a. It determined that the State had a "legitimate interest in addressing a Bridge collapse that was a 'catastrophe of historic proportions.'" *Id.* 20a (citing Minn. Stat. § 3.7391, subd. 1). The court also reasoned that "[t]he compensation statutes are narrowly targeted to contribution and indemnity causes of action against responsible third parties." Pet. App. 20a.



REASONS FOR DENYING THE PETITION

This Court lacks jurisdiction to review the decision of the Minnesota Supreme Court because it is not a “final judgment” within the meaning of 28 U.S.C. § 1257(a). Rather, the decision denying Petitioner’s motion to dismiss is interlocutory, and therefore a trial could potentially dispose of the case on the merits in Petitioner’s favor. Consistent with numerous decisions of the Court, there is no overriding federal policy in this case that supports an exception to the jurisdictional mandate set forth in Section 1257. *See, e.g., Flynt v. Ohio*, 451 U.S. 619, 622 (1981).

Even if the Minnesota Supreme Court’s decision was final for certiorari review, Petitioner cannot demonstrate compelling reasons to grant the petition. The Minnesota Supreme Court did not ignore controlling precedent of this Court. The *Lochner* era decision relied on by Petitioner, *William Danzer & Co. v. Gulf & Ship Island R.R. Co.*, 268 U.S. 633 (1925), which it failed to even cite to the Minnesota Supreme Court, is of no consequence to the issue raised and decided in this case. The Court should not consider Petitioner’s argument because Petitioner did not refer to this supposedly dispositive authority in its challenge of the reimbursement statute before the Minnesota Supreme Court. In any event, *Danzer* is strictly limited to its facts, *see Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 312 n.8 (1945), which are materially different than the facts of this case.

The decision of the Minnesota Supreme Court is based on the controlling substantive due process jurisprudence of this Court. Pet. App. 19a. A retroactive statute does not violate substantive due process if it is rationally based. *See, e.g., Usery*, 428 U.S. at 15-16. The Minnesota Supreme Court correctly determined that the Minnesota Legislature acted rationally to further a legitimate public purpose in passing the law in question, and the Petition does not contest this determination. In addition, there is no conflict among the circuit courts of appeals or the state high court decisions.

The decision of the Minnesota Supreme Court also involves a discreet and unprecedented event, the collapse of a major bridge, *see* Minn. Stat. § 3.7391, subd. 1, and therefore will not incite other states to abrogate their statutes of repose on a “wholesale” basis. The arguments made by Petitioner and *Amici* regarding the purpose of statutes of repose involve public policy determinations reserved to the legislative branch of government and do not provide compelling reasons for this Court’s review.

I. The Decision Of The Minnesota Supreme Court Is Not A Final Judgment For The Purpose Of Certiorari Review.

This Court’s certiorari jurisdiction is limited to “[f]inal judgments . . . rendered by the highest court of a State.” 28 U.S.C. § 1257(a). The Minnesota Supreme Court’s decision is not such a final judgment

because it is an interlocutory order denying Petitioner's motion to dismiss. The case therefore has returned to the Minnesota district court for further proceedings on the merits of the State's claim for reimbursement, proceedings which could entirely moot the federal constitutional issue on nonfederal grounds. *See, e.g., Pierce Cnty., Wash. v. Guillen*, 537 U.S. 129, 142 n.5 (2003) (holding that interlocutory determination on federal constitutional question was not a final judgment because outcome of trial could moot federal issue); *Jefferson v. City of Tarrant, Ala.*, 522 U.S. 75, 81-82 (1997) (holding that interlocutory state court decision on federal issue as to whether punitive damages are recoverable under 42 U.S.C. § 1983 was not a final judgment where state court proceedings, including a trial on the merits of the state law claims, could moot federal question).

Petitioner asserts that the Minnesota Supreme Court's decision "might seriously erode federal policy," *see Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975) (referring to fourth *Cox* exception to final judgment doctrine), but continued litigation in Minnesota state court has no such effect. Even if review by this Court of the due process issue is otherwise appropriate, such review can await a final judgment in the State court proceeding without adversely impacting important federal interests. A contrary conclusion would render the *Cox* exception meaningless because any interlocutory decision on a federal constitutional issue would be subject to certiorari notwithstanding the final judgment doctrine.

This Court reached a similar conclusion in *Flynt v. Ohio*. See 451 U.S. at 622. In that case, the Ohio Supreme Court held in an interlocutory decision that the defendant's right to equal protection was not violated by the alleged selective enforcement of the state's obscenity laws. The Court concluded that even though the writ presented a federal equal protection issue, the erosion of federal policy exception was inapplicable. The Court stated that "there is no identifiable federal policy that will suffer if the state criminal proceeding goes forward," *id.*, and reasoned as follows:

The resolution of this question [the denial of equal protection] can await final judgment without any adverse effect upon important federal interests. *A contrary conclusion would permit the fourth [Cox] exception to swallow the rule.*

Id. (emphasis added).

Petitioner's alleged due process right implicates federal policy interests no more than did the alleged equal protection rights of the defendant in *Flynt*. Since, as in *Flynt*, the ongoing litigation in this case will not seriously erode federal policy, the Petition does not fall within the fourth *Cox* exception. See also, e.g., *Johnson v. California*, 541 U.S. 428, 430 (2004) (holding that case involving equal protection claim did not satisfy fourth *Cox* exception); *Florida v. Thomas*, 532 U.S. 774, 778 (2001) (same as to Fourth Amendment claim).

Contrary to Petitioner's contention, the order of the Minnesota Court of Appeals granting interlocutory state court review was not based upon a federal question. Rather, the court of appeals' order was based on Minnesota case law and Minn. R. Civ. App. P. 103.03(j). Pet. App. 54a-57a. As a result, the order granting interlocutory review does not establish an erosion of federal policy within the meaning of *Cox*. The availability of interlocutory review at the state level reflects a *state* policy interest in continued litigation in state court. It does not establish an erosion of *federal* policy interests as contemplated by *Cox* for certiorari review of a decision of the highest court of a state. See, e.g., *Johnson*, 541 U.S. at 430; *Thomas*, 532 U.S. at 778; *Flynt*, 451 U.S. at 622. In fact, *Flynt* and *Thomas* both involved a state court interlocutory appeal, 451 U.S. at 620; 532 U.S. at 778-80, which demonstrates that state interlocutory review is of no relevance to whether the fourth *Cox* exception is satisfied.

Petitioner's citation to *Mercantile Nat'l Bank at Dallas v. Langdeau*, 371 U.S. 555 (1963) and *Local No. 438 Constr. & Gen. Laborers' Union, AFL-CIO v. Curry*, 371 U.S. 542 (1963), is also misplaced. In *Langdeau*, the Court granted the writ to determine under a federal statute which state court had jurisdiction to decide the case. 371 U.S. at 558 (finding section 1257 satisfied where federal statute, rather than state statute, dictated proper venue). In *Curry*, the Court similarly granted certiorari to determine whether a state court had jurisdiction to enjoin

picketing or whether the controversy was within the exclusive jurisdiction of the National Labor Relations Board. 371 U.S. at 548 (granting certiorari review to determine whether Georgia state court had jurisdiction and stating “[t]he issue ripe for review is not whether a Georgia court has erroneously decided a matter of federal law in a case admittedly within its jurisdiction.”).

Forcing those cases to go back to state court until the merits were decided would have undermined the federal policy prescribing which tribunal even had jurisdiction to hear those actions in the first instance. *See Langdeau*, 371 U.S. at 558, 560; *Curry*, 371 U.S. at 550. Here, by contrast, no federal policy is undermined by awaiting review of the substantive due process claim until final judgment in state court. In the words of *Curry*, and consistent with *Flynt*, the substantive due process issue is not “ripe for review” by this Court.

The Petition should be dismissed for lack of jurisdiction.

II. The Minnesota Supreme Court’s Decision Does Not Conflict With *William Danzer & Co. v. Gulf & Ship Island R.R. Co.*, Or Decisions Of Any Circuit Courts Of Appeals Or A State Court Of Last Resort.

Even if this Court had jurisdiction, Petitioner fails to demonstrate compelling reasons justifying review. The Minnesota Supreme Court’s decision does

not conflict with this Court's jurisprudence; rather, it is consistent with the Court's precedent. Nor is there a conflict among the circuits or the high state courts.

A. *Danzer* Does Not Control The Analysis Of This Case.

The cornerstone of the Petition is the allegedly dispositive *Danzer* case, 268 U.S. 633 (1925). Pet. 9, 12-16. The lack of merit in this argument is evidenced by the fact that Petitioner failed to even cite *Danzer* to the Minnesota Supreme Court, let alone develop the argument before the court in its challenge to the reimbursement statute.

The argument should not now be considered by this Court. See *United States v. United Foods, Inc.*, 533 U.S. 405, 417 (2001) (refusing "to allow a petitioner to assert new substantive arguments attacking, rather than defending, the judgment when those arguments were not pressed in the court whose opinion we are reviewing, or at least passed upon by it"); *Roberts v. Galen of Va., Inc.*, 525 U.S. 249, 253-54 (1999) (declining to address issues that were insufficiently developed below). Indeed, it is entirely inappropriate for Petitioner to assert to this Court that the Minnesota Supreme Court ignored or overruled *Danzer*, Pet. 13-14, when Petitioner did not even refer the Minnesota Supreme Court to the case. Petitioner cannot now claim that *Danzer* is dispositive when it failed to make the argument to the Minnesota Supreme Court. Even assuming the Court believed it

was necessary to clarify the import of *Danzer*, this is not the appropriate case to do so because the Minnesota Supreme Court did not have the opportunity to address Petitioner’s contention regarding the *Danzer* decision.

In any event, *Danzer* is not controlling authority in this case. *Danzer*, decided during the so-called *Lochner* era, addressed the constitutionality of a retroactive change in the limitations period for a violation of the Interstate Commerce Act. The Court held that, because the original limitations period was created at the same time as the statutory cause of action, and thus constituted a part of the definition of the cause of action, an expansion of the limitations period could not revive an expired cause of action without violating due process. 268 U.S. at 367.

The Court subsequently construed *Danzer* to be limited to claims in which the limitations period is created at the same time as the cause of action. See *Chase Sec. Corp.*, 325 U.S. at 312 n.8 (upholding statute and distinguishing *Danzer* as a case “where a statute in creating a liability also put a period to its existence”). See also *Int’l Union of Elec., Radio & Mach. Workers, AFL-CIO, Local 790 v. Robbins & Myers, Inc.*, 429 U.S. 229, 243-44 (1976) (“*Danzer* was given a narrow reading in the later case of *Chase Securities Corp.*”).⁴

⁴ The issue in *International Union* was the constitutionality of retroactive application of the 1972 Amendments to Title VII,
(Continued on following page)

Just as *Danzer* was inapplicable to the statute at issue in *Chase Securities Corp.*, the *Danzer* holding is inapplicable to this case. The cause of action against Jacobs was not created at the same time as the statute of repose. The repose statute, Minn. Stat. § 541.051, creates no causes of action. It was originally enacted in 1965, 1965 Minn. Laws ch. 564, § 1, and re-enacted in 1980. 1980 Minn. Laws ch. 518, §§ 2-4. The reimbursement statute was enacted in 2008. 2008 Minn. Laws ch. 288, §§ 2-7.

Chase Securities Corp. also noted in rendering its decision that appellant “does not say, and could hardly say, that it sold unregistered stock depending on a statute of limitation for shelter from liability.” 325 U.S. at 316. Similarly, in this case, Petitioner did not rely on the statute of repose in contracting with the State and designing the Bridge because the statute did not exist at the time. The statute of repose was first enacted three years *after* Petitioner executed its design contract with the State and two months *after* the design work was completed. 1965 Minn. Laws ch. 564, § 1. In fact, a valid statute of repose was not enacted until 18 years after the contract was executed. 1980 Minn. Laws ch. 518, § 204; *see*

42 U.S.C. § 2000e-5, which expanded the time for filing a claim set forth in 42 U.S.C. § 2000e-5(d). 429 U.S. at 233. Although the cause of action was created at the same time as the limitations period, the Court did not apply *Danzer*, and upheld the constitutionality of the retroactive application of the new limitations period. *Id.* at 243-44 (stating that a contrary conclusion would “rest[] on an unwarrantedly broad reading” of *Danzer*).

Lougren v. Peoples Elec. Co., Inc., 380 N.W.2d 791, 795, n.6 (Minn. 1986) (recognizing statute of repose was unconstitutional until re-enacted in 1980).

B. The Minnesota Supreme Court's Decision Conforms To This Court's Authority And Correctly Concludes That The State Reimbursement Statute Is Rationally Based.

Far from conflicting with this Court's precedent, the decision at issue is firmly rooted in the Court's jurisprudence. The Minnesota Supreme Court based its due process analysis on two Federal Circuit decisions, *Shadburne-Vinton v. Dalkon Shield Claimants Trust*, 60 F.3d 1071 (4th Cir. 1995), *cert. denied*, 516 U.S. 1184 (1996) and *Wesley Theological Seminary of the United Methodist Church v. U.S. Gypsum Co.*, 876 F.2d 119 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1003 (1990). Both cases involved a federal substantive due process challenge leveled against retroactive abrogation of a state's statute of repose. Both courts relied on this Court's authority, particularly *Usery* and *Pension Benefit*, to reject the constitutional claims. 60 F.3d at 1075; 876 F.2d at 122. *Shadburne* also relied on *General Motors Corp. v. Romein*, 503 U.S. 181 (1992). *See* 60 F.3d at 1075-76.

In *Usery*, the Court considered a constitutional challenge to retroactive effects of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972. Pursuant to

Title IV of the Black Lung Act, employers were required to compensate their former employees suffering from pneumoconiosis even if the employees had left employment prior to enactment of the law. The employers complained that the statute charged them with “unexpected liability for past, completed acts” which they had no reason to know at the time were dangerous. 428 U.S. at 15. The Court stated:

It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that *the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.*

Id. (emphasis added). The *Usery* Court acknowledged the Act’s retroactive effects, but nonetheless stated that “[o]ur cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations. . . . This is true even though the effect of the legislation is to impose a new duty or liability based on past acts.” *Id.* at 16.

The Court then determined that although the Act was retroactive, it satisfied due process because it was rationally based. The Court refused to question the wisdom of Congress’s chosen scheme. *Id.* at 18-19. Instead, the Court determined that “the imposition of liability for the effects of disabilities bred in the past is justified as a rational measure to spread the costs of the employees’ disabilities to those who have

profited from the fruits of their labor – the operators and the coal consumers.” *Id.* at 18.

Pension Benefit involved a challenge to the Multi-employer Pension Plan Amendments Act, which retroactively penalized employers who withdrew from pension plans prior to the statute’s enactment. The Court’s opinion declared that “[p]rovided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.” 467 U.S. at 729. The Court reasoned that “it was eminently rational for Congress to conclude that the purposes of the [statute at issue] could be more fully effectuated if its withdrawal liability provisions were applied retroactively.” *Id.* at 730.

In *General Motors Corp.*, the petitioners challenged legislation which required them to retroactively pay nearly \$25 million in workers’ compensation benefits to employees which were not previously paid based on a prior statute. 503 U.S. at 184-86. This Court again held that the retroactive state legislation satisfied the due process clause because it rationally served a legitimate legislative purpose. *Id.* at 191.

The Minnesota Supreme Court concluded that the legislative purposes supporting the change in the repose statute in this case satisfy rational basis

review.⁵ Pet. App. 19a-20a. Through the compensation fund legislation, the Minnesota Legislature responded to a “catastrophe of historic proportions” which resulted in “devastating physical and psychological impact” to the victims of the Bridge collapse. Minn. Stat. § 3.7391, subd. 1. The compensation fund law enabled the victims of this extraordinary and horrific event to settle with the State and receive payment promptly without protracted litigation against the State. The Legislature specifically found that the compensation fund process “furtheres the public interest by providing a remedy for survivors while avoiding the uncertainty and expense of potentially complex and protracted litigation to resolve the issue of the liability of the state, a municipality, or their

⁵ The Minnesota Supreme Court held that Jacobs had a property interest in repose prior to the enactment of the reimbursement statute. Pet. App. 16a. If the Court grants the Petition, the State of Minnesota does not waive the right to contest in this Court whether the statute of repose gives rise to a property interest for federal due process purposes. *See* Pet. App. 27a-30a (Stras, J., concurring) (concluding there is no protectable property interest in statute of repose defense); *Nat’l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (recognizing “well-established presumption that ‘a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.’”). *See also City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 198-99 (2003) (determining that the Court would not reach the property interest question in a due process case because the rational basis standard was satisfied); Pet. App. 27a (Gildea, C.J., concurring) (concluding that there was no need to decide property right issue because law was rationally based).

employees for damages incurred by survivors.” Minn. Stat. § 3.7391, subd. 2.

As part of the compensation legislation, the reimbursement statute provides for the public money paid to the victims to be recouped from those who are ultimately shown to have caused or contributed to the collapse. The Legislature rationally changed the statute of repose to allow liability to be allocated among all culpable parties. Any potential liability of Petitioner is based upon its fault, since the State will recover “to the extent” Petitioner caused or contributed to the collapse. Minn. Stat. § 3.7394, subd. 5(a). The Legislature thus acted rationally to hold accountable those who are found at trial to be at fault for the collapse, a public policy determination which the Minnesota Legislature is entitled to make.⁶ *See, e.g., Peterson v. City of Minneapolis*, 173 N.W.2d 353, 358

⁶ In light of the magnitude of the tragedy and the virtual certainty of lawsuits challenging the constitutionality of the tort cap as applied to the approximately 180 survivors, the Legislature reasonably provided for payment beyond the preexisting tort cap to settle the claims. Petitioner also does not have a right under state law to benefit from the State’s tort cap. *See* Pet. App. 21a-25a (finding Petitioner had no right under state law to challenge decision by State not to assert sovereign immunity as a defense to survivors’ claims). *See also id.* 48a & n.8 (Minnesota Court of Appeals recognizing that even before the execution of Petitioner’s design contract with the State in 1962, the Legislature “repeatedly” did not assert sovereign immunity as a defense to “claims against the state arising out of the construction, repair, improvement and maintenance of the trunk highway system – including claims for negligently caused death, personal injury, and injury to real and personal property.”).

(Minn. 1969) (upholding retroactive application of comparative fault statute, and stating that “the legislature had the constitutional right to determine this question of policy”). Petitioner does not challenge the Minnesota Supreme Court’s conclusion that the reimbursement statute satisfies rational basis review.

This Court’s controlling authority analyzing retroactive statutes which alter economic expectations, including the imposition of liability for past acts, is applicable here. *See, e.g., Usery*, 428 U.S. at 15. Since the reimbursement statute is rationally based, it satisfies substantive due process.

C. There Is No Conflict Among Federal Circuit Courts Or State Courts Of Last Resort With Respect To The Federal Question Presented In This Case.

Petitioner also cannot rely upon a conflict among federal circuit courts or state courts to justify certiorari review. It identifies no conflict in the circuit courts. As the Minnesota Supreme Court decision indicates, Pet. App. 19a, the circuit courts consistently rely on and apply this Court’s substantive due process jurisprudence for retroactive statutes as established in *Usery*, *Pension Benefit*, and/or *General Motors Corp.* *See, e.g., Wesley*, 876 F.2d at 122 (D.C. Cir.); *Maine Cent. R.R. Co. v. Bhd. of Maint. of Way Emps.*, 835 F.2d 368, 372 (1st Cir. 1987); *Rojas-Reyes v. I.N.S.*, 235 F.3d 115, 122-23 (2d Cir. 2000); *B & G Constr. Co., Inc. v. Dir., Off. of Work. Comp. Progs.*,

662 F.3d 233, 238, 255 (3d Cir. 2011); *Shadburne*, 60 F.3d at 1075-76 (4th Cir.); *Travelers Ins. Co. v. Marshall*, 634 F.2d 843, 847-48 (5th Cir. 1981); *Franklin Cnty. Convention Facilities Auth. v. Am. Premier Underwriters, Inc.*, 240 F.3d 534, 550-52 (6th Cir. 2001); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 849-50 (7th Cir. 2011); *Lundeen v. Canadian Pac. Ry. Co.*, 532 F.3d 682, 689-90 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 2379 (2009); *Lyon v. Augusta S.P.A.*, 252 F.3d 1078, 1086-87 (9th Cir. 2001); *Harris v. Owens*, 264 F.3d 1282, 1296-97 (10th Cir. 2001), *cert. denied*, 535 U.S. 1097 (2002); *Swisher Int’l, Inc. v. Schafer*, 550 F.3d 1046, 1057-58 (11th Cir. 2008).

The state cases cited by Petitioner do not establish a conflict with respect to the federal due process clause, and are otherwise inapposite for many reasons. Two cases, *Smith v. Westinghouse Corp.*, 291 A.2d 452 (Md. 1972) and *Haase v. Sawicki*, 121 N.W.2d 876 (Wis. 1963), involve changes in the statute of limitations for a wrongful death liability. Since the statute creating the cause of action for wrongful death also put a limit to its existence, the courts found that the cases fell squarely within the narrow holding of *Danzer*. See *Smith*, 291 A.2d at 454-55; *Haase*, 121 N.W.2d at 880-81. Moreover, the cases were decided years before this Court’s due process clause analysis of retroactive statutes in *Usery*, *Pension Benefit* and *General Motors Corp.*, which are controlling in this case. See *supra* at 15-17. More recently, in *Dua v. Comcast Cable of Md., Inc.*, 805 A.2d 1061 (Md. 2002), the court refused to follow rational basis analysis in

applying the Maryland due process clause, and explicitly stated that the Maryland Constitution has not been interpreted coextensively with the federal due process clause. *Id.* at 1070-72.

Petitioner's reliance on *Colony Hill Condo. I Ass'n v. Colony Co.*, 320 S.E.2d 273, 276 (N.C. Ct. App. 1984), *rev. denied*, 325 S.E.2d 485 (N.C. 1985), is also misplaced. In that case, the North Carolina Court of Appeals failed to mention, let alone address, *Usery, Pension Benefit* or *General Motors Corp.*, *id.* at 276, but in a later case, the court recognized that *Usery* and *Pension Benefit* control federal due process analysis of retroactive statutes. *Miracle v. N.C. Local Gov't Emps. Ret. Sys.*, 477 S.E.2d 204, 209-10 (N.C. App. 1996), *rev. denied*, 485 S.E.2d 57 (N.C. 1997) (remanding to trial court to develop sufficient record upon which to apply rational basis review). In addition, the *Colony* court determined that the amended statute of repose at issue was not retroactive, and therefore the "due process" discussion in that decision is *dicta*. 320 S.E.2d at 277.

The Rhode Island, Nebraska and Virginia cases cited by Petitioner explicitly rendered their decisions only pursuant to particular state constitution due process clauses, not federal due process, and applied a stricter standard than is provided for under the federal due process clause. They also do not reference this Court's federal due process analysis cited above.

The decision in *Theta Props. v. Ronci Realty Co., Inc.*, 814 A.2d 907 (R.I. 2003), was strictly a state

constitutional determination. 814 A.2d at 916-17. The court cited as dispositive a prior case, *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996). 814 A.2d at 916-17. *Kelly* involved a certified question from a federal district court and a lower state court as to the constitutionality of legislation reviving time-barred claims under the Rhode Island and federal due process clauses. 678 A.2d at 875. The *Kelly* court, however, never reached the federal constitutional question. Rather, *Kelly* reasoned that state courts “are free to interpret and to construe their own state constitutional due process . . . provisions.” *Id.* at 883. As a result, relying upon the *dissenting* opinion in *Campbell v. Holt*, 115 U.S. 620 (1885), the court determined that the revival violated the Rhode Island due process clause. 678 A.2d at 883-84.

Likewise, *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771 (Neb. 1991), was a determination on a certified question from a federal district court that the Nebraska constitution precluded retroactive modification of statutes of limitation or repose. *Id.* at 773-74. The *Givens* court recognized that Nebraska state law jurisprudence, which was controlling on the state constitutional determination, was based on the dissent in *Campbell v. Holt*. *Id.* (stating “[o]ur determination, however, is controlled by state law”). The later Nebraska case cited by Petitioner simply adheres to the holding in *Givens*. See *Farber v. Lok-N-Logs, Inc.*, 701 N.W.2d 368, 375, 378 (Neb. 2005).

The decision in *Sch. Bd. of Norfolk v. U.S. Gypsum Co.*, 360 S.E.2d 325 (Va. 1987), was also a

determination upon a certified question by a federal district court. 360 S.E.2d at 326-27. The certified question was whether retroactive revival of a cause of action violated the *Virginia* due process clause, a defense raised by the defendant in the federal action. *Id.* See, e.g., *Shadburne-Vinton*, 60 F.3d at 1077 (recognizing *Norfolk* was decided under the Virginia constitution, and stating that “because states are free to interpret their constitutions under a stricter standard than the federal courts interpret the Federal Constitution, we find [*Norfolk*] inapplicable here”).

Since there is no conflict among the circuit or state high courts on the federal question involved in this case, the Petition should be denied.

III. The Minnesota Supreme Court’s Decision Has Limited Application Because It Involves An Extraordinary Matter, And In Any Event, The Public Policy Underlying The Statute In Question Is Properly Determined By The Minnesota Legislature.

The reimbursement statute applies to a single extraordinary event, and only to the extent that a fact-finder determines that Petitioner caused or contributed to the Bridge collapse. The alteration of the statute of repose with respect to this one event was part of a comprehensive response which included payments to victims, a release of the State’s liability to them, and reimbursement to the State of public funds from culpable parties. The Minnesota Supreme

Court's decision under these unique circumstances will not lead to wholesale retroactive changes in statutes of repose.

Previous similar holdings have not produced the results predicted by Petitioner and *Amici*. As described above, the federal appellate courts for the District of Columbia and the Fourth Circuit upheld the revocation of statutes of repose and the resulting revival of causes of action on much broader scales in 1989 and 1995, respectively. *Wesley*, 876 F.2d at 122-23; *Shadburne*, 60 F.3d at 1075-77. Petitioner and *Amici*, however, fail to identify any wholesale abandonment of statutes of repose as a result of these cases.

While Petitioner complains that the reimbursement statute subjects it to potentially large financial exposure, such exposure is commensurate with its culpability. Minn. Stat. § 3.7394, subd. 5(a) (reimbursement required to the extent third party "caused or contributed to" the collapse). In addition, as discussed above, no statute of repose existed when Petitioner contracted with the State or when it performed its work on the contract. See *supra* at 14-15. Petitioner therefore could not have relied on repose when it actually entered into the contract with the State or designed the Bridge. See also Charles B. Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 HARV. L. REV. 692, 720 (1960) ("[A]n act which has the effect of implementing the original intentions of the parties affected

has generally been held constitutional since there is little injustice in retroactively depriving a person of a right, however valuable, which was created contrary to his bona fide expectations at the time he entered the transaction from which the right arose.”) (citations omitted).

Amici’s reference to the investigation by the National Transportation Safety Board (“NTSB”) of the Bridge collapse, *Amici* Br. 15, does not support their argument. The Bridge was built in accordance with the final design plans, which still exist. NTSB Report at 91, 129. The NTSB easily determined that Jacobs designed the gusset plates to be half as thick as required, and was able to opine on the probable cause of the collapse. *Id.* at 75-76, 127-30.

Finally, changes in state law, including statutes of repose, are a matter of public policy based on legislative judgment. *See, e.g., Nat’l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (stating that a law “merely declares a policy to be pursued until the legislature shall ordain otherwise.”) (quoting *Dodge v. Bd. of Educ. of Chicago*, 302 U.S. 74, 79 (1937)); *Pension Benefit*, 467 U.S. at 729 (stating that if retroactive statute “is supported by a legitimate purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches”); *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 272

(1979) (“The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility.”); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (“[I]t is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality.”). The Minnesota Legislature acted well within its authority to enact the reimbursement statute.

The Minnesota Supreme Court’s decision upholding the law at issue merely applied the settled rational basis standard by which retroactive legislation is assessed. That standard gives deference to the legislature when it acts for “legitimate reasons” – and Petitioner no longer disputes that the State met that test here.



CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

LORI SWANSON
Attorney General
STATE OF MINNESOTA

ALAN I. GILBERT
Counsel of Record
Solicitor General

P. KENNETH KOHNSTAMM
KRISTYN ANDERSON
GARY R. CUNNINGHAM
JACOB CAMPION
Assistant Attorneys General

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1450 (Voice)
(651) 296-1410 (TTY)
al.gilbert@ag.state.mn.us

Attorneys for Respondent

Master File No.
27-CV-09-7519

**THIRD PARTY
DEFENDANT STATE
OF MINNESOTA,
DEPARTMENT OF
TRANSPORTATION'S
AMENDED ANSWER TO
THIRD PARTY
PLAINTIFF
PROGRESSIVE
CONTRACTORS
INCORPORATED'S
THIRD PARTY
COMPLAINT,
COUNTERCLAIM
AGAINST THIRD PARTY
PLAINTIFF
PROGRESSIVE
CONTRACTORS
INCORPORATED,
AND CROSS-CLAIM
AGAINST THIRD PARTY
DEFENDANT JACOBS
ENGINEERING, INC.**

(Schrom) File No.

27-CV-09-9118

(Visnjic) File No.

27-CV-09-7248

(Vo) File No.

27-CV-09-7264

(Weese) File No.

27-CV-09-7274

The State of Minnesota, Department of Transportation (“State”), for its Amended Answer to Third Party Plaintiff Progressive Contractors Incorporated’s (“PCI”) Third Party Complaint, states as follows:

1. Denies each and every allegation in PCI’s Third Party Complaint, except as may be hereinafter specifically admitted, qualified or otherwise answered below.

2. Admits the allegations in the first sentence of Paragraph 1, and admits the allegations in the second sentence of Paragraph 1 upon information and belief.

3. Admits the allegations in Paragraph 2.

4. As to the allegations in Paragraph 3, admits that the quoted language is contained in the 1962 Agreement, and further alleges that the 1962 Agreement to which the allegations in Paragraph 3 refers speaks for itself and must be interpreted as a whole.

5. As to the allegations in Paragraph 4, admits, upon information and belief that some of the gusset plates were erroneously designed to be ½ inch thick

rather than 1 inch thick, and states that the remainder of the allegations in Paragraph 4 assert legal conclusions to which no response is required.

6. As to the allegations in Paragraph 5, admits that it owned the Bridge, and asserts that the remaining allegations in the first sentence of Paragraph 5 assert legal conclusions to which no response is required. Denies the allegations in the second and third sentences of Paragraph 5.

7. As to the allegations in Paragraph 6, admits that it contracted with PCI, and states that the contract speaks for itself. Denies any allegations that are inconsistent with the terms of its contract with PCI.

8. Denies the allegations in Paragraph 7.

9. As to the allegations in Paragraphs 8, 9, 10, 11, 12 and 13, states that the contract to which they refer speaks for itself, and denies any allegations that are inconsistent with the terms of the contract.

10. As to the allegations in Paragraph 14, admits, upon information and belief, that the gusset plates were not properly designed, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14, and accordingly denies the same.

11. Admits the allegations in the first sentence of Paragraph 15. States that it is without knowledge or information sufficient to form a belief as to the

truth of the allegations in the second sentence of Paragraph 15, and accordingly denies the same.

12. As to the allegations in Paragraph 16, admits, upon information and belief, that the gusset plates were not properly designed, denies that the gusset plates were not properly inspected, maintained and/or repaired, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16, and accordingly denies the same.

13. Denies the allegations in Paragraph 17.

14. As to the allegations in Paragraph 18, denies the Bridge contained the “deficiencies described above,” except admits, upon information and belief, that some of the gusset plates were erroneously designed to be $\frac{1}{2}$ inch thick rather than 1 inch thick, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 18, and accordingly denies the same.

15. States that the allegations in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 are directed toward Third Party Defendant Jacobs, and not the State, and accordingly no response is required by the State.

16. As to the reallegation set forth in Paragraph 36, the State realleges the answers given in Paragraphs 1 through 15 above.

17. States that the allegations in Paragraph 37 assert legal conclusions to which no response is required, provided if response is required, denies the same.

18. As to the reallegation set forth in Paragraph 38, the State realleges the answers given in Paragraphs 1 through 17 above.

19. States that the allegations in Paragraphs 39, 39a., 39b. and 39c. assert legal conclusions to which no response is required, provided if response is required, denies the same.

20. States that the allegations in Paragraph 40 assert legal conclusions to which no response is required, provided if response is required, denies the same.

21. As to the reallegation set forth in Paragraph 41, the State realleges the answers given in Paragraphs 1 through 20 above.

22. As to the allegations in Paragraph 42, admits that it contracted with PCI and states that the contract speaks for itself.

23. States that the allegations in Paragraphs 43, 43a., 43b. and 43c. assert legal conclusions to which no response is required, provided if response is required, denies the same.

24. Denies the allegations in Paragraphs 44, 45 and 46.

25. As to the reallegation set forth in Paragraph 47, the State realleges the answers given in Paragraphs 1 through 24 above.

26. States that the allegations in Paragraph 48 assert legal conclusions to which no response is required, provided if response is required, denies the same.

27. Denies the allegations in Paragraphs 49, 50 and 51.

28. As to the reallegation set forth in Paragraph 52, the State realleges the answers given in Paragraphs 1 through 27 above.

29. States that the allegations in Paragraphs 53, 54 and 55 assert legal conclusions to which no response is required, provided if response is required, denies the same.

30. Denies the allegations in Paragraphs 56 and 57.

31. As to the reallegation set forth in Paragraph 58, the State realleges the answers given in Paragraphs 1 through 30 above.

32. As to the allegations in Paragraph 59, admits that the Minnesota Legislature established the Emergency Relief Fund on November 30, 2007, and states that the legislation speaks for itself.

33. As to the allegations in Paragraph 60, admits that the Minnesota Legislature enacted Minn. Stat. § 3.7391, *et. seq.*, states that the legislation

speaks for itself, and denies that the State's payments to the Bridge collapse survivors were voluntary payments.

34. States that the allegations in Paragraphs 61, 61a., 61b., 61c. and 61d. assert legal conclusions to which no response is required, provided if response is required, denies the same.

35. States that the allegations in Paragraph 62 assert legal conclusions to which no response is required, provided if response is required, denies the same.

SEPARATE DEFENSES

36. PCI's Third Party Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

37. PCI's claims are barred, at least in part, by the applicable statute of limitations/repose.

38. PCI's claims for contribution and/or indemnity are barred by the settlement agreements entered into between Plaintiffs and the State, and by the provisions of Minn. Stat. § 3.7393, subd. 13.

39. PCI's claims for contribution and/or indemnity are not ripe.

40. The State does not have sufficient information and/or knowledge to form a belief as to the character or extent of any alleged injuries or damages sustained by PCI and demands strict proof thereof.

41. PCI's alleged damages are based, in whole or in part, on PCI's failure to mitigate its damages.

42. The injuries and other damages alleged in the Third Party Complaint were the direct and proximate result of the negligent, careless, or unlawful conduct of PCI or others over whom the State, in the absence of effective notice, had no control.

43. PCI's Third Party Complaint, claims and causes of action are barred and/or limited, in whole or in part, by the doctrines of absolute, qualified, official, good faith and/or discretionary immunity, and/or by the statutory immunities set forth in Minn. Stat. § 3.736, subd. 3.

44. PCI's lawsuit is subject, in whole or in part, to the provisions, exclusions, and limitations of the Minnesota Tort Claims Act, Minn. Stat. § 3.736, *et. seq.*

45. PCI's claims may be barred, in whole or in part, by the doctrines of consent, unclean hands, waiver and/or estoppel.

46. PCI waived all subrogation and other rights, including but not limited to its rights under Minn. Stat. §§ 65B.53 and 176.061, against the State of Minnesota and its employees, to recover benefits or compensation paid by PCI and its insurer to or on behalf of PCI's employees, as a result of the collapse of the I-35W Bridge.

47. The State had no actual or constructive knowledge of deficient design, maintenance, inspection or repair of the Bridge, and had no actual or constructive knowledge of any safety risks.

48. The State's knowledge of any deficiencies was not superior to PCI's as PCI had the opportunity to access the same information as did the State, and was reasonably expected to understand the potential dangers of its own conduct.

49. PCI's claims are barred or limited by its agreements to defend and indemnify the State and save it harmless.

50. PCI's claims are barred or limited by the State's rights to reimbursement and subrogation provided in Minn. Stat. § 3.9374, subd. 5.

51. PCI's claims are barred or limited by its failure to perform its obligations under, or otherwise comply with, the contract between the State and PCI.

52. PCI's claims are barred or limited by the contract between State and PCI.

53. The injuries and other damages alleged in the Third Party Complaint are barred by PCI's assumption of the risk.

54. PCI's claims are barred as a result of circuitry of obligations.

55. The State alleges any other matter constituting an avoidance or affirmative defense to PCI's Third Party Complaint.

**COUNTERCLAIM AGAINST THIRD PARTY
PLAINTIFF PCI AND CROSS-CLAIM AGAINST
THIRD PARTY DEFENDANT JACOBS**

The State of Minnesota as and for its counter-claim against Third Party Plaintiff Progressive Contractors Incorporated (“PCI”) and its cross-claim against Third Party Defendant Jacobs Engineering Group, Inc. (“Jacobs”) alleges and states as follows:

THE PARTIES

1. PCI is a Minnesota corporation licensed to do business in the State of Minnesota.

2. Jacobs is a Delaware corporation licensed to do business in the State of Minnesota.

3. Jacobs is the successor in interest to Sverdrup & Parcel and Associates, Inc. (“Sverdrup & Parcel”).

4. On December 12, 1960, “Sverdrup & Parcel Engineering Company” began operating under the name “Sverdrup & Parcel and Associates, Inc.” when it amended its Articles of Incorporation in order to change its name.

5. On January 18, 1966, Sverdrup & Parcel and Associates, Inc. merged with Sverdrup & Parcel, Inc., a Delaware corporation. The surviving corporation following the 1966 merger was Sverdrup & Parcel and Associates, Inc.

6. On December 2, 1976, Sverdrup & Parcel and Associates, Inc. amended its Articles of Incorporation in order to change its name from “Sverdrup & Parcel and Associates, Inc.” to “Sverdrup Corporation.”

7. On May 15, 1998, SPCM, Inc., a Delaware corporation, merged with and into Sverdrup Corporation. The surviving corporation following the 1998 merger was Sverdrup Corporation.

8. On January 14, 1999, Sverdrup Corporation merged with Jacobs Acquisition Corp., a Missouri corporation and wholly owned subsidiary of Jacobs (the “January 1999 Merger”). The surviving corporation following the January 1999 Merger was Sverdrup Corporation.

9. On September 28, 1999, Sverdrup Corporation merged with Jacobs (the “September 1999 Merger”). Jacobs was the surviving corporation following the September 1999 Merger.

10. As the successor in interest to Sverdrup & Parcel, Jacobs is legally liable and responsible for Sverdrup & Parcel’s actions, errors and omissions.

THE BRIDGE

11. Minnesota Bridge No. 9340 (“the Bridge”) was designed by structural engineering consultant Sverdrup & Parcel under contract with the Minnesota Department of Transportation (“MnDOT”) in the early 1960s.

12. MnDOT commissioned the design of the Bridge to be in conformance with Division 1 of the A.A.S.H.O. "Standard Specification for Highway Bridges," 1961 Edition, and subsequent applicable Interim Specifications ("the Specifications").

13. The State of Minnesota and Sverdrup & Parcel entered into a contract for the design of the I-35W Bridge on or about October 23, 1962.

14. Final design plans for the Bridge were certified by Sverdrup & Parcel on March 4, 1965.

15. Sverdrup & Parcel's design of the Bridge did not comply with Section 1.4.7 of the Specifications. Sverdrup & Parcel's design of the Bridge's gusset plates identified as U10, U10', and other gusset locations, were approximately half the thickness as required by Section 1.4.7 of the Specifications.

16. Section 1.6.34 of the Specifications provides that "gusset plates shall be of ample thickness to resist shear, direct stress, and flexure, acting on the weakest or critical section of maximum stress." Sverdrup & Parcel designed gusset plates for the Bridge that were not of ample strength to resist shear, direct stress, and flexure as required by Section 1.6.34 of the Specifications.

17. Sverdrup & Parcel was negligent in the design of the Bridge, including but not limited to, its failure to properly design the gusset plates for the Bridge. In addition, the failure of Sverdrup & Parcel to design the gusset plates in accordance with the

requirements of its contract with the State constitutes a breach of the contract.

18. The Bridge was constructed according to Sverdrup & Parcel's design. The negligent design was unknown by the State.

19. The State and PCI entered into a construction contract, dated May 30, 2007, for work on the Bridge involving the removal of the concrete wearing course to a depth of 2 inches and its replacement with a 2 inch thick concrete overlay. The contract also provided for removing and patching unsound concrete from the curb, deck repairs and reconstructing expansion joints. The Standard Specifications applicable to the contract further provided:

a. **1701 Laws To Be Observed:** "The contractor shall at all times observe and comply with all applicable laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the department and its representatives against all claims and liabilities arising from or based on violations committed by the contractor or the contractor's employees."

b. **1716 Contractor's Responsibility For Work:** "The contractor has the charge and care of the project and shall take every precaution against injury or damage to any part of the project by the action of the elements or from other cause, whether arising from the execution or the nonexecution of the work."

c. **1805 Methods And Equipment:** "Equipment used on any portion of the projects shall be

such that no damage to the roadway, adjacent property, or other highways will result from its use.”

20. The project began in June 2007 and was scheduled for substantial completion in late September 2007.

21. On August 1, 2007, in connection with its performance of its contract with the State, PCI loaded and staged a large and heavy amount of equipment and material on the center span of the Bridge. In addition, PCI failed to notify the MnDOT Project Supervisor of its plan for staging the materials and equipment as it did. Had PCI notified the proper State personnel of the quantity, weight and location of the material it staged on the Bridge, the State would have prohibited PCI from loading and staging the material on the Bridge as it did.

22. Sverdrup & Parcel’s actions and omissions caused or contributed to the Bridge’s catastrophic collapse on August 1, 2007.

23. PCI’s actions and omissions caused or contributed to the collapse of the Bridge.

24. As a result of the collapse of the Bridge, 13 people died, 145 people were injured, and the State suffered loss included but not limited to expenses for emergency response, traffic rerouting, forensic work, and other costs, in an amount in excess of \$50,000.

THE COMPENSATION FUND LEGISLATION

25. The Minnesota Legislature found that the collapse of the Interstate Highway 35W Bridge over the Mississippi River on August 1, 2007, was a catastrophe of historic proportions. *See* Minn. Stat. § 3.7391, subd. 1 (2008).

26. The legislature provided for compensation to be paid to survivors of the collapse as a remedy for the survivors “while avoiding the uncertainty and expense of potentially complex and protracted litigation to resolve the issue of the liability of the state, a municipality, or their employees for damages incurred by survivors.” *See* Minn. Stat. § 3.7391, subd. 2. The legislation provided for immediate payments from an emergency relief fund and a process under section 3.7393 for other compensation to be paid to survivors.

27. Under the compensation fund legislation, the chief justice of the Supreme Court established a special master panel to consider survivors’ claims, make offers of settlement, and enter into releases with survivors on behalf of the state. *See* Minn. Stat. § 3.7393, subd. 1.

28. The special master panel made settlement offers to 179 survivors. All of those survivors accepted the offers of settlement and signed settlement agreements with the State, releasing the state, its municipalities and their employees from liability.

29. Section 3.7393, subd. 5(a) of the compensation fund legislation provides that the “state is entitled

to recover from any third party, including an agent, contractor, or vendor retained by the state, any payments made from the emergency relief fund or under section 3.7393 to the extent the third party caused or contributed to the catastrophe.”

30. The compensation fund legislation also provides that the State is “subrogated to all potential claims against third-party tortfeasors of a survivor receiving payment from the emergency relief fund or under section 3.7393 to the extent the claims relate to, involve, or arise out of the catastrophe. The subrogation right of the state . . . is limited to the amount paid to the survivor from the emergency relief fund and under section 3.7393.” Minn. Stat. § 3.7394, subd. 5(b).

31. The compensation fund legislation also provides that the State is entitled to be reimbursed for payments made to survivors regardless of whether the survivor is fully compensated. Minn. Stat. § 3.7394, subd. 5(a).

32. The State has paid to survivors a total of \$36,640,000.00 through the compensation fund legislation. The State also has paid to survivors \$398,984.36 from the emergency relief fund.

33. All survivors, including Plaintiff, who made claims with the State and received payment, signed a settlement agreement and release. Consistent with the compensation fund legislation, the settlement agreement and release provides that the State has rights of subrogation, reimbursement, contribution

and indemnity against third parties, including agents, contractors, or vendors retained by the State, for the payment the State made to the Plaintiff.

STATUTORY REQUIREMENTS

34. Third-Party Defendant State of Minnesota's counsel has provided an Affidavit of Expert Review, attached hereto, to initiate this action against Jacobs in accordance with Minn. Stat. § 544.42, subd. 3(a)(1).

COUNT I – NEGLIGENCE – PCI

35. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-34 above and incorporates them as if fully stated herein.

36. PCI's construction activities were negligent in several respects, including but not limited to, the following:

a. In regard to the materials and equipment PCI placed on the Bridge the afternoon of August 1, 2007, it was negligent in its placement of such materials and equipment in the particular location on the Bridge and in the amount of weight it placed on the Bridge.

b. PCI also was negligent in failing to notify the MnDOT Project Supervisor of its plan for staging the materials and equipment as it did. Had PCI notified the Project Supervisor, MnDOT would have prohibited

PCI from staging the material and equipment where it did.

37. As a direct and proximate result of PCI's negligence, the Bridge collapsed and the State suffered damage, including but not limited to expenses for emergency response, traffic rerouting, forensic work, and other costs in an amount in excess of \$50,000.

COUNT II – BREACH OF CONTRACT – PCI

38. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-37 above and incorporates them as if fully stated herein.

39. As described in the factual allegations above, PCI breached provisions of the Standard Specifications applicable to its contract with the State.

40. The contract between PCI and the State also included the following Standard Specifications:

a. **1712.4 Protection And Restoration Of Property – General Liability:** “The contractor is responsible for all damages to property of any character, resulting from any act, omission, neglect, or misconduct in the execution or non-execution of the work . . . ”

b. **1720 No Waiver Of Legal Rights:** “The contractor is liable to the department . . . as regards the department's rights under any warranty or guaranty.”

41. As a direct and proximate result of PCI's breaches, the State suffered damage, including but not limited to expenses for emergency response, traffic rerouting, forensic work, and other costs, in an amount in excess of \$50,000.

COUNT III – BREACH OF CONTRACT –
IMPLIED WARRANTY – PCI

42. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-41 above and incorporates them as if fully stated herein.

43. In regard to the materials and equipment PCI placed on the Bridge the afternoon of August 1, 2007, the excessive weight and the location on the Bridge was not in conformance with workman-like performance.

44. The excessive weight and improper placement of materials and equipment on the Bridge were done in violation of the implied warranty of workman-like performance.

45. As a direct and proximate result of PCI's breaches, the State suffered damage, including but not limited to expenses for emergency response, traffic rerouting, forensic work, and other costs, in an amount in excess of \$50,000.

**COUNT IV – STATUTORY
REIMBURSEMENT FROM PCI**

46. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-45 above and incorporates them as if fully stated herein.

47. As described above, PCI caused or contributed to the collapse of the Bridge. As a result, under Minn. Stat. § 3.7394 subd 5(a), the State has a right of reimbursement from PCI for the payments the State made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393.

COUNT V – SUBROGATION AGAINST PCI

48. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-47 above and incorporates them as if fully stated herein.

49. As described above, PCI caused or contributed to the collapse of the Bridge. As a result, under Minn. Stat. § 3.7394, subd 5(b) and the settlement agreement and release executed by survivors, the State has a right of subrogation against PCI for the payments the State made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393.

**COUNT VI – CONTRIBUTION
AND INDEMNITY FROM PCI**

50. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-49 above and incorporates them as if fully stated herein.

51. PCI's 2007 contract with MnDOT incorporated by reference MnDOT's Standard Specifications for Construction. The Standard Specifications included, but were not limited to, the following requirements:

a. **1701 Laws To Be Observed:** "The contractor shall at all times observe and comply with all applicable laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the department and its representatives against all claims and liabilities arising from or based on violations committed by the contractor or the contractor's employees."

b. **1714 Responsibility For Damage Claims:** "The contractor shall indemnify, defend, and save harmless the department [MnDOT], its officers, and its employees from all suits, actions, and claims of any character brought because of injuries or damages received or sustained by any person, persons, or property on account of the operations of the contractor; or on account of or in the consequence of any neglect in safeguarding the work; . . . or because of any act or omission, neglect, or misconduct of the contractor . . ."

52. Pursuant to the State's contract with PCI and the common law of contribution and indemnity,

in the event the State of Minnesota is found liable for any damages as a result of the Bridge collapse, the State of Minnesota demands judgment in the same amount against PCI, together with the costs, disbursements and attorneys' fees incurred in this action, to the extent such damages were caused by PCI's acts or omissions.

53. In addition, the State is entitled to contribution and/or indemnity as a matter of common law and contract from PCI for the payments it made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393 and for any other payments made or costs incurred by the State arising out of the collapse of the Bridge.

COUNT VII - COMMON-LAW
CONTRIBUTION AND
INDEMNITY FROM JACOBS

54. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-53 above and incorporates them as if fully stated herein.

55. If PCI was injured or damaged as alleged in PCI's Amended Third Party Complaint, PCI's injuries or damages were caused in whole or in part by the negligent acts or omissions of Sverdrup & Parcel.

56. If the State of Minnesota is found liable to PCI, then all such damages, to the extent the

damages relate to work performed by Sverdrup & Parcel, are the responsibility of Jacobs.

57. In the event the State of Minnesota is found liable for any damages to PCI, the State of Minnesota demands judgment in the same amount against Jacobs, together with the costs, disbursements and attorneys' fees incurred in this action, to the extent such damages were caused by Jacobs' acts or omissions.

COUNT VIII - CONTRACTUAL
CONTRIBUTION AND
INDEMNITY FROM JACOBS

58. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-57 above and incorporates them as if fully stated herein.

59. The State of Minnesota and Jacobs' predecessor, Sverdrup & Parcel, entered into a contract for the design of the Bridge which contained an agreement by Sverdrup & Parcel to indemnify the State from all liability. The contract states, in pertinent part:

The Consultant indemnifies, saves and holds harmless the State and any agents or employees thereof from any and all claims, demands, actions or causes of action of whatsoever nature or character arising out of or by reason of the execution or performance of the work of the Consultant provided for under this agreement.

60. Pursuant to the provisions of the contract, if the State of Minnesota is found liable for PCI's damages, the State of Minnesota is entitled to contribution and indemnity from Jacobs as a matter of contract.

61. In the event the State of Minnesota is found liable for any damages to PCI, the State of Minnesota demands judgment in the same amount against Jacobs, together with the costs, disbursements and attorneys' fees incurred in this action, to the extent such damages were caused by Jacobs' acts or omissions.

62. In addition, the State is entitled to contribution and/or indemnity as a matter of contract against Jacobs for the payments it made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393 and for any other payments made or costs incurred by the State arising out of the collapse of the Bridge.

COUNT IX – STATUTORY
REIMBURSEMENT FROM JACOBS

63. Third-Party Defendant State of Minnesota repeats the allegations in paragraph 1-62 above and incorporates them as if fully stated herein.

64. Sverdrup & Parcel caused or contributed to the collapse of the Bridge. As a result, under Minn. Stat. § 3.7394 subd 5(a) the State has a right of reimbursement from Jacobs for the payment the

State made to claimants pursuant to the State's obligations under the emergency relief fund and section 3.7393.

WHEREFORE, the State prays as follows:

1. That the Court dismiss PCI's Third Party Complaint and causes of action therein, that PCI's claims therein be denied, that judgment be entered in the State's favor with respect to all of PCI's claims and causes of action therein;

2. That the State be awarded judgment by way of subrogation, reimbursement, contribution and/or indemnity against PCI for payments made by the State under the emergency relief fund and section 3.7393;

3. That the State be awarded damages against PCI for other amounts paid, or other economic injury suffered, by the State as a result of the collapse, in an amount in excess of \$50,000;

4. That in the event the State is adjudged liable to PCI in any respect, that judgment be entered against Jacobs entitling the State to indemnity and/or contribution from Jacobs;

5. That the State be awarded judgment by way of reimbursement, contribution and/or indemnity against Jacobs for payments made by the State under the emergency relief fund and section 3.7393;

6. That the State be awarded its attorney fees, costs, and disbursements herein;

7. That the State be awarded any other and further relief as justice requires.

Dated: June 3, 2009 LORI SWANSON
Attorney General
State of Minnesota

/s/ Kristyn Anderson
ALAN I. GILBERT
Solicitor General
Atty. Reg. No. Atty. Reg.
No. 0034678
P. KENNETH KOHNSTAMM
Assistant Attorney General
Atty. Reg. No. 005740X
KRISTYN ANDERSON
Assistant Attorney General
Atty. Reg. No. 0267752
GARY CUNNINGHAM
Assistant Attorney General
Atty. Reg. No. 0186210

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2127
(651) 282-5700 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR THIRD
PARTY DEFENDANT,
STATE OF MINNESOTA,
DEPARTMENT OF
TRANSPORTATION

MINN. STAT. § 549.211 ACKNOWLEDGEMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: June 3, 2009

/s/ Kristyn Anderson
ALAN I. GILBERT
Solicitor General
Atty. Reg. No. No. 0034678
P. KENNETH KOHNSTAMM
Assistant Attorney General
Atty. Reg. No. 005740X
KRISTYN ANDERSON
Assistant Attorney General
Atty. Reg. No. 0267752
GARY CUNNINGHAM
Assistant Attorney General
Atty. Reg. No. 0186210

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2127
(651) 282-5700 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR THIRD
PARTY DEFENDANT,
STATE OF MINNESOTA,
DEPARTMENT OF
TRANSPORTATION
