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# Cogeneration plant at Norcal-Crosetti subject of lawsuit

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The Texas contractor originally hired to build an energy-producing cogeneration plant on Norcal-Crosetti Foods property on Ford Street in Watsonville has filed a multi-million dollar lawsuit against the limited partnership which hired it, charging its members with fraud, breach of contract and dealing in bad faith, among other things.

Lawyers for MMR/Wallace Power and Industrial filed the lawsuit Feb. 9 in federal court.

The primary defendant in the suit is the Salt Lake City-based Bonneville Pacific Corporation. Bonneville is the general partner in the limited partnership called Watsonville Cogen Corporation, which was created two years ago in order to build the plant.

Also named in the suit is Norcal-Crosetti, as well as the now-defunct Watsonville Canning.

The San Francisco attorney for Watsonville Cogen Corp., David Brown, declined to speak to a reporter yesterday. A spokeswoman in his office said his client had asked him not to comment.

According to court papers, Brown has filed a motion asking the court not to take any action in the case pending arbitration.

Whatever happens, however, there are signs that the lawsuit won't have much impact here. Ray Walker, executive vice president for Norcal-Crosetti, said yesterday that the food-processing company will not be liable for any court settlement because it has a clause in its agreement with Bonneville that protects it from such lawsuits.

"I guess we were named because we own the land," Walker said. "The fight is really between them."

According to the lawsuit, MMR/Wallace signed a contract with Bonneville and the other partners in October 1988 to build the plant for \$25.9 million. Plans called for the gas-fired plant to produce up to 45,000 pounds per hour of steam and electric energy.

MMR/Wallace was responsible for the entire project, from drawing up the plans to training workers how to run the finished plant.

But by April 1989, seven months into the project, the relationship had gone sour. The partnership notified MMR/Wallace that it had been fired. (It has since hired another contractor, and the project should be completed this summer.)

The dispute centers around the fact that at the time it was fired, MMR/Wallace still had not obtained a performance bond, a kind of guarantee that the work will be done. The contractor ad-

mits to that in court papers, but blames Bonneville.

The lawsuit charges that the firing was the end result of a scheme by the defendants to take advantage of MMR/Wallace's initial subcontracting work on the project, and then to horn in on its profit.

MMR/Wallace says in the lawsuit that in early March 1989, its insurance company, Aetna Casualty & Surety, informed the defendants in writing of its willingness to issue a bond for the contractor as soon as the defendants supplied proof of sufficient funding for the project.

But the defendants stalled and finally simply failed to provide such proof, even though they knew very well it would mean that Aetna wouldn't issue a bond, the lawsuit says. Furthermore, it says, when the contractor tried to set up an April 6, 1989, meeting between the defendants and an Aetna representative, the defendants cancelled at the last minute.

Five days later, according to the lawsuit, the defendants notified the contractor that it was fired from the project because it allegedly couldn't obtain a performance bond.

The defendants' motive in setting up the alleged Catch-22 scheme, according to the lawsuit, was that they discovered early on that MMR/Wallace stood to gain a hefty profit from its subcontracts with various vendors and suppliers.

The defendants wanted a piece of the pie, the lawsuit says, and demanded that MMR/Wallace knock nearly \$1 million off its price for the project.

When the contractor refused, they stopped monthly payments and began scheming to fire it, the lawsuit alleges. Eventually, they sent letters to each of the subcontractors working on the project, saying that they would be taking over the profitable contracts themselves.

In connection with those letters, the contractor is also charging the defendants with trade libel, saying that as a result MMR/Wallace has "suffered injury to its business, trade and profession in that certain entities in the construction industry believe that plaintiff is not bondable and therefore will not contract with (it.)"

The lawsuit asks the court to award MMR/Wallace more than \$18 million in actual damages and \$200 million in punitive damages, plus attorneys' fees and an unspecified amount to compensate for lost business.

Paul R. Fine, the Los Angeles attorney representing MMR/Wallace, refused to comment on behalf of his client.