

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT,
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

MANATEE COUNTY, FLORIDA, a political subdivision
of the State of Florida

Plaintiff,

vs.

URS CORPORATION SOUTHERN, INC.,
a foreign corporation

Defendant.

120* 02451

Case No.

Division

CLERK OF CIRCUIT COURT
MANATEE CO., FLORIDA

2012 APR 11 PM 12:29

FILED BY: [illegible]

COMPLAINT (AND JURY DEMAND)

MANATEE COUNTY, FLORIDA (the "COUNTY") sues URS CORPORATION SOUTHERN, INC., a foreign corporation ("URS") and says:

PARTIES, JURISDICTION AND VENUE

1. The COUNTY is a political subdivision of the State of Florida created by the Florida Constitution and Chapter 125, *Florida Statutes* and is authorized, among other things, to maintain the Lake Manatee Reservoir System.

2. Defendant, URS is a California corporation that at all times material to this Complaint conducted business within Florida as a design engineer, geotechnical engineer and a general engineering consultant including design and project oversight and support activities regarding recent construction on and around the Lake Manatee Dam Tainter Gates (the "Project").

3. This is an action for damages in excess of \$15,000 exclusive of prejudgment interest and costs.

4. This Court has jurisdiction over URS because URS conducts business in Florida

and breached contracts in this State by failing to perform acts that the Contracts required to be performed in Florida.

5. This Court has jurisdiction over URS because URS conducts business in the State of Florida and engages in substantial and not isolated activity in Florida.

6. Venue is proper in the Circuit because of the home venue privilege and because the causes of action alleged herein all accrued in Manatee County, Florida. In addition, URS is bound by the forum selection clauses contained in the Agreement for Utility, Architectural/Engineering Services entered into by the COUNTY and URS in 2007, a copy of which is attached hereto as **Exhibit 1**. The clauses mandate that all actions concerning the Project be filed in Manatee County, Florida.

7. All conditions precedent to the maintenance of this action have occurred, have been performed or waived.

THE LAKE MANATEE DAM TAITER GATES PROJECT

8. Lake Manatee is a reservoir which serves Manatee and Sarasota Counties as a major drinking water supply.

9. The Lake Manatee Dam and Spillway was constructed in 1966 and an emergency spillway was constructed in 1983. Having the dams and spillways operate properly to control water levels in the safe operating range for the dam is significant to the health, safety and welfare of the citizens of Manatee County and their property which could be impacted by an inappropriate release of waters from a dam failure.

10. Given the importance of the proper maintenance of the reservoir and the dam, the COUNTY has historically retained an engineering firm to perform an annual inspection to determine the structural condition of the dam, the condition of the tainter gates, areas of settlement and scour, the calibration of the tainter gates and also review the metal and concrete

surface condition and the toe drain condition.

11. Based upon recommendations to perform repairs and maintenance to the spillway and dam, on or about March 25, 2009, the COUNTY and URS entered into Work Assignment No. 10 pursuant to which URS agreed to provide a detailed design for the needed repair and maintenance work, provide various permitting services and also provide services during construction. A true and correct copy of Work Assignment No. 10 with Change Order #1 is attached hereto as **Exhibit 2**.

12. As conceived, the upstream spillway approach area required repairs to concrete surfaces, restoration of scoured areas, repairs to the tainter gates and a stop log. All of this required the work area to be “in the dry” which meant that the approach area of the spillway needed to be completely dry and dewatered before work could safely commence. A dewatered site would allow for safe and effective visual and hands-on inspection of underwater conditions, repairs of concrete surfaces, efficient application of coatings to tainter gates and repair of rip-rap.

13. The design solution chosen by URS to dewater that area was a temporary cofferdam which was intended and designed to hold back the Lake Manatee water from the work zone on a temporary basis.

14. Given the significance of Lake Manatee during the wet and storm season, URS was aware that all work must be performed between December 1 and May 15. Significant discharges are required from time-to-time during the wet season which would require the full unimpeded use of the spillway.

15. On or about September 15, 2009, URS issued its Plans and Specifications for the Lake Manatee Dam Tainter Gates Project. The Plans reflected that URS was in possession of geotechnical data showing “loose sands” for approximately 25 feet below the bottom of the reservoir. The design solution chosen by URS for the cofferdam was a steel beam structure with

a vertical wall of sand bags around the ends.

16. Johnson Brothers Construction was chosen by the County based on URS's recommendation as the Contractor for the Project and received a Notice to Proceed from the County on December 15, 2010. On the approved schedule, it was to construct the cofferdam in December 2010 and January 2011 allowing time for completion of the work and removal of the cofferdam by May 15, 2011.

17. During the construction of the cofferdam the design was modified by URS. The redesign increased the extent of sandbagging. The cofferdam was completed on February 16, 2011.

18. Immediately upon gradually opening the tainter gate to lower the water level inside the cofferdam, the sandbags leaked, began eroding and dislodging. In addition, "boils" and turbulence became apparent indicating that water under pressure was entering the cofferdam area through the loose sand under the sandbags and/or from the end of the submerged soil cement. The dewatering effort was stopped within a few hours to avoid the potential of a complete washout.

19. URS was fully informed of the cofferdam failure but was unable to certify any solution as it was apparent that the original design was so flawed that it could not be salvaged.

20. By mid-March 2011 it was apparent that there was no safe way to complete the cofferdam as designed by URS and the Contractor was accordingly notified to begin the process of removing the cofferdam on or about March 18, 2011.

21. With the partial cofferdam in place, water flows into the spillway were impeded. During the week of March 28, 2011 a major storm event occurred resulting in high inflow volumes which required water release to maintain the lake level within the safe operating range. As a result, an emergency flow was authorized through the emergency spillway and the tainter

gates.

22. As a result of the failed cofferdam design, the COUNTY was not able to complete the required repair and coating application of the approach concrete surfaces or fill the scoured areas and repair the rip-rap at the approach spillway. Furthermore, some items were able to be completed but with additional costs including the tainter gate and foundation coatings and seals and the downstream embankment repairs. Ultimately the Contractor removed the cofferdam in full except for steel beams which were cut-off under water which will present issues in the future.

23. As a further result of the failed cofferdam, the COUNTY has not been able to effect all of the needed repairs.

24. The COUNTY has been damaged by the failed cofferdam in at least the following respects:

- (a) The wasted cost of design of the cofferdam;
- (b) The wasted cost of construction of the cofferdam;
- (c) The wasted cost of additional work directed at the cofferdam;
- (d) The wasted cost of removing the cofferdam;
- (e) The additional costs of performing some work out of sequence and in confined spaces;
- (f) Damage to the embankments;
- (g) Possible additional cost when the COUNTY dewateres at this location in the future including, but not limited to, dealing with the effects of the cut off steel beams;
- (h) Such other damage as may become apparent during the course of future investigation.

THE PROFESSIONAL RESPONSIBILITY OF ENGINEERS

25. Each engineer who designed the Lake Manatee Dam – Tainter Gates Project was either a “professional engineer” as defined by Chapter 471, *Florida Statutes* (2010) or was under the direct supervision of a “professional engineer.”

26. Section 471.033(1)(g), *Florida Statutes* (2010) subjects engineers to disciplinary sanctions for “[e]ngaging in . . . negligence, incompetence, or misconduct in the practice of engineering.”

27. Florida Administrative Code Rule 61G15-19.001(4) defines engineering “negligence” as “the failure by a professional engineer to utilize due care in performing an engineering capacity or failing to have due regard for acceptable standards of engineering principles.”

28. Florida Administrative Code Rule 61G15-19.001(4) also provides that “[p]rofessional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.”

29. In addition to Section 471.033(1)(g) and Rule 61G15-19.001(4), in a project involving the construction of dams, the standard in this community requires an engineer to exercise due care in conducting geotechnical analyses and designing the cofferdam accordingly.

30. Here, URS’s engineers failed to meet their professional duties in at least the following ways:

- (a) Failing to account for, appreciate and respond to the nature and consistency of the loose sandy soils in the area underlying the cofferdam;
- (b) Failing to design a dewatering solution which would deal with the rate of flow, the quantity of water and the rate of percolation through the sandy

soils;

- (c) Designing a sand bag wall which could not withstand water pressure at this location;
- (d) Failing to obtain an independent technical (peer) review of the design;
- (e) Failing to design the Project consistent with the standard of care of engineers practicing in Florida in the engineering discipline required by this Project.

31. In addition, pursuant to Article 13 of the COUNTY-URS Agreement, **Exhibit 1**, URS agreed to “indemnify, defend, save and hold harmless the COUNTY from all costs, expenses, claims, demands, liabilities, judgments and suits of any nature whatsoever, arising out of, because of, or due to any negligent error, omission or act of professional malpractice by the consultant, or due to the breach of this Agreement, by the consultant, his sub-consultants, agents or employees.”

32. Pursuant to the above provision, a distinction is made between a negligent act, which is an act which falls below the applicable standard of care, and any error or omission or breach of contract which could be an act which is not negligent. Thus the contract provides for strict liability in the event of a non-negligent error or omission by URS. Such an indemnity would include on its face all of the claims and losses sustained by the COUNTY resulting from the failure of the cofferdam and the damages flowing from that failure.

33. In addition to the professional responsibility to act with due care in accordance with the statutory Professional Responsibility, URS agreed to provide certain quality control processes prior to submitting construction plans to the COUNTY. Such quality control techniques typically include mandatory peer review, by independent engineers, of the design plans for the dam. URS failed to obtain a competent peer review.

34. The Plans and Specifications for the Project were submitted to the COUNTY sealed by professional engineers on or about September 15, 2009 and reasonably relied upon by the COUNTY thereafter.

COUNT I – BREACH OF CONTRACT

35. The COUNTY realleges and incorporates by reference paragraphs 1 – 34 as though fully set forth herein.

36. This is an action for Breach of Contract against URS.

37. For the reason set forth herein, URS has materially breached the COUNTY-URS Agreements, **Exhibits 1 and 2**.

38. As a direct and proximate result of URS's material breach of the COUNTY-URS Agreements, **Exhibits 1 and 2**, the COUNTY has been damaged as set forth more fully in paragraph 24 of this Complaint.

WHEREFORE, Plaintiff, MANATEE COUNTY, FLORIDA demands judgment against Defendant URS CORPORATION SOUTHERN, INC. for compensatory damages, interest, costs and such further relief as the Court deems proper.

COUNT II – PROFESSIONAL NEGLIGENCE

39. The COUNTY realleges and incorporates by reference paragraphs 1 – 34 as fully set forth herein.

40. This is an action for professional negligence against URS.

41. URS as the design engineer responsible for the design of the cofferdam and as the construction inspector owed the COUNTY a duty to provide acceptable, competent and non-negligent professional consultation, advice and services including the services in designing the cofferdam.

42. URS failed to provide acceptable, competent and non-negligent professional

consultation, advice and service in accordance with the standard of care used by some of the professionals in the community under similar circumstances.

43. URS's professional negligence includes but was not limited to the professional failings set forth in paragraph 30 of this Complaint.


44. Engineers employed by URS to work on the cofferdam design knew that the COUNTY would and did reasonably rely upon URS's professional representations and certifications.

45. As a direct and proximate result of URS's professional negligence the COUNTY has been damaged as set forth in paragraph 24 of this Complaint.

WHEREFORE, Plaintiff, MANATEE COUNTY, FLORIDA demands judgment against Defendant URS CORPORATION SOUTHERN, INC. for compensatory damages together with interest, cost and such other relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff, MANATEE COUNTY, FLORIDA hereby demands trial by jury.



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