

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

GREENBRIAR DIGGING SERVICE LIMITED
PARTNERSHIP and INSURANCE COMPANY
OF THE WEST

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:07-CV-00601-DPJ-JCS

SOUTH CENTRAL WATER ASSOCIATION, INC.

DEFENDANT

SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW Defendant/Counterplaintiff, South Central Water Association, Inc. (“South Central”), and submits this, its Supplemental Proposed Findings of Fact and Conclusions of Law as requested by the Court:

Proposed Findings of Fact

1. In order for South Central to get the benefit of its bargain and be made whole, Plaintiff, Greenbriar Digging Service Limited Partnership (“Greenbriar”), must provide an ozone system which reduces the color in the water produced by South Central’s Well 4 to a value of twenty (20) units or less at 1200 gallons per minute.

2. The only competent expert testimony before the Court as to what is required to provide such a system is that of South Central’s expert, Wayne Wolf, and the Court-appointed FRE 706 expert, Michael Oneby.

3. Mr. Wolf has opined in his report, made an exhibit to his testimony herein, that the costs to install such a system is one million two hundred and four thousand dollars

(\$1,204,000.00). His figures are based on his education and experience with installing these types of ozonation systems and have been expressed with a reasonable degree of certainty. Greenbriar has offered no expert testimony as to possible alternative solutions to meet the contractual goal and has likewise failed to submit any evidence contradicting the reasonableness and accuracy of Mr. Wolf's figures.

4. Mr. Wolf's ozonation system and technology are not compatible with the system installed by Greenbriar, and as such, betterment or upgrade of the current system is not feasible.

5. Mr. Oneby's report furnished to the Court sets forth two alternatives for meeting the contractual goal of 20 units or less of color at 1200 gpm. The first option, and the one which Mr. Oneby recommends, is installing a new ozone system ("Option 1"). Mr. Oneby's opinion is that the cost of Option 1 will be \$990,000.00. The second option ("Option 2") involves upgrading the current system installed by Greenbriar. Mr. Oneby is of the opinion that the cost to upgrade the system will be \$525,000.00.

6. Mr. Oneby acknowledges that this estimate does not include additional costs for installation, removal of existing equipment, demolition, piping modifications, electrical modifications, structural modifications and site work. [Report, p. 10]. Also, he notes that since power consumption under Option 2 would be more than tripling, substantial electrical improvements are probable [Last Page of Report].

7. Mr. Oneby is of the opinion (Dep. p. 71-73) that the engineering costs for Option 2 could easily exceed \$150,000.00.

8. South Central's damages in this case are at a minimum six hundred seventy-five thousand dollars (\$675,000.00).

Conclusions of Law

1. Greenbriar's liability for breach of contract having been previously found by Order of this Court [Doc. 67], South Central is entitled to recover a sum sufficient to construct an ozone system in accordance with the guarantee under the contract. *Wright v. Stevens*, 445 So.2d 791, 796 (Miss. 1984); *Bevis Construction Co., Inc. v. Kittrell*, 243 Miss. 549, 560, 139 So.2d 375 (1962).

2. The only competent expert testimony before the Court on the issue of damages is that of South Central's expert, Wayne Wolf, whose qualifications and opinions have not been challenged by Greenbriar and that of the Court-appointed FRE 706 expert, Michael Oneby.

3. The proof in this case is sufficient to demonstrate damages on behalf of South Central at a minimum of six hundred seventy-five thousand dollars (\$675,000.00).

Dated this the 1st day of March, 2010.

Respectfully submitted,

**SOUTH CENTRAL WATER
ASSOCIATION, INC.**

By: /s/ C. Stephen Stack, Jr.
C. Stephen Stack, Jr.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, C. Stephen Stack, Jr., do hereby certify that I have this day forwarded the above and foregoing document to jordan_chambers@mssd.uscourts.gov with electronic copy to the following counsel of record:

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This the 1st day of March, 2010.

/s/ C. Stephen Stack, Jr.
C. Stephen Stack, Jr.