

MEMORANDUM

OFFICE OF THE CITY ATTORNEY
ROOM 800 – CITY HALL

TO: Grant F. Langley
Rudolph M. Konrad

FROM: Michael G. Tobin *MT*

DATE: January 7, 2003

RE: Miller Brewing Company Claim
C.I. File No. 02-L-10

This claim arises from an incident which occurred on September 21, 2001 at 4100 West State Street. A joint public/private major reconstruction project was underway for West State Street in the area of the Miller Brewing Company. A City DPW excavation crew came upon a concrete encased electrical package beneath the street. The area around the concrete encasement was excavated. The City crew then attempted to remove the concrete encasement and during the process broke the major electrical power package supplying the Miller Brewing Company primary brew house. Repair of the electrical package cost \$39,996.65. Brewery economic losses for shutdown of the primary brew house for a period of two days was calculated at \$44,044.82.

A more detailed recitation of the events is attached as Exhibit A as prepared by Miller Brewing Company engineers. Their account of the incident is accurate. It appears the City is 100% liable.

This claim was initially scheduled for denial before the Judiciary & Legislation Committee on May 6, 2002. Upon learning additional facts not present in the City Engineer's original response to us, this file was adjourned for further investigation. The matter has never been presented to the Judiciary & Legislation Committee and their original file is closed.

Several meetings were held in September of 2002 regarding this incident. The meetings were held in our office and were attended by the City Engineer, City Field Engineers, Miller Brewing Company engineers, Alderman Murphy, and various attorneys. At the conclusion of several meetings the liability issue became clear.

DRAFT

MEMORANDUM

*Relative to
Common Council File No. 020011 ... Communication
from the City Attorney's Office transmitting a
communication from Miller Brewing
Company relative to claim for property damage*

May 7, 2002

9:15 a.m.

Judiciary & Legislation Committee

Agenda Item #11

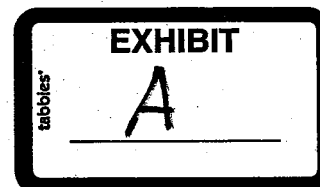
Introduction and Background

The above claim (City Attorney file no. 02-L-10) relates to a major power outage which occurred at Miller Brewing Company ("Miller") as a result of a City of Milwaukee (the "City") communications crew breaking through a reinforced concrete conduit which housed high capacity, high voltage electrical feeder lines from the power source to Miller's main brew house.

The City Attorney recommends denial because Miller did not take adequate steps to protect its property.

The Project

The construction out of which this claim arose related to a major reconstruction of West State from North 35th Street to approximately North 41st Street, which proceeded in two phases.



What Miller Did to Protect Its Property

1. Digger's Hotline marked up construction site maps and located all public utilities. Miller located and marked its private utilities, conduits, vaults and anything else that was located in the street or adjoining right-of-way.

2. Miller participated in almost daily construction meetings with the City and its contractor regarding the work that was going on, both public and private. All existing installations in the right-of-way were discussed on a regular basis.

3. Richard Vlasek, Miller's Program Engineering Manager, was regularly on the job site and available 24 hours per day at a telephone number he had provided to the City, its contractors and the relevant supervisory personnel. When a question arose as to the presence of uniform reinforced concrete conduit in the right-of-way, the City crew could have called Mr. Vlasek who would have quickly identified the slab as being an electrical feeder line conduit.

4. In addition to locating its utility and other installations in the street, Miller specifically marked the pavement, identifying both the location and the type of underground installation. Mr. Vlasek will present photographs of the installation markings in the right-of-way and testify as to what each installation marking represents.

5. The appearance of smooth, reinforced concrete conduit is significantly different from abandoned concrete roadway slab and should have been readily apparent to the crew working at the job site. At that point, the crew should have consulted its construction site map to locate underground installations, checked with its department's

office at City Hall, or attempted to contact Mr. Vlasek or anyone else in Miller's engineering department who were only minutes away from the scene of the work.

6. The steps that Miller took to protect its property were adequate to protect the high voltage feeder conduit in State Street when the precise same construction was undertaken on the north side of State Street without disturbing, excavating, cracking or otherwise damaging the reinforced concrete conduit. There appears to be no reason why the same conduit in the same street, but on the south side, was the subject of a break-out procedure which severely damaged the major power source to Miller's main brew house.

There is No Reason to Explain What the Municipal Crew Did On Site

The recommendation from the City Attorney's office suggests that Miller did not take the proper steps to protect its property. Miller did, as indicated above, and what it did represented sound construction practices.

There is nothing to indicate that the crew on-site attempted to contact Miller, or consulted construction site plans to determine what the concrete conduit was that they encountered while excavating. There is no indication that the crew attempted to contact the point person at Miller or their own supervisory staff for more information when they encountered the reinforced concrete conduit.

While it is not known whether this is the same municipal crew that worked on the north side of State Street, the team that worked on the north side successfully maneuvered and completed its excavation and reconstruction work without disturbing precisely the

same conduit on the other side of the street from the conduit and power line that were destroyed.

While Miller compliments the City on the excellent work that was undertaken in connection with the State Street improvement program, this instance, while probably a rare occasion, could have been avoided. Instead, it caused Miller a major disruption which it required to promptly repair to get its main brew house back on line.

Brewery Losses
due to Power Outage on 9/21/01

INTERNAL COSTS:

<i>Brewing</i>	\$ 41,477.61	
<i>Packaging</i>	1,984.22	
<i>Distribution</i>	583.00	
	<u> </u>	\$ 44,044.82

EXTERNAL COSTS:

<i>High Voltage Maintenance Corp</i>	\$ 918.72	
<i>Terminal-Andrae</i>	39,077.93	
	<u> </u>	\$ 39,996.65

TOTAL CLAIM

\$ 84,041.47

HVM HIGH VOLTAGE MAINTENANCE CORP.

3000 S. CALHOUN ROAD NEW BERLIN, WI 53151

*Related to
9/21 power
outage*

INVOICE

Attn: Jim Thompson
MILLER BREWING COMPANY
4000 WEST STATE STREET
MILWAUKEE, WI 53208

INVOICE NUMBER: 0100977-IN
INVOICE DATE: 09/27/2001
CUSTOMER NO: 70-0130949
JOB NUMBER: 7010459
PO/CONTRACT#: VERBAL
VENDOR FEIN: 31-0725293

JOB DESC: EMERGENCY CALL 9/22 TEST CABLE

TERMS: NET 30

TEST CABLES

870.00

OK to prep
[Signature] 10/30/01

*Charge to: 191-061
plant 01
per lead*

SALES TAX: 48.72
NET INVOICE: 918.72

Please Remit To:

PO BOX 73974 CHICAGO, IL 60673-7974

CHICAGO 847/228-9595 MAHONRAHEDDIT 606/371-5355 CASPER/NOCEP/DAVTON 440/951-2706 DETROIT 937/278-0811 INDIANAPOLIS 734/524-0409 MILWAUKEE 317/887-6133 PITTSBURGH 262/784-3660 412/747-0550



MILLER BREWING COMPANY
 CORPORATE OFFICE AF
 P.O. BOX 3103
 MILWAUKEE, WI. 53201-3103

JOB NUMBER : 9775
 PO NUMBER :

- MILLER BREWING COMPANY

DATE	DESCRIPTION	QTY	U/M	RATE	AMOUNT
MATERIAL					
/21/01	TFT-151R-G COLD TERMINATION KITS	6.0	EA	62.9800	377.88
/21/01	250MCM 5/BKV WIRE	3,000.0	FT	4.3708	13,112.35
/21/01	4" ERC CONDUIT	20.0	FT	5.4960	109.92
/21/01	LCC250-12X 2 HOLE CRIMP LUGS	6.0	EA	6.1117	36.67
/21/01	GALLONS WIREEASE	5.0	EA	13.3360	66.68
/21/01	4" THREADLESS COUPLING	2.0	EA	145.3600	290.72
/21/01	DAY/NIGHT DELIVERY				424.75
/26/01	MISCELLANEOUS NUTS & BOLTS	1.0	EA	52.8000	52.80
/26/01	# 3 THHN WIRE	900.0	FT	.2448	220.31
/26/01	GALLON GAS	5.0	GL	1.7300	8.65
					14,700.73
MATERIAL +15%					2,205.11
TOTAL MATERIAL :					16,905.84
FOR					
	CONST FORE OT	36.00	OT Hrs	76.9200	2,769.12
	CONST FORE ST	8.00	ST Hrs	58.1900	465.52
	CONST JOURN OT	232.00	OT Hrs	70.8200	16,430.24
	CONST JOURN ST	9.00	ST Hrs	53.8200	484.38
	GENERAL FORE OT	24.50	OT Hrs	78.9298	1,933.78
	GENERAL FORE ST	1.50	ST Hrs	59.3667	89.05
(9/21-9/24/01)					
REPLACE 5KV FEEDER DUE TO BREWHOUSE OUTAGE.					
TOTAL LABOR :					22,172.09
Subtotal :					39,077.93

1 - See attached page

* INCLUDES 5.6% USE TAX. (MAT'L'S ONLY)

cc: Dennis Biss
Candy Bo

MILLER BREWING COMPANY
CORPORATE OPER AP
P.O. BOX 3103
MILWAUKEE, WI. 53201-3103

JOB NUMBER : 9775
PO NUMBER :

- MILLER BREWING COMPANY

DATE	DESCRIPTION	QTY	U/M	RATE	AMOUNT
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TOTAL DUE

39,077.93

Charge to:
g/l 1191-061
plant 01
per lead

OK to pay
[Signature]
11/1/01