

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT**

**CA 11-656**

**POLARIS ENGINEERING, INC.**

**VERSUS**

**PELICAN REFINING COMPANY, LLC**

\*\*\*\*\*

**APPEAL FROM THE  
FOURTEENTH JUDICIAL DISTRICT COURT  
PARISH OF CALCASIEU, NO. 2006-2137  
HONORABLE CLAYTON DAVIS, DISTRICT JUDGE**

\*\*\*\*\*

**SYLVIA R. COOKS**

**JUDGE**

\*\*\*\*\*

Court composed of Ulysses Gene Thibodeaux, Chief Judge, Sylvia R. Cooks, and John D. Saunders, Judges.

**MOTION TO DISMISS SUSPENSIVE APPEAL GRANTED.  
SUSPENSIVE APPEAL DISMISSED.  
APPEAL MAINTAINED AS DEVOLUTIVE.**

**Edward J. Fonti  
Jones, Tete, Fonti & Belfour  
Post Office Box 1930  
Lake Charles, LA 70602-1930  
(337) 439-8315  
COUNSEL FOR DEFENDANT/APPELLANT:  
Pelican Refining Company, LLC**

**Christopher Paul Ieyoub  
Plauche, Smith & Nieset  
Post Office Drawer 1705  
Lake Charles, LA 70602  
(337) 436-0522  
COUNSEL FOR PLAINTIFF/APPELLEE:  
Polaris Engineering, Inc.**

**Tyson Brahm Shofstahl  
Adams & Reese  
4500 One Shell Square  
New Orleans, LA 70139  
(504) 581-3234  
COUNSEL FOR THIRD PARTY/APPELLEE:  
James Rivers Ins. Co.**

**Thomas William Darling  
Attorney at Law  
2223 Quail Run Drive, Ste C-2  
Baton Rouge, LA 70808  
(225) 663-6101  
COUNSEL FOR THIRD PARTY/APPELLEE:  
Maryland Casualty Co.**

**COOKS, Judge.**

The plaintiff-appellee, Polaris Engineering, Inc. (Polaris), moves to dismiss the suspensive appeal filed by the defendant-appellant, Pelican Refining Company, LLC. (Pelican), based on Pelican's failure to post a suspensive appeal bond. For the reasons given herein, we grant the motion, ordering the dismissal of the suspensive appeal, and maintain the appeal as devolutive.

Following the rendition of a judgment on December 14, 2010, Pelican filed a motion for new trial, which the trial court denied. Thereafter, Pelican filed its motion for a suspensive appeal. The trial court signed the order granting the suspensive appeal on March 1, 2011, and in the order of appeal, set the amount of the suspensive appeal bond for \$6,875,000.00.

The record in this appeal was lodged in this court on May 31, 2011. Polaris filed its Motion to Dismiss Suspensive Appeal, and to Maintain as Devolutive Appeal in this court on July 1, 2011. In the motion, Polaris points out that Pelican has not filed a suspensive appeal bond. Therefore, Polaris asks that this court dismiss the suspensive appeal and maintain the appeal as devolutive.

In *Strother v. Continental Casualty Co.*, 2005-1094 (La.App. 3 Cir. 2/8/06), 923 So.2d 783, the appellee moved to dismiss the suspensive appeal since the appellants had failed to post any suspensive appeal bond. First, this court noted that, ordinarily, a motion to dismiss a suspensive appeal due to the appellant's failure to post bond timely must be filed no later than three days after the lodging of the record in the court of appeal or the return date, whichever is later pursuant to La.Code Civ.P. art. 2161. Nevertheless, this court stated in *Strother*, "We find that when the appellant has not filed any bond, a motion to dismiss the suspensive appeal is not untimely if filed beyond the three day time period set forth in Article 2161." 2005-1094, p. 2, 923 So.2d at 785. This court dismissed the suspensive appeal in *Strother* and maintained the appeal as devolutive. Likewise, in the instant case, since Pelican has failed to post

any suspensive appeal bond, we grant the motion, dismiss the suspensive appeal, and maintain the appeal as devolutive.

**MOTION TO DISMISS SUSPENSIVE APPEAL GRANTED.  
SUSPENSIVE APPEAL DISMISSED.  
APPEAL MAINTAINED AS DEVOLUTIVE.**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.  
Rule 2-16.3 Uniform Rules, Court of Appeal.