

Rocky Road

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In 2004, the U.S. Army Corps of Engineers awarded Weston/Bean Joint Venture a contract to dredge the Miami River channel. That channel was originally created between 1931 and 1933, and has not been dredged since. Under the contract, Weston agreed to remove and dispose of contaminated sediment, and to be paid based on a price per cubic yard of dredged material. Once the work began, Weston discovered that the materials to be dredged included significant quantities of rock. Weston claimed that although the contract was for “maintenance dredging” and disposal of “sediments,” it was entirely outside the contract to require Weston to dredge and dispose of rock.

Weston sued for breach of contract in the U.S. Court of Federal Claims. Earlier in the litigation the Court had denied cross motions for summary judgment. The case was therefore tried, and during the nine-day trial, the Court heard testimony from 16 witnesses, including several experts. In addition, the parties submitted hundreds of exhibits and hundreds of pages of post-trial briefs.

At trial, Weston attempted to prove that under the contract it was only supposed to dredge sediments and not large rocks, and any requirement that it dredge and dispose of rocks was a constructive change to the contract. But the Court was unconvinced, holding that the Character of Materials clause did not limit Weston’s work to sediment. The Court further concluded that the contract covered the removal of rocks (other than in situ rocks), and the Government could show that at no point did the Corps require Weston to dredge in situ rocks.

Weston also failed to show that the conditions it encountered—the large amount of gravel, cobbles, and boulders—was unforeseeable and differed from the work it agreed to perform in the contract. At trial the Government introduced prior surveys of the property showing limestone rock, including larger gravel, cobbles, and boulders.

The Court therefore awarded judgment to the Government on all counts.

Read Judge Kaplan’s full decision [here](#).