

CANE RIVER WATERWAY COMMISSION

NUMBER:

90458 - A

VERSUS

TENTH JUDICIAL DISTRICT COURT

WOMACK AND SONS CONSTRUCTION
GROUP, INC., ET AL

NATCHITOCHE'S PARISH, LOUISIANA

PETITION

NOW INTO COURT comes the CANE RIVER WATERWAY COMMISSION ("the Commission"), the governing body of the Cane River Water Way District, created by La. R.S. 34:3261, et. seq., and domiciled in Natchitoches Parish, which respectfully represents:

1.

Made defendant in this matter are:

- A. WOMACK AND SONS CONSTRUCTION GROUP, INC. ("General Contractor"), a Louisiana corporation domiciled at Harrisonburg, Louisiana, which may be served through its registered agent, Glen Womack, at 5739 Highway 8 East, Harrisonburg, Louisiana; and,
- B. TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("Surety"), a foreign insurer domiciled at 1 Tower Square, Hartford, Connecticut 06183, who may be served there pursuant to Long Arm Service.

2.

On or about November 18, 2014, the Commission entered a written contract with defendant Womack ("the First Contract").

3.

The object of the First Contract was the construction of the "Cane River Lake Force Main and Weir" ("the Pipeline"), as described in the First Contract.

4.

Womack agreed to construct the Pipeline for \$1,872,939.10.

5.

A certificate of substantial completion was issued for the First Contract on or about October 30, 2015.

6.

On or about November 21, 2016, the Commission entered a second written contract with defendant Womack ("the Second Contract").

7.

The object of the Second Contract was the construction of the "Cane River Lake Pump Station" ("the Pump Station"), as described in the Contract.

8.

Womack agreed to construct the Pump Station for \$3,919,360.00.

9.

The work in the First Contract constituted the first phase of the two-phase project.

10.

The work in the Second Contract constituted the second phase of the two-phase project.

11.

In order to meet the requirements of the Commission, Contractor was aware that both phases of the work must be complete and operable.

12.

More specifically, the Pipeline and Pump Station—together—were to provide a means to pump water, as needed, from Hampton's Lake (an oxbow of Red River) into Cane River Lake, during times when the water level of Cane River Lake dropped below certain limits.

13.

The Pipeline has no value without an operable Pump Station that is capable of pumping and filtering the required amount of water from Hampton's Lake to Cane River Lake.

14.

The plans and specifications in the Second Contract required that the Pump Station be capable of filtering and pumping 30,000 gallons of water per minute through the Pipeline to Cane River Lake.

15.

The plans and specifications in the Second Contract required that the Pump Station filter this water using the following type of filter system:

1. VAF V8000 40 Micron filter rated for 30,000 gpm with internal self-cleaning or equal approved by the project engineer. Filtering system to induce a pressure

differential of 7 psi across the filter. Filtering system not to include motoring system that powers filter. The filtering element shall consist of 3 layers constructed of 316L stainless steel, and shall be fabricated by a "sintered" manufacturing procedure to allow for maximum open area and strength. The filtering element layers shall be the 1) filtering weavewire screen rated at 40 micron, 2) weavewire dispersion screen and 3) the structural perforated screen. The internal cleaning mechanism assembly shall be constructed of 316L stainless steel, Acetyl, and Glass Reinforced Nylon with EPDM and Nitrile seals. The suction scanner nozzle assemblies shall be constructed of CPVC. Exterior of the filtering system shall be KSI carbon steel, epoxy coated.

16.

The scheduled completion date for the Second Contract was March 25, 2018, including allowable weather delays.

17.

Contractor did not meet the scheduled completion date. To date, Contractor has not completed the construction required by the Second Contract.

18.

On February 21, 2018, March 27, 2018, May 17, 2018, and July 2, 2018, Contractor tested the workability of the Pump Station. On all of those dates, the Pump Station failed to operate in accordance with the plans and specifications applicable to the Second Contract.

19.

The last testing date for the Pump Station was July 2, 2018. On that date, testing of the Pump Station indicated that it was capable during short tests of pumping about 10,000 gallons of water per minute.

20.

Upon information and belief, at present, the Pump Station is not capable of pumping more than 10,000 gallons of filtered water per minute.

21.

The rate of 10,000 gallons per minute cannot meet the purpose of the First and Second Contracts. This deficiency causes damages to the Commission.

22.

On or about June 23, 2018, the Commission advised Contractor that Contractor had exceeded the completion date, triggering the liquidated damages clause in the Second Contract. Because the Contractor has exceeded the allowable completion date, liquidated damages are due under the Second Contract.

23.

In addition, the Contractor has breached and not performed the Second Contract. The Contractor has not provided a Pump Station capable of meeting the specifications of the Second Contract.

24.

In addition, because the Pipeline and Pump Station must work together for the system to be of any value to the Commission, the failure of the Pump Station makes the Pipeline similarly valueless to the Commission. Accordingly, the Commission's damages include the amounts paid for both the First and Second Contract.

25.

Surety provided Performance Bond No. 106146591 on behalf of Contractor for the First Contract. Surety provided Payment Bond No. 106146591 on behalf of Contractor for the First Contract. Pursuant to the terms of these bonds and applicable law, Surety guaranteed certain obligations on behalf of Contractor.

26.

Surety provided Performance Bond No. 106619794 on behalf of Contractor for the Second Contract. Surety provided Payment Bond No. 106619794 on behalf of Contractor for the Second Contract. Pursuant to the terms of these bonds and applicable law, Surety guaranteed certain obligations on behalf of Contractor.

27.

Surety is liable to the Commission for the performance of the work in the First Contract and the Second Contract.

28.

Surety is liable to the Commission, in solido, to the extent that Contractor breached its obligations to the Commission. Accordingly, Surety is liable to the Commission for Contractor's breaches, as further described herein.

WHEREFORE, plaintiff, CANE RIVER WATERWAY COMMISSION, hereby prays that, following due proceedings:

- I. There be judgment in its favor and against defendants, in solido, for all damages proved at trial; and,

- II. Reasonable attorneys' fees, costs, interest; and,
- III. All other relief allowed by the law, facts, and equity.

CORKERN, CREWS, GUILLET & JOHNSON, L.L.C.
Attorneys at Law
Post Office Box 1036
Natchitoches, Louisiana 71458-1036

BY: _____

J. CHRIS GUILLET

Bar Roll No. 26312

Attorney for Cane River Waterway Commission

PLEASE SERVE:

WOMACK AND SONS CONSTRUCTION GROUP, INC.
through its registered agent
Glen Womack
5739 Highway 8 East
Harrisonburg, Louisiana

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
No service requested. Plaintiff shall serve by Long Arm Service.

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VERIFICATION

BE IT KNOWN that the undersigned hereby verifies the accuracy of the allegations in the Petition, and joins in same.

CANE RIVER WATERWAY COMMISSION

BY: 

JIM RHODES, Chairman