

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

DUNNET BAY CONSTRUCTION COMPANY,  
an Illinois Corporation

Plaintiff

v.

ANGUS CONTRACTORS, INC., an Illinois  
Corporation; MCDONOUGH ASSOCIATES, INC.  
an Illinois Corporation,

Defendants

2009L009570  
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Other Com Litigation

DUNNET BAY CONSTRUCTION COMPANY'S  
COMPLAINT AGAINST MCDONOUGH ASSOCIATES, INC.  
and  
ANGUS CONTRACTORS, INC.

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Plaintiff, Dunnet Bay Construction Company ("Dunnet Bay"), through its counsel, Lyman & Nielsen, LLC, complains against Defendants Angus Contractors, Inc. ("Angus") and McDonough Associates, Inc. ("McDonough") as follows:

**ALTERNATIVE PLEADING**

1. This Complaint is filed *in the alternative*, pursuant to 735 ILCS 5/2-613; that is, a claim for some of the same damages has been filed with the Illinois Department of Transportation ("IDOT"). This Complaint is asserted in the event and to the extent that Dunnet Bay does not recover from IDOT, or from others for which IDOT is responsible, all of its damages which have resulted from the following described occurrences.

**PARTIES & JURISDICTION**

2. The bridge design and construction project that is the subject matter of this litigation is commonly known as the reconstruction of Interstate 80/294 and construction of ramps connecting I80/294 to I-94 and I-394 in Lansing, Illinois, more technically referred to as Section (0303.1, 6 and 6A)B Project ACNHI-80-5(53)160, FAI 80 in Cook County, Illinois, known as I-80/94/294/394

overpass, (“Ramp J”) Illinois Department of Transportation Contract No. 62343 (the “Project”). Ramp J is a complex curved girder structure.

3. Plaintiff Dunnet Bay Construction, Inc. (“Dunnet Bay”) is an Illinois corporation with offices located at 115 North Brandon Dr., Glendale Heights, Illinois. Dunnet Bay is a general contractor for highway bridge construction projects located throughout Illinois.

4. Defendant Angus Contractors, Inc. (“Angus”) is an Illinois corporation with offices located at 4N211 Woodland Trail W., Wayne, Illinois. Angus was the steel erection subcontractor for the Project.

5. Defendant McDonough Associates, Inc. (“McDonough”) is an Illinois corporation with offices located at 130 East Randolph Street, Suite 1000, Chicago, Illinois. McDonough is a professional engineering firm and was the structural engineer of record on the Project.

6. This lawsuit concerns damage to Dunnet Bay’s property as a result of the sudden and calamitous collapse on August 19, 2005 of a section of the bridge (the “Collapse”) while it was being erected at the Project.

7. Jurisdiction is proper over Angus as it is an Illinois citizen and because it contracted to perform, and did perform, construction services, on the Project in Cook County, Illinois.

8. Jurisdiction is proper over McDonough because it is an Illinois citizen and because it contracted to perform, and did perform, design services for the Project in Cook County, Illinois.

9. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 (1) and (2).

#### **BACKGROUND FACTS**

10. Upon information and belief, on or about December 5, 2001, McDonough was retained by the State of Illinois, acting by and through the Illinois Department of Transportation (“IDOT”), to prepare the structural engineering services for the Project, including the curved girder structure carrying east bound I-80 to north bound I-394 identified as “Ramp J.”

11. The structural engineering services for the Project to be performed by McDonough included developing a design for the bridge known as “Ramp J” and preparing plans and

specifications for the construction of the Project.

12. Upon information and belief, McDonough completed its structural engineering for the Project prior to September 26, 2003, and the Project was set out for public bid.

13. James Cape & Sons, Inc. ("Cape") entered into an agreement with the State of Illinois, acting by and through IDOT, whereby Cape agreed to provide services as a general or prime contractor with regard to the construction of the Project.

14. On information and belief, Angus entered into a subcontract with Cape wherein Angus contracted to erect the structural steel girders, install the bearings, and other related work, all to be performed at the Project.

15. On information and belief, early in the construction of the Project, Cape went out of business or was otherwise unable to complete the Project. Thereafter, Federal Insurance Company, Cape's surety, took over the Project.

16. On April 15, 2005, Dunnet Bay entered into a contract with Federal Insurance Company ("Federal") by the terms of which Dunnet Bay provided services as a general or prime contractor with regard to the construction of the Project.

17. Pursuant to the contract between Federal and Dunnet Bay, Dunnet Bay was, among other things, to furnish and erect the steel beams required for the complex curved girder structure.

18. On or around May 5, 2005, Dunnet Bay and Angus Contractors, Inc. entered into a subcontract (the "Subcontract"). A copy of the Subcontract is attached to the Complaint in this case as Exhibit A.

19. Pursuant to the terms of the Subcontract between Dunnet Bay and Angus, Angus was to perform the same work as it had previously contracted to perform for Cape; i.e., erect the steel beams and girders necessary to construct the complex curved girder structure in accordance with plans and specifications prepared by McDonough and issued by IDOT for the Project.

20. From time to time over a period of many years, IDOT has and continues to publish and promulgate specifications and procedures for constructing the various aspects of roads and

bridges. The publication by IDOT that promulgates these procedures is entitled IDOT Standard Specifications for Road and Bridge Construction.

21. The current version of the IDOT Standard Specifications for Road and Bridge Construction are incorporated into every IDOT contract, except to the extent that particular specifications state otherwise.

22. Accordingly, Dunnet Bay was required to construct the Project, and by virtue of the undertakings in the Subcontract, Angus, was required to erect the structural steel girders, bearings and related components in accordance with the then current version of the IDOT Standard Specifications for Road and Bridge Construction, unless directed otherwise by McDonough's plans and specifications

23. The plans and specifications prepared by McDonough and issued by IDOT for the Project required, among other things, for Angus to develop and submit for IDOT's approval the erection procedures for the construction of the steel beams and girders for the Project in accordance with the plans and specifications ("Erection Procedures").<sup>1</sup>

24. Angus caused the Erection Procedures for the steel beams and girders for the complex curved girder structure to be developed and submitted for approval by IDOT.

25. Between May 5, 2005, and August 19, 2005, Angus erected steel beams and girders for Units 1 and 2 of the Project.

26. On August 19, 2005, when the temporary supports, known as "shore towers," were being removed, span 6 of Unit 2 of Ramp J suddenly collapsed from its position as erected by Angus to the ground.

27. One of Angus' employees (Daniel F. Lopez) was killed in the collapse of span 6. Another Angus employee, (Steven Buenrostro) was injured in the collapse of span 6.

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<sup>1</sup> The plans and specifications are too voluminous to attach to this Complaint and are available for inspection and copying. Angus and McDonough each have a copy of the plans and specifications.

28. The collapse of span 6 caused substantial damage to the steel beams and girders owned by Dunnet Bay and rendered them unusable for the purpose of constructing the Project and necessitated their replacement.

29. The collapse of span 6 also caused Dunnet Bay to suffer other property damage.

**COUNT I  
NEGLIGENCE  
MCDONOUGH ASSOCIATES, INC.**

1-29. Dunnet Bay reasserts and realleges paragraphs 1 through 29 of this Complaint as paragraphs 1 through 29 of this Count I.

30. McDonough designed the plans and specifications, which were issued to Dunnet Bay by IDOT, by which to construct the complex curved girder structure including the beams for span 6 of Unit 2 of Ramp J.

31. As the bridge designer, McDonough had a duty to design the bridge with the ordinary and reasonable skill usually exercised by other design professionals under similar circumstances.

32. As part of its duty, McDonough was responsible for determining the “constructability” of the structure it was designing; that is, determining whether the bridge could maintain plumbness, elevation and geometry while being constructed.

33. In meeting its duty to determine the constructability of the structure it is proposing for a road or bridge for an IDOT project, the structural engineer of record must determine whether the means and methods set forth in the IDOT Standard Specifications are appropriate for the construction of that particular structure.

34. If the structure being proposed by a design engineer cannot be constructed in a manner specified in the IDOT Standard Specifications for Road and Bridge Construction (“IDOT Standard Specifications”), the design engineer must:

- a. call the contractors’ attention to that fact in the plans and specifications, or take other steps to assure the safe erection of the structure;
- b. modify the IDOT Standard Specifications in McDonough’s design documents

where necessary; and,

c. provide adequate warnings of any potential safety precautions that were necessary due to the unique, curved girder design.

35. McDonough's duty was owed not only to IDOT, but also to the contractors responsible for constructing the bridge and the public who were intended to use the bridge.

36. The Project was not a standard, straight girder bridge design. Rather, this Project included a more unique, curved girder bridge design to which some of the IDOT Standard Specifications would not apply, without some modification.

37. The erection procedures contained in the IDOT Standard Specifications for Road and Bridge Construction are inadequate procedures for erecting the complex curved girder structure as designed by McDonough.

38. McDonough failed to design the bridge with the ordinary and reasonable skill usually exercised by other design professionals under similar circumstances by, among other things:

a. Designing a bridge with unstable curved girders;

b. Failing to design a bridge that could be constructed safely in accordance with the design requirements;

c. Failing to provide one viable construction scheme in the design in accordance with NCHRP Report 424 (1999) and AASHTO Guide Specifications for Horizontally Curved Steel Girder Highway Bridges, among other standards;

d. failing to call the contractors' attention in the plans and specification to the fact that the structure required non-standard construction procedures to erect safely, or take other steps to assure the safe erection of the structure;

e. failing to warn contractors that the erection procedures contained in the IDOT Standard Specifications are inadequate for erecting the complex curved girder structure designed by McDonough to be constructed by Dunnet Bay and erected by Angus;

f. failing to issue modified specifications for the erection of the complex curved

girder structure;

g. failing to provide adequate warnings of any potential safety precautions that were necessary due to the unique, complex curved girder structure design;

h. failing to include in the design as set forth in the plans and specifications a safe and viable erection plan of this unique, curved girder structure, by including without limitation, any modification of standard erection procedures contained in the IDOT Standard Specifications for Road and Bridge Construction which were appropriate only for more standard, straight girder structures;

i. failing to include a requirement that the erection plan for the Project be signed and sealed by a licensed engineer in accordance with NCHRP Report 424 (1999) and AASHTO Guide Specifications;

j. failing to require in the plans and specifications that the contractor submit the procedures by which it intended to erect the complex curved girder structure bridge to McDonough to evaluate stability during the erection;

k. designing oversized holes with standard size pins in the cross-frame connections which permitted movement at each cross-frame connection, complicated the cross frame installation, and do not comply with NCHRP Report 424 and the 2003 AASHTO Guide Specifications; and,

l. designing substandard flange sizes non-compliant with AASHTO specifications, which decreased the stability of the partially erected framing.

39. Dunnet Bay and Angus relied upon McDonough's structural engineering expertise with respect to stability of curved girder bridges and its expertise in providing a design that was capable of being constructed when the design requirements were followed.

40. As a direct and proximate result of McDonough's design deficiencies, the steel beams being erected in span 6 of Unit 2 of Ramp J of the complex curved girder structure suddenly and unexpectedly fell to the ground immediately after the temporary support or shoring was removed,

killing one worker and significantly injuring another, as well as substantially damaging the steel beam owned by Dunnet Bay and other property in the vicinity of the fall.

41. It was foreseeable to McDonough that its deficient design could and likely would create instability in the erected bridge, or components thereof, leading to a collapse soon after the removal of the temporary supports, or shoring, causing substantial damage to the steel beams and other property in the vicinity.

42. As a result of McDonough's professional negligence, Dunnet Bay has suffered damages in an amount presently unascertainable inasmuch as the personal injury claims and insurance coverage claims are still pending in other cases, but exceeding \$50,000 in replacement steel and other related costs.

**WHEREFORE**, Dunnet Bay prays this Court for judgment in its favor and against McDonough, in the amount to be proven at a trial or hearing of this matter, for its court costs and such other relief as the Court deems appropriate in the premises.

**COUNT II  
IN THE ALTERNATIVE  
BREACH OF CONTRACT  
ANGUS CONTRACTORS, INC.**

1- 29. Dunnet Bay reasserts and realleges paragraphs 1 through 29 of this Complaint as paragraphs 1 through 29 of this Count II.

30. Pursuant to its Subcontract with Dunnet Bay, Angus was responsible for preparing the Erection Procedures so as to provide for a safe erection of the steel beams.

31. On information and belief, the collapse of span 6 was due to Angus breaching the terms of the Subcontract, by, including without limitation, one or more of the following:

- a. failing to modify and select the erection procedures and sequences required to successfully and securely erect the steel beams and girders that it contracted to erect and construct;
- b. failing to properly erect Ramp J in a good and workmanlike manner by failing

to install sufficient bolts and diaphragm in the steel ramp components being erected before releasing the support of the shoring towers; and,

c. failing to shore the steel beams being erected by it as required to construct it in a good and workmanlike manner and in accordance with the Subcontract.

32. In addition, subsequent to the collapse of span 6 of Unit 2 of Ramp J, it was discovered that Angus also materially breached the Subcontract by erecting Unit 1 of Ramp J in an out-of-tolerance condition.

33. Pursuant to the Subcontract between Dunnet Bay and Angus, Angus was to complete its work in accordance with the Project construction schedule.

34. The loss of the bridge span caused by Angus delayed the construction of the Project.

35. Re-engineering the erection procedures to be employed by Angus to erect the fly-over bridge also delayed the completion of the construction of the Project.

36. The failure of Angus to timely complete its work caused Federal to be assessed liquidated damages by IDOT, which can, in turn, be assessed against Dunnet Bay.

37. The Subcontract between Dunnet Bay and Angus required Angus to provide insurance coverage naming Dunnet Bay as an additional insured.

38. Angus purchased insurance from National Trust Insurance Company (“National”) and Monroe Guaranty Insurance Company (“Monroe”). National and Monroe have filed a declaratory judgment action in the Circuit Court of Cook County, case numbered 05 CH 21989 denying coverage to Dunnet Bay on the ground that Angus committed fraud in applying for the insurance coverage.

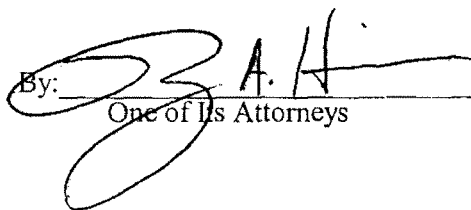
39. The Subcontract between Dunnet Bay and Angus required Angus to hold harmless, defend and indemnify Dunnet Bay against all loss, cost and expense incurred by Dunnet Bay caused by, arising out of, resulting from or occurring in connection with the performance of the work by the Subcontractor or its agents or employees, or from any activity of the Subcontractor or its agent or employees at the Site.

40. Angus has failed and refused to defend and indemnify Dunnet Bay for any of the damages incurred by Dunnet Bay as a result of the collapse of span 6 of Unit 2 of Ramp J.

41. As a result of Angus' material breach of the Subcontract, Dunnet Bay has suffered damages in an amount presently unascertainable inasmuch as the personal injury claims and insurance coverage claims are still pending in other cases, but exceeding \$50,000.00 in replacement steel, additional construction cost and liquidated damages.

**WHEREFORE**, Dunnet Bay prays this Court for judgment in its favor and against Angus, in the amount to be proven at the trial or a hearing in this matter, and for its attorneys' fees, court costs and such other relief as the Court deems appropriate in the premises.

Respectfully submitted,  
Dunnet Bay Construction Company

By:  \_\_\_\_\_  
One of Its Attorneys

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**Exhibit**

A. Angus Contractors, Inc.'s Subcontract with Dunnet Bay.