

FILE COPY

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**CHARLESTON AREA MEDICAL
CENTER, INC.,**

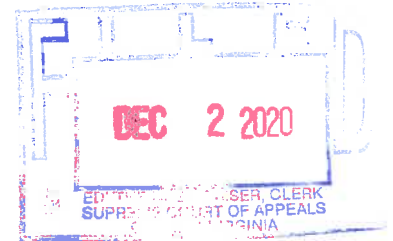
Plaintiff,

v.

**Civil Action No.: 19-C-1259
Honorable Judge Bloom**

**BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BARRY, INC., and
ENGINEERING ECONOMICS, INC.,**

Defendants.



MOTION TO REFER CASE TO BUSINESS COURT DIVISION

Defendants BSA LifeStructures, Inc. (“BSA”), Mi-De-Con, Inc. (“MDC”), Elco Mechanical Contractors, LLC (“Elco”), Carrier Corporation (“Carrier”), and Mason & Barry, Inc. (“Mason & Barry”), by and through their respective counsel, pursuant to West Virginia Code Section 51-2-15 and Rule 29.06 of the West Virginia Trial Court Rules, move to refer the above-styled action to the Business Court Division.¹ This action involves claims of breach of contract, negligent design and administration, negligence, and breach of warranty. The referral of this case to the Business Court Division is appropriate as the principal claims involve matters of significance to the transactions and operations between business entities. In addition, this case is complex in nature in that it involves highly technical commercial issues. Thus, for the reasons provided below, BSA, MDC, Elco, Carrier, and Mason & Barry respectfully request that the Court refer this matter to the Business Court Division.

¹ Plaintiff Charleston Area Medical Center, Inc. and Defendant Engineering Economics, Inc. did not object to moving this matter to business court.

I. Prefatory Statement

The claims in this matter are premised upon contracts and commercial relationships between Plaintiff Charleston Area Medical Center, Inc. (“CAMC” or “Plaintiff”) and Defendants BSA, Mi-De-Con, Elco, Carrier, Mason & Barry, and Engineering Economics, Inc. (“EEI”) (collectively, “Defendants”). As noted above, CAMC alleges claims of breach of contract, negligent design and administration, negligence, and breach of warranty related to the design and installation of a commercial HVAC system for CAMC’s commercial healthcare facility. Specifically, CAMC alleges that Defendants failed to design and install an HVAC system that would function without defects and that was suitable for operation under normal conditions in Charleston. CAMC also claims that the HVAC system designed and installed by Defendants failed to comply with CAMC’s operational requirements and that the HVAC system failed to function properly and experienced critical and catastrophic failures.

II. Procedural History and Nature of Claims Asserted

1. On or about January 2, 2020, CAMC filed its Complaint in the Circuit Court of Kanawha County, West Virginia. A copy of the Docket Sheet and Complaint are attached hereto as **Exhibit A**.

2. As set forth more fully in the Complaint, the claims asserted in this civil action are premised on the contracts and commercial relationships between CAMC and Defendants.

3. In the Complaint, CAMC asserted a breach of contract claim against BSA, a negligent design and administration claim against BSA, a breach of contract claim against Mi-De-Con, Carrier, Mason & Barry, and EEI, a negligence claim against Mi-De-Con, Carrier, Mason & Barry, EEI, and Elco, and a breach of warranty claim against all Defendants.

4. On or about February 3, 2020, Mi-De-Con filed its Answer, Affirmative Defenses, and Cross-Claim. A copy of Mi-De-Con's responsive pleading is attached hereto as **Exhibit B**. Mi-De-Con's responsive pleading includes a cross-claim against Elco for contractual indemnity pursuant to the terms of the sub-contract between Elco and Mi-De-Con.

5. On or about February 3, 2020, EEI filed its Answer and Affirmative Defenses to CAMC's Complaint. A copy of EEI's responsive pleading is attached hereto as **Exhibit C**.

6. On or about February 5, 2020, Mason & Barry filed its Answer to CAMC's Complaint. Mason & Barry's responsive pleading is attached hereto as **Exhibit D**.

7. On or about February 28, 2020, BSA filed its Answer and Affirmative Defenses in response to CAMC's Complaint. A copy of BSA's Answer is attached hereto as **Exhibit E**.

8. On or about March 2, 2020, Carrier filed its Answer and Affirmative Defenses to CAMC's Complaint. Carrier's responsive pleading is attached hereto as **Exhibit F**.

9. On or about June 8, 2020, Elco filed its Answer to CAMC's Complaint. A copy of Elco's Answer is attached hereto as **Exhibit G**.

10. The principal claims in this case comprise commercial disputes involving matters of significance to transactions and operations between the parties as business entities. *See* Rule 29.04(a) of the West Virginia Trial Court Rules.

11. The disputes present commercial issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because the need for specialized knowledge or expertise in the subject matter may be applicable. *Id.*

12. The principal claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act, or consumer insurance coverage disputes; non-commercial

insurance disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; or administrative disputes with government organizations and regulatory agencies. *Id.*

13. This Motion has been filed after the time to answer the Complaint has expired as required by Rule 29.06(a)(2) of the West Virginia Trial Court Rules.

14. Additional related actions are not currently pending.


15. Pursuant to Rule 29.06(a)(1) of the West Virginia Trial Court Rules, the Complaint, responsive pleadings, and docket sheet are attached hereto.

WHEREFORE, for all of the reasons stated herein, BSA, MDC, Elco, Carrier, and Mason & Barry respectfully request that this Court, pursuant to West Virginia Code § 51-2-15 and Rule 29.06 of the West Virginia Trial Court Rules, refer this matter and order the transfer of this matter to the Business Court Division and to award BSA, MDC, Elco, Carrier, and Mason & Barry any such further relief as this Court deems just and proper.

Respectfully submitted,

BSA LIFESTRUCTURES, INC.

By Counsel



Kevin A. Nelson (WVSB #2715)

Kelsey Haught Parsons (WVSB #13205)

Dinsmore & Shohl LLP

707 Virginia Street East, Suite 1300

Charleston, West Virginia 25301

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MI-DE-CON, INC.

By Counsel

Matthew G. Breneman w/ perm.
KHP

Matthew G. Breneman (WVSB #9303)

Thomas Cocchi (WVSB #13181)

Adam Auchey (WVSB #10691)

Zimmer Kunz, PLLC

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Grant Building, Suite 3000

Pittsburgh, PA 15219

Telephone: (412) 281-8000

ELCO MECHANICAL CONTRACTORS, LLC

By Counsel

Michael P. Markins w/ perm.
KHP

Michael P. Markins (WVSB #8825)

Cipriani & Werner, PC

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Email: mmarkins@c-wlaw.com

CARRIER CORPORATION

By Counsel

Daniel R. Higginbotham w/ perm.
KHP

Daniel R. Higginbotham (WVSB #11680)

Sarah A. Meadows (WVSB #11639)

Thomas Combs & Spann, PLLC

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Email: dhigginbotham@tcspllc.com

Email: smeadows@tcspllc.com

MASON & BARRY, INC.

By Counsel

Wendy E. Greve *w/perm. KHP*

Wendy E. Greve (WVSB # 6599)

Pullin, Fowler, Flanagan, Brown & Poe, PLLC

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Facsimile: (304) 342-1545

Email: wgreve@pffwv.com

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**CHARLESTON AREA MEDICAL
CENTER, INC.,**

Plaintiff,

v.

**Civil Action No.: 19-C-1259
Honorable Judge Bloom**

**BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BERRY, INC., and
ENGINEERING ECONOMICS, INC.,**

Defendants.

CERTIFICATE OF SERVICE

I, Kelsey Haught Parsons, certify that a copy of the foregoing **Motion to Refer Case to Business Court Division** was filed today with the Supreme Court of Appeals of West Virginia and served on the following on this the 2nd day of December, 2020 via First Class U.S. Mail, postage prepaid:

Honorable Louis H. Bloom, Judge
Circuit Court of Kanawha County
Kanawha County Judicial Building
111 Court Street
Charleston, WV 25301

Alexander L. Turner, Esq.
Spilman, Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Counsel for Plaintiff

Gerald M. Titus, III, Esq.
Spilman, Thomas & Battle, PLLC
300 Kanawha Blvd., East
Charleston, WV 25301
Counsel for Plaintiff

Cathy Gatson, Clerk
Circuit Court of Kanawha County
Kanawha County Judicial Building
111 Court Street
Charleston, WV 25301

Charles Bailey, Esq.
Daniel T. LeMasters, Esq.
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25301
Counsel for Engineering Economics, Inc.

Wendy E. Greve, Esq.
Pullin, Fowler, Flanagan, Brown & Poe
901 Quarrier Street
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Counsel for Mason & Barry, Inc.

Matthew Breneman, Esq.
Thomas F. Cocchi, Jr., Esq.
Adam Auchey, Esq.
Zimmer Kunz PLLC
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Grant Building, Suite 3000
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Cipriani & Werner PC
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Counsel for ELCO Mechanical Contractors, LLC

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Sarah A. Meadows, Esq.
Thomas Combs & Spann, PLLC
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P.O. Box 3824
Charleston, WV 25338-3824
Counsel for Carrier Corporation

Central Office of the Business Court
Berkley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, WV 25401



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Kelsey Haught Parsons (WVSB #13205)
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Email: kevin.nelson@dinsmore.com
Email: kelsey.parsons@dinsmore.com

EXHIBIT A



(/DEFAULT.ASPX)

Civil

Case Information

Thirteenth Judicial Circuit of Kanawha County

19-C-1259

Judge: LOUIS H. (DUKE) BLOOM

CHARLESTON AREA MEDICAL CENTER, INC., VS. BSA LIFESTRUCTURES, INC.,

Plaintiff(s)Plaintiff Attorney(s)

CHARLESTON AREA MEDICAL CENTER

GERALD TITUS, JR. | BRYAN
SCOTT | ALEXANDER L. TURNERDefendant(s)Defendant Attorney(s)BSA LIFESTRUCTURES, INC
CARRIER CORPORATION
ELCO MECHANICAL CONTRACTORS, L
ENGINEERING ECONOMICS, INC
MASON & BARRY, INC
MI-DE-CON, INCMATTHEW BRENNEMAN | KEVIN A.
NELSON | DANIEL R. HIGGINBOTHAM | ADAM B.
POE | MICHAEL P. MARKINS

Date Filed: 12/27/2019

Case Type: CONTRACT

Appealed: 0

Final Order Date: N/A

Statistical Close Date: N/A

Hearings:

Pre-Trial Conference: 06/09/2021 - 1:30 PM

Original Trial: 06/21/2021 - 8:30 AM

<u>Line</u>	<u>Date</u>	<u>Action / Result</u>
0001	12/27/2019	# CASE INFO SHEET; COMPLAINT; ISSUED SUM & 12 CPYS; F FEE;
0002		RCPT 577283; \$290.00
0003	01/06/2020	# LET FR SS DTD 1/2/20; SUM W/RET (1/2/20 SS) AS TO ENGINEERING
0004		ECONOMICS INC
0005	01/06/2020	# LET FR SS DTD 1/2/20; SUM W/RET (1/2/20 SS) AS TO CARRIER

0006		CORP.
0007	01/06/2020	# LET FR SS DTD 1/2/20; SUM W/RET (1/2/20 SS) AS TO MASON &
0008		BARRY INC
0009	01/06/2020	# LET FR SS DTD 1/2/20; SUM W/RET (1/2/20 SS) AS TO ELCO
0010		MECHANICAL CONTRACTORS LLC
0011	01/06/2020	# LET FR SS DTD 1/2/20; SUM W/RET (1/2/20 SS) AS TO MI-DE-CON
0012		INC
0013	01/06/2020	# LET FR SS DTD 1/2/20; SUM W/RET (1/2/20 SS) AS TO BSA
0014		LIFESTRUCTURES INC
0015	01/14/2020	# (6) E-CERTS FR SS
0016	01/31/2020	# NOT OF APPEARANCE W/COS
0017	02/03/2020	# CASE INFO SHEET; ANS & CR CL OF MI-DE-CON INC W/COS; FEE;
0018		RCPT 578111; \$200.00
0019	02/03/2020	# CASE INFO SHEET; ENGINEERING ECONOMICS INC'S ANS W/COS
0020	02/05/2020	# CASE INFO SHEET; MASON & BARRY INC'S ANS W/COS
0021	02/25/2020	# RMR AS TO ELCO MECHANICAL CONTRACTORS RET MARKED "UNABLE TO
0022		FORWARD"
0023	03/02/2020	# ANS OF BSA LIFESTRUCTURES W/COS
0024	03/05/2020	# CASE INFO SHEET; CARRIER CORP'S ANS W/COS
0025	03/10/2020	# NOT OF SUBST OF CNSL W/COS
0026	03/10/2020	# COS AS TO MASON & BARRY INC'S 1ST INTERROG'S, REQ FOR
0027		PROD & REQ FOR ADM'S TO CAMC
0028	04/08/2020	# RET OF SERVICE OF SUM & C (3/27/20 SP) AS TO ELCO
0029		MECHANICAL CONTRACTORS LLC
0030	04/13/2020	# COS AS TO CARRIER CORP'S 1ST INTERROG'S, REQ FOR PROD &
0031		REQ FOR ADM'S TO P
0032	04/22/2020	# COS AS TO ENGINEERING ECONOMICS 1ST INTERROG'S & REQ FOR
0033		PROD TO CAMC
0034	05/18/2020	# COS AS TO MI-DE-CON INC'S 1ST INTERROG'S & REQ FOR PROD
0035	05/26/2020	@ NOT OF APPEANCE W/COS
0036	05/28/2020	@ COS AS TO P'S RESP TO ENGINEERING ECONOMICS INC'S 1ST SET OF
0037		INTERROG'S
0038	05/27/2020	@ AMD COS AS TO P'S RESP TO ENGINEERING ECONOMICS IN'S 1ST SET
0039		OF INTERROGS
0040	05/29/2020	@ AMD COS AS TO P'S RESP TO ENGINEERING ECONOMICS 1ST SET OF
0041		INTERROG'S
0042	06/04/2020	<O MAILED; 6/4/20; W. GREVE; M BRENEMAN; C BAILEY; R PARONS; D
0043		HIGGINBOTHAM; G TITUS; B SCOTT/CLEM
0044	06/04/2020	LK O: SCHED CONF SET (7/7/20 @ 10:00 AM) S/BLO
0045	06/10/2020	# CASE INFO SHEET; ELCO MECHANICAL CONTRACTORS LLC'S ANS
0046		W/COS
0047	06/12/2020	# COS AS TO P'S RESP TO MASON & BARRY INC'S 1ST INTERROG'S &

0048		REQ FOR ADM'S
0049	06/12/2020	# COS AS TO P'S ANS' TO MI-DE-CON INC'S 1ST INTERROG'S
0050	06/22/2020	@ COS AS TO P'S RESP TO MASON & BARRY'S 1ST SET OF REQ FOR PROD
0051	06/22/2020	@ COS AS TO P'S RESP TO CARRIER CORP'S 1ST SET OF REQ FOR PROD
0052	06/22/2020	@ COS AS TO P'S RESP & ANS TO CARRIER CORP'S 1ST SET OF INTERROG
0053		& REQ FOR ADM
0054	06/22/2020	@ COS AS TO P'S RESP TO ENGINEERING ECONOMICS'S 1ST SET OF REQ F
0055		FOR PROD
0056	06/22/2020	@ COS AS TO P'S RESP TO MIDE-CON'S 1ST SET OF REQ FOR PROD
0057	06/22/2020	@ COS AS TO BSA LIFESTRUCTURES RESP TO CAMC'S 1ST SET OF REQ FOR
0058		ADM, INTERROGS & REQ OF PROD
0059	07/06/2020	<O DTD 7/2/20 MAILED/CLE
0060	07/06/2020	LK O: SCHED O (TD 6/21/21 @ 8:30 AM;CONF 6/9/21) S/7/2/BLO
0061	07/09/2020	# COS AS TO ELCO MECHANICAL CONTRACTORS LLC'S ANS' & RESP'S
0062		TO CAMC'S 1ST REQ FOR ADM, INTERROG'S & REQ FOR PROD
0063	07/09/2020	# COS AS TO MASON & BARRY INC'S RESP'S TO CAMC'S 1ST REQ FOR
0064		ADM, INTERROG'S & REQ FOR PROD
0065	07/09/2020	# COS AS TO BSA LIFESTRUCTURES INC'S RESP'S TO CAMC'S 1ST
0066		REQ FOR ADM, INTERROG'S & REQ FOR PROD
0067	07/14/2020	# COS AS TO ENGINEERING ECONOMICS RESP'S TO P'S 1ST REQ FOR
0068		ADM, INTERROG'S & REQ FOR PROD
0069	08/03/2020	# COS AS TO P'S 1ST REQ FOR ADM'S, INTERROG'S & REQ FOR PROD
0070	08/03/2020	# COS AS TO BSA LIFESTRUCTURES INC'S 1ST COMBINED INTERROG'S &
0071		REQ FOR PROD TO CAMC INC
0072	08/17/2020	# COS AS TO ANS' TO P'S 1ST INTERROG'S, REQ FOR ADM'S & REQ
0073		FOR PROD
0074	09/04/2020	# COS AS TO P'S RESP TO BSA LIFESTRUCTURES INC'S 1ST COMBINED
0075		INTERROG'S & REQ FOR PROD
0076	10/08/2020	@ MOT TO REFER CASE TO BUSINESS COURT DIV W/EXH'S & COS
0077	10/19/2020	# ENGINEERING ECONOMICS INC'S FACT WIT DISCL W/COS
0078	10/19/2020	# BSA LIFESTRUCTURES FACT WIT DISCL W/COS
0079	10/19/2020	# COS AS TO BSA LIFESTRUCTURES 2ND COMBINED INTERROG'S &
0080		REQ FOR PROD TO CAMC
0081	10/19/2020	# ELCO MECHANICAL CONTRACTORS FACT WIT DISCL W/COS
0082	10/19/2020	# MASON & BARRY INC'S PRELIMIN FACT WIT DISCL W/COS
0083	11/06/2020	# CARRIER CORP'S WIT LIST W/COS
0084	11/09/2020	# COS AS TO CAMC'S EXPERT WIT DISCL
0085	11/09/2020	# COS AS TO CAMC'S FACT WIT DISCL
0086	11/23/2020	# CARRIER CORP'S DISCL OF EXPERT WIT'S W/COS
0087	11/23/2020	# MASON & BARRY INC'S EXPERT WIT DISCL W/COS
0088	11/23/2020	# COS AS TO P'S 1ST SUPP RESP TO BSA LIFESTRUCTURES 1ST REQ FOR
0089		PROD OF DOCS

0090	11/23/2020	# COS AS TO P'S 1ST SUPP RESP TO MASON & BARRY INC'S 1ST REQ FOR
0091		PROD OF DOCS
0092	11/23/2020	# COS AS TO P'S 1ST SUPP RESP TO ENGINEERING ECONOMICS 1ST
0093		REQ FOR PROD
0094	11/23/2020	# COS AS TO P'S 1ST SUPP RESP TO MI-DE-CON INC'S 1ST REQ FOR
0095		PROD OF DOCS
0096	11/23/2020	# BSA LIFESTRUCTURES INC'S EXPERT WIT DISCL W/COS
0097	11/23/2020	# NOT OF POTENTIAL PHYSICAL INSPECTION UNDER RULE 34 W/COS
0098	11/23/2020	# ELCO MECHANICAL CONTRACTORS LLC'S EXPERT WIT DISCL W/COS

These materials have been prepared by the Office of the Clerk of the various Circuit Courts from original sources and data believed to be reliable. The information contained herein, however, has not been independently verified by the Office of the Clerk or Software Computer Group, Incorporated. The Office of the Clerk of the Circuit Courts and Software Computer Group, Inc. assume no liability for the accuracy, completeness, or timeliness of the information contained herein.

Software Computer Group | PO Box 27 | Fraziers Bottom WV 25082

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

Civil Action No. 19-C-1259
Bloom

BSA LIFE STRUCTURES, INC.,
MI-DE-CON, INC.,
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BARRY, INC., and
ENGINEERING ECONOMICS, INC.,

Defendants.

SUMMONS

To: BSA Life Structures, Inc.
CT Corporation System
1627 Quarrier Street
Charleston, WV 25311

ACCEPTED FOR
SERVICE OF PROCESS
JUN 2 2 3 26
CLERK OF STATE
COURT OF WEST VIRGINIA

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Bryan G. Scott, Alexander L. Turner, and Gerald M. Titus, III, Plaintiffs' attorneys, whose address is Spilman Thomas & Battle, PLLC, Post Office 273, Charleston, West Virginia 25321-0273, an answer, including any related counterclaim you may have, to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint, and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 12/27/19

Cathy S. Gatson, Clerk

Clerk of Court

DMG

CIVIL CASE INFORMATION STATEMENT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

2019 DEC 21 P 3:01

KANAWHA COUNTY CLERK OF COURT

I. CASE STYLE:

Plaintiff(s):

CHARLESTON AREA MEDICAL CENTER, INC.

v.

CIVIL ACTION NO. 19-C-1259

Defendant(s):

Bloom

**BSA LIFESTRUCTURES, INC., MI-DE-CON, INC., ELCO
MECHANICAL CONTRACTORS, LLC, CARRIER
CORPORATION, MASON & BARRY, INC. AND
ENGINEERING ECONOMICS, INC.**

	<i>Days to Answer</i>	<i>Type of Service</i>
BSA LifeStructures, Inc. CT Corporation System 1627 Quarrier Street Charleston, WV 25311	30	Secretary of State
Mi-De-Con, Inc. Mark Henson 3331 S 3 rd Street Ironton, OH 45638	30	Secretary of State
ELCO Mechanical Contractors, LLC Scott F. Ellis 1510 Coonskin Drive Charleston, WV 25311	30	Secretary of State
Carrier Corporation CT Corporation System 1627 Quarrier Street Charleston, WV 25311	30	Secretary of State
Mason & Barry, Inc. Dan S. Duncan 301 Smiley Drive Saint Albans, WV 25177	30	Secretary of State

Engineering Economics, Inc.
Registered Agent Solutions, Inc.
200 Capitol Street
Charleston, WV 25301

30

Secretary of State

Original and 2 copies of Summons furnished herewith.

CIVIL CASE INFORMATION STATEMENT

PLAINTIFFS: Charleston Area Medical Center, Inc. v. BSA LifeStructures, Inc., Mi-De-Con, Inc., ELCO Mechanical Contractors, LLC, Carrier Corporation, Mason & Barry, Inc. and Engineering Economics, Inc.	CASE NUMBER: <u>19-C-1259</u> Circuit Court of Kanawha County, WV
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II. TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other Cross-Claim
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): December 2020

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ Yes ☐ No IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
☐ Interpreter or other auxiliary aid for the hearing impaired
☐ Reader or other auxiliary aid for the visually impaired
☐ Spokesperson or other auxiliary aid for the speech impaired
☒ Other: _____ UNKNOWN AT THIS TIME

Attorney Name: *Bryan G. Scott (WV Bar #12902)*
 Alexander L. Turner (WV Bar #10839)
 Gerald M. Titus III (WV Bar #9392)

Representing: *Charleston Area Medical Center, Inc.*

Firm: *Spilman, Thomas & Battle, PLLC*


☒ Plaintiff ☐ Defendant

Address: *P. O. Box 273, Charleston WV 25321*

Cross-Complainant
Cross-Defendant

Telephone: *304/340-3800*

Dated: *December 27, 2019*



Gerald M. Titus III

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
CENTER, INC.,

FILED

2019 DEC 21 P 3:02

Plaintiff,

v.

KANAWHA COUNTY CIRCUIT COURT

Civil Action No.

19-C-1259

Bloom

BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.,
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BARRY, INC., and
ENGINEERING ECONOMICS, INC.,

Defendants.

COMPLAINT

Plaintiff Charleston Area Medical Center, Inc. ("CAMC") states as follows for its Complaint against Defendants, BSA LifeStructures, Inc. ("BSA"), Mi-De-Con, Inc. ("MDC"), ELCO Mechanical Contractors, LLC ("ELCO"), Carrier Corporation ("Carrier"), Mason & Barry, Inc. ("MAB"), and Engineering Economics, Inc. ("EEI") (collectively "Defendants"):

PARTIES AND JURISDICTION

1. CAMC is a West Virginia Corporation with its primary place of business in Charleston, West Virginia. CAMC operates healthcare facilities that provide healthcare services in Kanawha County, West Virginia.

2. On information and belief, BSA is an Indiana corporation with its primary place of business in Indianapolis, Indiana. BSA is a multi-disciplinary design practice of architecture and engineering professionals that specialize in providing architecture and engineering services to the healthcare industry.

3. On information and belief, MDC is an Ohio corporation with its primary place of business in Ironton, Ohio. MDC provides construction services to the healthcare industry, including new construction as well as complex renovations and additions to existing buildings.

4. On information and belief, ELCO is a West Virginia limited liability company with its primary place of business in Charleston, West Virginia. ELCO installs and services commercial HVAC systems.

5. On information and belief, Carrier is a Delaware corporation with its primary place of business in Palm Beach Gardens, Florida. Carrier manufactures, installs, and services commercial environmental control systems.

6. On information and belief, MAB is a West Virginia Corporation with its primary place of business in St. Albans, West Virginia. MAB sells commercial HVAC systems and components.

7. On information and belief, EEI is a Colorado corporation with its primary place of business in Golden, Colorado. EEI provides commissioning agent services to healthcare industry clients.

8. Jurisdiction and venue properly lie with this Court because the action involves contracts entered into in Kanawha County, West Virginia, and because the work conducted pursuant to those contracts was performed in Kanawha County, West Virginia.

GENERAL ALLEGATIONS

9. In March of 2014, CAMC began a renovation and expansion of the CAMC Family Practice Building (the "Facility") in Charleston, West Virginia for the construction of a new ambulatory surgery center (the "Project").

10. The Project required the knowledge and expertise of engineers and contractors experienced with the construction of healthcare facilities, including, but not limited to, experience designing and installing commercial HVAC systems specially designed for use in commercial healthcare facilities.
11. CAMC contracted with BSA to perform design and engineering services on the Project.
12. As part of the design and engineering services BSA was contracted to provide on the Project, BSA was responsible for designing and engineering the Facility's upgraded commercial HVAC system in compliance with CAMC's operational requirements.
13. Due to the expansion of the facility, the Project required the design and installation of a larger HVAC system, including the design, integration, and installation of a new 150-ton cooling tower to augment the Facility's existing 50-ton cooling tower.
14. CAMC contracted with MDC to be the General Contractor on the Project.
15. As part of its contractual obligations on the Project, MDC was responsible for coordinating and overseeing installation of the upgraded HVAC system at the Facility.
16. ELCO was selected by MDC as its mechanical subcontractor on the Project.
17. ELCO's subcontracted responsibilities on the Project included, but were not limited to, the installation and integration of the new 150-ton cooling tower as part of the HVAC system installed on the Project.
18. In connection with the Project, CAMC contracted directly with Carrier to provide and install the building and environmental controls for the upgraded HVAC system at the Facility.
19. CAMC also directly contracted with MAB to supply, among other things, the new 150-ton cooling tower as specified in the design drawings and submittals.

20. CAMC separately contracted with EEI to provide commissioning agent services on the Project.

21. BSA's design of the HVAC system at the Facility was required to meet CAMC's operational requirements, which included routine operation of the building and HVAC system, including cooling towers, in normal Charleston, West Virginia, weather conditions, including without limitation regular ambient outdoor temperatures below 32°F.

22. BSA's design for the HVAC system failed to address and/or meet these operational requirements.

23. In particular, in designing the HVAC system at the facility, BSA's design of the HVAC system failed to consider, provide for, or adhere to reasonable industry standards and recommendations and warnings of the equipment manufacturer for protection of the HVAC system and components from freezing, including, without limitation:

- a. Control sequences-of-operation, control system devices, and piping system to provide automatic drainage of the cooling tower sumps when ambient outdoor air temperatures would fall below 40°F;
- b. Control sequences-of-operation to maintain minimum fluid flow through the closed loop cooling coil to maintain leaving water temperature above 45°F;
- c. Water circulating in the cooling tower closed loop cooling coil and the condenser water loop was not treated with anti-freeze protection, ethylene, or propylene glycol;

- d. Cooling tower closed loop coils were not provided with piping systems and isolation valves that would allow drainage of the cooling coils when the outdoor air temperature dropped below freezing temperatures;
- e. Drainage of the cooling tower sumps required manual drainage and refill as the outdoor air temperature fell below or increased above 40°F;
- f. The condenser water loop was not provided with a heat exchanger to provide isolation between the cooling tower closed loop coils and the condenser water loop.

24. In designing the HVAC system at the facility, including the piping design and control sequences, BSA did not provide appropriate provisions and sequences of operation to drain, operate, and control the cooling towers in freezing conditions.

25. BSA's design drawings likewise did not provide for draining the cooling tower sumps and coils, or for completely isolating the condenser loop from the cooling towers to aid in draining water from the system in freezing conditions.

26. These defects in BSA's design drawings were or should have been apparent to BSA and to the other defendants given their experience and involvement in the industry and with similar systems.

27. Each of the Defendants failed to identify and/or disclose these apparent errors in BSA's design drawings and in project submittals so as to deliver to CAMC a suitably designed and installed HVAC system that would function without defects and was suitable for operation under normal conditions in Charleston, West Virginia.

28. Furthermore, in supplying the new 150-ton cooling tower for the Project, MAB failed to furnish a cooling tower unit equipped with galvanized steel positive closure dampers as described in the Project design drawings and submittals.

29. The lack of the specified closure dampers on the cooling tower unit was or should have been apparent to each of the defendants in the course of their respective design, installation, commissioning and other activities related to the HVAC system at the Facility.

30. Defendants nevertheless failed to identify and/or disclose to CAMC that the cooling tower furnished by MAB failed to adhere to the Project design drawings and submittals and lacked closure dampers as required.

31. Defendants, and in particular BSA, EEI, and Carrier, also failed to provide, or otherwise implement, a sufficient sequence of operations for the HVAC system installed at the Facility.

32. As a result of the Defendants' design and installation defects and errors, and the lack of a reasonable sequence of operations for the HVAC system, as well as the Defendants' failure to timely identify and/or disclose these defects to CAMC, the upgraded HVAC system failed to comply with CAMC's operational requirements and Project plans, specifications, and agreements, the HVAC system failed to function properly and, ultimately, experienced critical and catastrophic failures.

33. These HVAC system failures negatively impacted CAMC's ability to operate the ambulatory surgical center.

34. CAMC contacted Defendants during the fall of 2017 and informed them of routine concerns with the operation of the HVAC system at the Facility. During that time, the defendants

were regularly on site in an effort to address and correct the HVAC system issues so that CAMC could operate the system as intended and expected.

35. Despite these efforts, Defendants were unable to identify the cause of the continuing issues experienced at the Facility or to correct deficiencies in the HVAC system.

36. During a five-day period beginning on December 28, 2017 and through at least January 1, 2018, the outside temperature in Charleston, West Virginia dropped below freezing.

37. As a result of the defective design and installation of the HVAC system at the Facility, along with the improper ECS sequence implemented by Carrier's service technician, the freezing temperatures between December 28, 2017 and January 3, 2018 caused the coolant in the closed loop cooling coils to freeze and the cooling coils to rupture.

38. CAMC notified the Defendants immediately of the initial freeze event on December 28, 2017.

39. Defendants responded and again attempted to correct the failure of the HVAC system that they had designed and installed at the Facility, including on information and belief, implementation by Carrier and/or EEI of an ECS sequence procedure without approval from BSA.

40. During the second freeze event on January 3, 2018, the rupture of the coils caused a catastrophic and complete failure of both cooling towers, rendering the cooling towers, and by extension the Facility's HVAC system, inoperable.

41. The freeze events on December 28, 2017 and January 3, 2017 were the product of continuing defects of Defendants' design, furnishing, and installation of the HVAC system, coupled with the ineffective modifications and manipulation of the controls and lack of a suitable sequence of operations, all of which combined to result in the catastrophic failure of the cooling towers and the HVAC system at the Facility.

42. Following the catastrophic failure of the Facility's HVAC system in January of 2018, and in order to avoid additional interruption of operations at the Facility, CAMC was required to rent portable cooling towers at considerable extra cost in order to have an operational HVAC system at the Facility, as well as additional costs for the design and installation of new HVAC components and equipment to remediate deficiencies in the system designed, furnished, and installed by Defendants.

COUNT I
Breach of Contract
(Against BSA)

43. The allegations contained in the preceding paragraphs are hereby incorporated in their entirety as if restated herein.

44. Under its contract with CAMC, BSA owed a contractual duty to perform its services with the skill, care, and diligence of a reasonably professional architect and engineer in designing and overseeing construction and installation of the HVAC system at the Project, and in the preparation and review of drawings, specifications, and submittals associated therewith.

45. BSA further owed CAMC a contractual duty to perform its services in accordance with contractual requirements and CAMC's programming and operational requirements.

46. BSA breached its contract with CAMC by, among other ways to be proven at trial, failing to comply with the requisite professional skill and care and by failing to design and engineer the HVAC system and related sequences of operation and protocols for the Facility consistent with contractual requirements and CAMC's programmatic and operational requirements, including but not limited to appropriate operation of the HVAC system, including the cooling towers, during cold temperatures.

47. BSA further breached its contractual duties to CAMC after installation of the HVAC system and cooling towers by failing to take reasonable action to recommend or design an appropriate fix for the problems experience in the HVAC system, and by failing in its construction administration duties to direct MDC to complete work to address and remediate issues experienced with the installed system and cooling towers, particularly following the first freeze event on December 28, 2017, in order to avoid further damage to the installed HVAC components and cooling towers.

48. At no time was CAMC in material breach of its contract with BSA.

49. CAMC performed all conditions precedent, including payment obligations, required pursuant to its contract with BSA.

50. As a direct and proximate result of BSA's breach of its contract with CAMC, as described herein, CAMC has and will continue to incur damages in excess of the jurisdictional limits of this Court.

COUNT II
Negligent Design and Administration
(Against BSA)

51. The allegations contained in the preceding paragraphs are hereby incorporated in their entirety as if restated herein.

52. As the design and engineering professional on the Project, BSA owed CAMC a non-delegable duty to exercise act with the skill, care, and diligence of a reasonably professional architect and engineer in designing and overseeing construction and installation of the HVAC system at the Project, and in the preparation and review of drawings, specifications, and submittals associated therewith.

53. BSA breached its duty of care to CAMC as set forth above and by, among other things, failing to properly design and administer installation and construction of the HVAC system so as to provide for appropriate operation of the system, including the cooling towers, during cold temperatures without damaging the system and its components.

54. BSA further breached its duty of care to CAMC during and after installation of the HVAC system and cooling towers by, among other ways to be proven at trial, failing to identify and/or disclose defects in the equipment furnished to the Project and in the installation of the HVAC system, and by failing to take appropriate action to address and remediate issues experienced with the installed system and cooling towers, particularly following the first freeze event on December 28, 2017, in order to avoid further damage to the installed HVAC components and cooling towers.

55. As a direct and proximate result of BSA's breach of its duty to CAMC, CAMC has and will continue to incur damages in excess of the jurisdictional limits of this Court.

COUNT III
Breach of Contract
(MDC, Carrier, MAB, and EEI)

56. The allegations contained in the preceding paragraphs are hereby incorporated in their entirety as if restated herein.

57. Under its contract with CAMC, MDC owed a contractual duty to supervise and coordinate subcontractors and suppliers and to perform its work in constructing the Facility, including the HVAC system, in accordance with plans, specifications, and generally acceptable construction practices.

58. Under its contract with CAMC, Carrier owed contractual duties to CAMC to, among other things, install, monitor, and adjust electronic controls within the Facility for the

HVAC system consistent with plans, specifications, manufacturer recommendations and guidelines, and generally acceptable industry practices.

59. Under its contract with CAMC, EEI owed a contractual duty to employ robust commissioning procedures to enable and ensure the effective operation of the HVAC system consistent with CAMC's operational requirements, as well as to facilitate training of CAMC's staff in order to ensure that the upgraded HVAC system installed at the Facility as part of the Project met and operated within CAMC's requirements.

60. Under its contract with CAMC, MAB owed a contractual duty to procure and furnish equipment that complied with plans, submittals, specifications, and generally acceptable industry practices.

61. MDC, Carrier, EEI, and MAB breached their contractual duties to CAMC as alleged above, and by failing to perform their work on the Project in accordance with the Project plans, specifications, and appropriate industry practices and standards of care so as to permit and ensure operation of the completed HVAC system in accordance with CAMC's operational requirements, including operation of the HVAC cooling towers in cold weather conditions, and by failure to provide appropriate training and/or operation manuals and sequences to CAMC's staff.

62. At no time was CAMC in material breach of its contracts with any of the defendants.

63. CAMC performed all conditions precedent, including payment obligations, required pursuant to the contracts.

64. As a direct and proximate result of the defendants' breach of their contractual and common law duties to CAMC, CAMC has and will continue to incur damages in excess of the jurisdictional limits of this Court.

COUNT IV
Negligence
(Against MDC, Carrier, MAB, EEI, and ELCO)

65. The allegations contained in the preceding paragraphs are hereby incorporated in their entirety as if restated herein.

66. Defendants MDC, Carrier, MAB, EEI, and ELCO owed common law duties to CAMC to exercise reasonable care in the performance of their work on the Project in compliance with accepted industry standards and requirements of the Project documents.

67. The Defendants breached their duties to CAMC as alleged above, and by, among other things, failing to review the Project documents and designs for constructability and feasibility, by failing to identify and/or disclose to CAMC apparent defects in the Project documents and designs, by failing to furnish equipment and perform installation work in a good and workmanlike manner and consistent with Project plans, specifications and acceptable industry practices and standards, by failing to appropriately address issues as they became apparent following installation of the HVAC system; and by failing to adequately train CAMC staff or provide necessary operational manuals and/or sequences of operation to permit operation of the HVAC system in accordance with CAMC's requirements and so as to avoid damage to the system.

68. As a direct and proximate result of Defendants' breach of their common law duties to CAMC, CAMC has and will continue to incur damages in excess of the jurisdictional limits of this Court.

COUNT V
Breach of Warranty
(All Defendants)

69. The allegations contained in the preceding paragraphs are hereby incorporated in their entirety as if restated herein.

70. In agreeing to and undertaking to provide their respective design, construction, supply, and commissioning services, each of the defendants warranted, expressly and impliedly, that their work would be consistent with applicable industry standards and the Project documents, of good quality and free from defects, and would result in completed work and a Project that would meet or exceed CAMC's programmatic and operational requirements, including requirements for heating and cooling the building in cold temperatures.

71. Defendants breached their express and implied warranties by designing and installing the HVAC system at the Facility in a defective and unworkmanlike manner, in supplying equipment that did not conform with the Project plans, submittals, and specifications, and in failing to perform their work such that the HVAC system could be operated consistent with CAMC's normal operational requirements as described herein, and by failing to correct the defects identified by CAMC within the applicable warranty periods.

72. As a direct and proximate result of Defendants' breach of their warranties to CAMC, CAMC has and will continue to incur damages in excess of the jurisdictional limits of this Court.

PRAYER FOR RELIEF

WHEREFORE, Charleston Area Medical Center, Inc., demands judgment against Defendants as follows:

- (a) Awarding CAMC its actual and consequential damages in an amount to be established at trial as a result of the facts alleged herein and such other facts established at trial;
- (b) Awarding CAMC pre-judgment and post-judgment interest on its damages at the rates prescribed by applicable law;
- (c) Awarding CAMC its costs and expenses in this litigation, including its attorneys' fees, expert fees, and other costs and disbursements; and

- (d) Awarding CAMC such other and further relief as this Court may deem just and proper under the circumstances.

JURY TRIAL DEMANDED

**CHARLESTON AREA
MEDICAL CENTER, INC.**

By Counsel: Bryan R. Scott
Bryan O. Scott (WVSB # 12902)
Alexander L. Turner (WVSB # 10839)
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aturner@spilmanlaw.com

Gerald M. Titus, III (WVSB # 9392)
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Fax: (336) 340-3801
Email: gtitus@spilmanlaw.com

*Counsel for Charleston Area Medical
Center, Inc.*

EXHIBIT B

**CIVIL CASE INFORMATION SHEET
CIVIL CASES**

In the Circuit Court of Kanawha County, West Virginia

FILED
2020 FEB -3 PM 3:20

CITY OF MARTINSBURG
KANAWHA COUNTY CIRCUIT COURT

I. CASE STYLE

Plaintiff(s)

Case No. 19-C-1259

CHARLESTON ARI A MEDICAL CENTER,
INC.,

Plaintiffs.

vs.

BSA LIFE STRUCTURES, INC., MI-DE-CON,
INC., ELCO MECHANICAL CONTRACTORS,
LLC, CARRIER CORPORATION, MASON &
BARRY, INC., AND ENGINEERING
ECONOMICS, INC.,

Defendants.

17-17
200.00 LSF
rept # 578111

**PLAINTIFF: CHARLESTON AREA
MEDICAL CENTER, INC.,**

CASE NUMBER: 19-C-1259

**DEFENDANT: BSA LIFE STRUCTURES,
INC., MI-DE-CON, INC., ELCO
MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION, MASON &
BARRY, INC., AND ENGINEERING
ECONOMICS, INC.,**

II: TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other Infant matter settlement
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMANDED: Yes ☒ No ☐
CASE WILL BE READY FOR TRIAL BY (Month/Year): Unknown

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? Yes ☐ No ☒
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney Name: Matthew G. Breneman, Esquire

Firm: ZIMMER KUNZ, PLLC

Address: 310 Grant Street
Suite 3000 Grant Building
Pittsburgh, PA 15219

Telephone: 412-281-8000

Date: January 31, 2020

Representing: ☐ Plaintiff

☒ Defendant

☐ Cross-Claimant

☐ Cross-Defendant

/s/ Matthew G. Breneman

Matthew G. Breneman

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA **DO**

CHARLESTON AREA MEDICAL CENTER,)
INC.,)

Plaintiff,)

v.)

BSA LIFE STRUCTURES, INC., MI-DE-CON,)
INC., ELCO MECHANICAL)
CONTRACTORS, L.L.C., CARRIER)
CORPORATION, MASON & BARRY, INC.,)
AND ENGINEERING ECONOMICS, INC.,)

Defendant.)

2020 FEB -3 PM 3:20
CATHY S. SAISON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Civil Action No. 19-C-1259

ANSWER, AFFIRMATIVE DEFENSES AND CROSS-CLAIM OF MI-DE-CON, INC.

AND NOW, comes the Defendant, MI-DE-CON, INC., by and through its attorneys, MATTHEW G. BRENNEMAN, ESQUIRE AND ZIMMER KUNZ, P.L.L.C., and submits the following Answer, Affirmative Defenses and Cross-claim, averring as follows:

PRELIMINARY STATEMENT

Because of the nature and timing of the Complaint, in order to preserve important legal rights and protections, this Defendant sets forth below certain defenses and affirmative defenses which, based upon the information set forth in the Complaint, it believes do or may apply to some or all of the claims raised therein. This Defendant reserves the right to withdraw or modify some or all of the affirmative defenses set forth below, in whole or in part, depending upon the outcome of discovery.

ANSWER

1. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

2. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

3. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant admits that it is an Ohio Corporation.

4. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

5. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

6. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

7. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

8. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

GENERAL ALLEGATIONS

9. Upon information and belief, admitted.

10. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

11. Upon information and belief, admitted.

12. Upon information and belief, admitted.

13. Upon information and belief, admitted.

14. Admitted.

15. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, it is admitted that this Defendant had a contract with Plaintiff. The obligations of this Defendant for the HVAC project at issue in this case are set forth in the contract between this Defendant and Plaintiff and said obligations speak for themselves.

16. It is admitted that this Defendant subcontracted with ELCO to install the HVAC unit at issue.

17. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, ELCO installed the HVAC system per the design and specifications of BSA.

18. Upon information and belief, admitted.

19. Upon information and belief, admitted.

20. Upon information and belief, admitted.

21. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments

contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

22. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

23. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

24. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

25. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

26. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

27. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

28. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

29. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

30. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

31. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

32. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

33. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

34. Upon information and belief, admitted.

35. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

36. Upon information and belief, admitted.

37. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

38. Upon information and belief, admitted.

39. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

40. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

41. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

42. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, this Defendant is

without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of Plaintiff's Complaint and, therefore, same are denied with strict proof thereof demanded at the time of trial.

COUNT I
Against BSA
Breach of Contract

43-50. These paragraphs of Plaintiff's Complaint are directed to parties other than this Defendant and, therefore, no response is required. To the extent that these paragraphs are directed to this Defendant, same are denied with strict proof thereof demanded at the time of trial.

COUNT II
Against BSA
Negligent Design and Administration

50-55. These paragraphs of Plaintiff's Complaint are directed to parties other than this Defendant and, therefore, no response is required. To the extent that these paragraphs are directed to this Defendant, same are denied with strict proof thereof demanded at the time of trial.

COUNT III
Against MDC, Carrier, MAP and EEI
Breach of Contract

56. This Defendant incorporates its answers to the paragraphs 1-55 as if the same were set forth at length herein.

57. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, it is admitted that this Defendant had a contract with Plaintiff. The obligations of this Defendant for the HVAC project

at issue in this case are set forth in the contract between this Defendant and Plaintiff and said obligations speak for themselves.

58. This paragraph of Plaintiff's Complaint is directed to parties other than this Defendant and, therefore, no response is required. To the extent that this paragraph is directed to this Defendant, same is denied with strict proof thereof demanded at the time of trial.

59. This paragraph of Plaintiff's Complaint is directed to parties other than this Defendant and, therefore, no response is required. To the extent that this paragraph is directed to this Defendant, same is denied with strict proof thereof demanded at the time of trial.

60. This paragraph of Plaintiff's Complaint is directed to parties other than this Defendant and, therefore, no response is required. To the extent that this paragraph is directed to this Defendant, same is denied with strict proof thereof demanded at the time of trial.

61. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

62. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

63. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

64. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

COUNT IV
Against MDC, Carrier, MAP, EEI, and ELCO
Negligence

65. This Defendant incorporates its answers to the paragraphs 1-64 as if the same were set forth at length herein.

66. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

67. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

68. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

COUNT V
Against All Defendants
Breach of Warranty

69. This Defendant incorporates its answers to the paragraphs 1-68 as if the same were set forth at length herein.

70. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

71. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

72. This paragraph of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, same are denied with strict proof thereof demanded at the time of trial.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. Plaintiff's Complaint fails to state a cause of action as to this Defendant upon which relief may be granted.

Second Affirmative Defense

2. This Defendant denies all allegations contained in Plaintiff's Complaint unless expressly and specifically admitted in this Answer.

Third Affirmative Defense

3. This Defendant specifically denies that the Plaintiff is entitled to any of the relief prayed for against it in Plaintiff's Complaint.

Fourth Affirmative Defense

4. This Defendant reserves the right to assert as an affirmative, to the extent revealed by discovery, comparative negligence and/or comparative fault on the part of Plaintiff and Plaintiff's representatives.

Fifth Affirmative Defense

5. This Defendant sets forth, to the extent revealed by discovery, waiver and estoppel in respect to Plaintiff's alleged claim.

Sixth Affirmative Defense

6. This Defendant sets forth all affirmative defenses set forth in Rule 8(c) as regarding discovery, including, but not limited to, the affirmative defenses of contributory fault, comparative fault and assumption of the risk, as if all affirmative defenses identified within the said rule were set forth expressly herein as against the Plaintiff.

Seventh Affirmative Defense

7. It is denied that Plaintiff has suffered any injuries or damages as a result of any conduct of this Defendant.

Eighth Affirmative Defense

8. This Defendant denies that it owed a duty of the type alleged by Plaintiff.

Ninth Affirmative Defense

9. To the extent revealed by discovery or at the trial of this case that any duty was owed to the Plaintiff, this Defendant denies that it owed the duties as alleged in Plaintiff's Complaint.

Tenth Affirmative Defense

10. To the extent that it is determined through discovery in this matter or at trial, that any duty owed to the Plaintiff was breached in regard to the matters at issue, it is denied that this Defendant breached any such duty.

Eleventh Affirmative Defense

11. To the extent revealed in discovery of this matter or in testimony rendered at trial that Plaintiff sustained any injuries and damages, which is denied, as a result of any alleged breach, it is denied that this Defendant proximately caused any such injuries and damages.

Twelfth Affirmative Defense

12. To the extent further investigation and/or discovery in this matter may prove them applicable, this Defendant asserts the defenses of statute of limitations, statute of repose and laches.

Thirteenth Affirmative Defense

13. Plaintiff's injuries and damages were caused or contributed to by superseding or intervening causes other than any alleged act or omission on the part of this Defendant.

Fourteenth Affirmative Defense

14. This Defendant asserts that it breached no duty whatsoever to Plaintiff and, accordingly, Plaintiff's claims against this Defendant are barred.

Fifteenth Affirmative Defense

15. The damages of which Plaintiff claims were not the proximate result of any alleged act or omission on the part of this Defendant.

Sixteenth Affirmative Defense

16. Plaintiff's claims as against this Defendant are, in whole or in part, barred by failure of consideration and/or lack of privity.

Seventeenth Affirmative Defense

17. This Defendant reserves the right to raise such further defenses as may be warranted by further investigation, discovery and/or through trial. This Defendant further reserves the right to file such further crossclaims, counter claims and/or third-party claims as may be warranted by investigation, discovery and trial in this matter.

Eighteenth Affirmative Defense

18. To the extent revealed by discovery, Plaintiff's claim against this Defendant is barred and/or limited by virtue of the provisions of any applicable contract agreements.

Nineteenth Affirmative Defense

19. This Defendant sets forth all applicable limitations of liability and/or limitation of action clauses as contained in any purchase agreement or documents as a bar to and/or in diminution of Plaintiff's claim for damages.

Twentieth Affirmative Defense

20. This Defendant denies that it may be liable under any breach of warranty theories and, furthermore, denies that it extended warranties of the type asserted by Plaintiff or that any alleged express or implied warranties, the existence of which are denied, were breached. Additionally, this Defendant denies that it received the type of notice required under law as to any warranty claim alleged by Plaintiff.

Twenty-First Affirmative Defense

21. This Defendant breached no warranty, whether expressed or implied, the existence of which is denied, with respect to services rendered in connection with the iron.

Twenty-Second Affirmative Defense

22. If Plaintiff incurred any damages, which is not admitted, this Defendant avers that they may have been caused by Plaintiff's own acts or omissions to the extent revealed by discovery or testimony rendered at trial.

Twenty-Third Affirmative Defense

23. To the extent revealed applicable by discovery or testimony rendered at trial, Plaintiff may have failed to mitigate its alleged damages.

Twenty-Fourth Affirmative Defense

24. The damages, if any, of which Plaintiff complains were caused by the acts, omissions, or fault of others and not by this Defendant and this Defendant further denies that it designed, selected or specified the HVAC system to be installed.

Twenty-Fifth Affirmative Defense

25. This Defendant denies that it was negligent or otherwise culpable or engaged in any tortious conduct as alleged in the Complaint and, furthermore, that it breached any duty owed to the Plaintiff.

Twenty-Sixth Affirmative Defense

26. This Defendant sets forth as an affirmative defense, to the extent revealed by discovery or testimony rendered at trial, that Plaintiff's claims are barred by Plaintiff's own misuse or abuse of the HVAC system at issue.

Twenty-Seventh Affirmative Defense

27. This Defendant asserts that it had no role in selecting, purchasing and supplying all materials to be used on the HVAC system project at issue in this case.

Twenty-Eighth Affirmative Defense

28. This Defendant denies all allegations not otherwise responded to herein.

WHEREFORE, Defendant, MI-DE-CON, INC., demands that the Complaint against it be dismissed and that judgment against the Plaintiffs for costs in its behalf be entered in favor of this Defendant.

CROSS-CLAIM AGAINST ELCO MECHANICAL CONTRACTORS, LLC

1. Solely for the purposes of this Cross-claim, this Defendant incorporates the averments contained in Plaintiff's Complaint as if the same were set forth at length herein.
2. This Defendant denies that it is liable to any party in any sum whatsoever.
3. This Defendant does hereby assert a claim for contractual indemnity against ELCO Mechanical Contractors, LLC pursuant to the terms of the sub-contract between ELCO and Mi-De-Con for the HVAC project at issue in this case.

WHEREFORE, in the event that Plaintiff is entitled to damages against Defendant, MI-DE-CON, INC., as a result of the allegations contained in Plaintiff's Complaint, this Defendant demands that it is entitled to contractual indemnification pursuant to the terms of the sub-contract between this Defendant and ELCO Mechanical Contractors, LLC.

Respectfully submitted,

ZIMMER KUNZ, PLLC

By: 

Matthew G. Breneman, Esquire

W. Va. I.D. 9303

Thomas Cocchi, Esquire

W. Va. I.D. 13181

Adam Auchey, Esquire

W. Va. I.D. 10691

Attorneys for Defendant, MI-DE-CON, Inc.

310 Grant Street, Suite 3000

Pittsburgh, PA 15219

(412) 281-8000

CERTIFICATE OF SERVICE

FILED
2020 FEB -3 PM 3:21
CATHY S. HAYES, CLERK
HAWAII COUNTY CIRCUIT COURT

I, hereby certify that I have this 31st day of January, 2020, served a true and correct copy of the foregoing ANSWER, AFFIRMATIVE DEFENSES AND CROSS-CLAIM TO PLAINTIFF'S COMPLAINT on the following counsel of record via U.S. first class mail:

Bryan G. Scott, Esquire
Alexander L. Turner, Esquire
Spilman, Thomas, & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, North Carolina 27103
(Counsel for Plaintiff)

ZIMMER KUNZ, PLLC

By

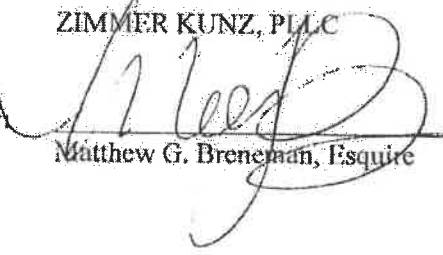

Matthew G. Breneman, Esquire

EXHIBIT C

I. Parties**PLAINTIFF(S):** CHARLESTON AREA MEDICAL CENTER, INC.,

Plaintiff,

DEFENDANT(S): BSA LIFE STRUCTURES, INC., MI-DE-CON, INC.,
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION, MASON & BARRY,
INC., and ENGINEERING ECONOMICS, INC.,

Defendants.

2020 FEB -3 PM 3:34
 EAST VIRGINIA DISTRICT COURT
 KANAWHA COUNTY CIRCUIT CLERK
 Civil Action No. 20-C-1259

II. Type of Case

TORTS		OTHER CIVIL
Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	Other
Other Tort	Appeal of Administrative Agency	

III. Jury Demand ☒ Yes ☐ No

Case will be read for trial by (month/year): June/2021

IV. Do you or any of your clients or witnesses in this require special accommodations due to a disability or age?☐ Yes ☒ No

If Yes, please specify:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other:

Attorney Name: Charles R. Bailey

Daniel L. LeMasters

Firm:

Bailey & Wyant, PLLC

Address:500 Virginia Street East, Suite 600
Charleston, WV 25301**Telephone:**

(304) 315-4222

☐ Plaintiff ☒ Defendant
☐ Cross-
 Complainant
☐ Cross-Defendant
Signature:

Date: Monday, February 3, 2020

19

FILED
2020 FEB -3 PM 3:24
CLERK OF COURT
KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

Civil Action No. 19-C-1259
Honorable Louis H. Bloom

BSA LIFE STRUCTURES, INC., MI-DE-
CON, INC., ELCO MECHANICAL
CONTRACTORS, LLC, CARRIER
CORPORATION, MASON & BARRY,
INC., and ENGINEERING ECONOMICS,
INC.,

Defendants.

**DEFENDANT ENGINEERING ECONOMICS, INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT**

NOW COMES Defendant, Engineering Economics, Inc. (hereinafter referred to as "Engineering Economics"), by and through its counsel, Charles R. Bailey, Daniel T. LeMasters, and the law firm of Bailey & Wyant, PLLC, and hereby asserts its Answer and Affirmative Defenses to Plaintiff Charleston Area Medical Center, Inc.'s (hereinafter referred to as "Plaintiff") Complaint as follows:

PARTIES

1. Based upon information and belief, Engineering Economics admits that CAMC is a West Virginia Corporation with its primary place of business in Charleston, West Virginia, and that CAMC operates healthcare facilities that provide healthcare services in Kanawha County, West Virginia. However, these admissions in no way imply any liability, wrongdoing, or fault on part

of Engineering Economics. As to any remaining allegations asserted within Paragraph 1 of the Complaint, Engineering Economics denies the same and demands strict proof thereof.

2. The allegations contained in Paragraph 2 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

3. The allegations contained in Paragraph 3 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

4. The allegations contained in Paragraph 4 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

5. The allegations contained in Paragraph 5 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

6. The allegations contained in Paragraph 6 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

7. Engineering Economics admits that it is a Colorado corporation with its primary place of business in Golden, Colorado, and that it provides commission agent services to healthcare industry clients. However, these admissions in no way imply any liability, wrongdoing, or fault on part of Engineering Economics. As to any remaining allegations asserted within Paragraph 7 of the Complaint, Engineering Economics denies the same and demands strict proof thereof.

8. The allegations contained in Paragraph 8 of the Complaint are legal conclusions and as such, no response is deemed necessary. To the extent that a response is deemed necessary and the allegations pertain to Engineering Economics, it admits that CAMC entered into contracts with it to perform services in Kanawha County, West Virginia. However, these admissions in no way imply any liability, wrongdoing, or fault on part of Engineering Economics.

GENERAL ALLEGATIONS

9. Based upon information and belief, Engineering Economics admits that CAMC began a renovation and expansion of the CAMC Family Practice Building ("Facility") in Charleston, West Virginia for the construction of a new ambulatory surgery center ("Project"). However, these admissions in no way imply any liability, wrongdoing, or fault on part of Engineering Economics. As to any remaining allegations asserted within Paragraph 9 of the Complaint, Engineering Economics denies the same and demands strict proof thereof.

10. Based upon information and belief, Engineering Economics admits the Project required the knowledge and expertise of engineers and contractors experienced with the construction of healthcare facilities, including, but not limited to, experience designing and installing commercial HVAC systems specially designed for use in commercial healthcare facilities. However, these admissions in no way imply any liability, wrongdoing, or fault on part of Engineering Economics. As to any remaining allegations asserted within Paragraph 10 of the Complaint, Engineering Economics denies the same and demands strict proof thereof.

11. The allegations contained in Paragraph 11 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

12. The allegations contained in Paragraph 12 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

13. Paragraph 13 of the Complaint contains no factual allegations to which a response is necessary from Engineering Economics. To the extent a response is deemed necessary and insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

14. The allegations contained in Paragraph 14 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

15. The allegations contained in Paragraph 15 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

16. The allegations contained in Paragraph 16 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

17. The allegations contained in Paragraph 17 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

18. The allegations contained in Paragraph 18 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

19. The allegation contained in Paragraph 19 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

20. Engineering Economics admits that CAMC separately contract

21. ed with it to provide commissioning agent services on the Project. However, these admissions in no way imply any liability, wrongdoing, or fault on part of Engineering Economics. As to all remaining allegations asserted within Paragraph 20 of the Complaint, Engineering Economics denies the same and demands strict proof thereof.

22. The allegation contained in Paragraph 21 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

23. The allegation contained in Paragraph 22 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

24. The allegation contained in Paragraph 23 of the Complaint including subparts a through f relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

25. The allegation contained in Paragraph 24 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

26. The allegations contained in Paragraph 25 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

27. Engineering Economics denies the allegations contained within Paragraph 26 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 26 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

28. Engineering Economics denies the allegations contained within Paragraph 27 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 27 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

29. The allegation contained in Paragraph 28 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

30. Engineering Economics denies the allegations contained within Paragraph 29 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 29 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

31. Engineering Economics denies the allegations contained within Paragraph 30 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations

contained in Paragraph 30 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

32. Engineering Economics denies the allegations contained within Paragraph 31 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 31 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

33. Engineering Economics denies the allegations contained within Paragraph 32 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 32 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

34. Engineering Economics denies the allegations contained within Paragraph 33 of the Complaint and demands strict proof thereof.

35. Engineering Economics denies the allegations contained within Paragraph 34 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 34 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

36. Engineering Economics denies the allegations contained within Paragraph 35 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 35 of the Complaint relate to defendants other than Engineering

Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

37. Engineering Economics denies the allegations contained within Paragraph 36 of the Complaint and demands strict proof thereof.

38. Engineering Economics denies the allegations contained within Paragraph 37 of the Complaint and demands strict proof thereof.

39. Engineering Economics denies the allegations contained within Paragraph 38 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 38 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

40. Engineering Economics denies the allegations contained within Paragraph 39 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 39 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

41. Engineering Economics denies the allegations contained within Paragraph 40 of the Complaint and demands strict proof thereof.

42. Engineering Economics denies the allegations contained within Paragraph 41 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 41 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

43. Engineering Economics denies the allegations contained within Paragraph 42 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 42 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

COUNT I
Breach of Contract
(Against BSA)

44. Engineering Economics incorporates by reference the responses to the preceding Paragraphs 1 through 41 as if fully set forth herein.

45. The allegations contained in Paragraph 44 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

46. The allegations contained in Paragraph 45 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

47. The allegations contained in Paragraph 46 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

48. The allegations contained in Paragraph 47 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

49. The allegations contained in Paragraph 48 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

50. The allegations contained in Paragraph 49 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

51. The allegations contained in Paragraph 50 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

COUNT II
Negligent Design and Administration
(Against BSA)

52. Engineering Economics incorporates by reference the responses to the preceding Paragraphs 1 through 51 as if fully set forth herein.

53. The allegations contained in Paragraph 52 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

54. The allegations contained in Paragraph 53 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

55. The allegations contained in Paragraph 54 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

56. The allegations contained in Paragraph 55 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

COUNT III
Breach of Contract
(MDC, Carrier, MAB, and EEI)

57. Engineering Economics incorporates by reference the responses to the preceding Paragraphs 1 through 5 as if fully set forth herein.

58. The allegations contained in Paragraph 57 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

59. The allegations contained in Paragraph 58 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

60. Engineering Economics denies the allegations contained within Paragraph 59 of the Complaint and demands strict proof thereof.

61. The allegations contained in Paragraph 60 of the Complaint relate to a defendant other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

62. Engineering Economics denies the allegations contained within Paragraph 61 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 61 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

63. Engineering Economics denies the allegations contained within Paragraph 62 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 62 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

64. Engineering Economics denies the allegations contained within Paragraph 63 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 63 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

65. Engineering Economics denies the allegations contained within Paragraph 64 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 64 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

COUNT IV
Negligence

Against MDC, Carrier, MAB, EEI, and ELCO)

66. Engineering Economics incorporates by reference the responses to the preceding Paragraphs 1 through 64 as if fully set forth herein.

67. Engineering Economics denies the allegations contained within Paragraph 66 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 66 of the Complaint relate to defendants other than Engineering

Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

68. Engineering Economics denies the allegations contained within Paragraph 67 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 67 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

69. Engineering Economics denies the allegations contained within Paragraph 68 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 68 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

COUNT V
Breach of Warranty
(All Defendants)

70. Engineering Economics incorporates by reference the responses to the preceding Paragraphs 1 through 67 as if fully set forth herein.

71. Engineering Economics denies the allegations contained within Paragraph 70 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 70 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

72. Engineering Economics denies the allegations contained within Paragraph 71 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations

contained in Paragraph 71 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

73. Engineering Economics denies the allegations contained within Paragraph 72 of the Complaint as they pertain to it and demands strict proof thereof. The remaining allegations contained in Paragraph 72 of the Complaint relate to defendants other than Engineering Economics, and as such no response is necessary. Insofar as such allegations relate in any way to Engineering Economics, it denies the same and demands strict proof thereof.

PRAYER FOR RELIEF

74. Engineering Economics denies the allegations in the "Wherefore" paragraph of the Complaint including all subparts (a) through (d) and demands strict proof thereof.

75. Engineering Economics denies all allegations in the Complaint as they pertain to it not specifically admitted herein.

ENGINEERING ECONOMICS DEMANDS A TRIAL BY JURY

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Engineering Economics.

SECOND AFFIRMATIVE DEFENSE

Engineering Economics does hereby invoke any and all affirmative defenses applicable in defense of the claim asserted herein and against it by Plaintiff as may be relevant or pertinent and justified and established by the facts and circumstances hereof. Such affirmative defenses are as contemplated and/or set forth in Rules 8 and 12 of the *West Virginia Rules of Civil Procedure* and any and all other matters consulting an avoidance or affirmative defense as

contemplated by Rules 8, 9, and 12 of the *West Virginia Rules of Civil Procedure*. Engineering Economics reserves unto itself all other affirmative defenses, both legal and factual, not listed above, which may be applicable herein.

THIRD AFFIRMATIVE DEFENSE

Plaintiff may have failed to join all necessary parties for a just adjudication of this matter.

FOURTH AFFIRMATIVE DEFENSE

The damages which Plaintiff complains, if any, were not caused in any way by the conduct or any other act of Engineering Economics; rather, they were caused, if at all, by the conduct of the Plaintiff or other persons, firms, or corporations other than Engineering Economics. Additionally, Plaintiff may have committed acts or omissions that would constitute comparative fault, contributory negligence, assumption of the risk, breach of contract, breach of warranty, and other similar doctrines.

FIFTH AFFIRMATIVE DEFENSE

Engineering Economics affirmatively asserts that the defenses of Act of God, natural causes, pre-existing conditions, superseding intervening causes, assumption of the risk, accord and satisfaction, the applicable statute of repose, estoppel, release, waiver, failure to mitigate, fraud, unjust enrichment, avoidable consequences, laches, and any other matter constituting an affirmative defense which may be applicable after discovery is completed.

SIXTH AFFIRMATIVE DEFENSE

Engineering Economics asserts that its actions were not a factor in causing the alleged damages for which Plaintiff seeks recovery.

SEVENTH AFFIRMATIVE DEFENSE

Engineering Economics asserts that the allegations contained in the Complaint do not give rise to a claim for punitive damages.

EIGHTH AFFIRMATIVE DEFENSE

Engineering Economics asserts that the allegations contained in the Complaint do not give rise to fee shifting nor are attorney fees able to be awarded and, accordingly, such claim must be dismissed as a matter of law.

NINTH AFFIRMATIVE DEFENSE

Engineering Economics asserts that Plaintiff may have failed to mitigate Plaintiff's damages. Or, in the alternative, if Plaintiff did mitigate damages, then Engineering Economics should be entitled to have those mitigated damages credited to those amounts, if any, allegedly owed by Engineering Economics to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is or maybe guilty of acts of negligence, fault, carelessness, or recklessness which proximately caused or contributed to the damages, if any, of which Plaintiff complains.

ELEVENTH AFFIRMATIVE DEFENSE

Engineering Economics reserves the right to amend its answer to include such other additional affirmative defenses that might be deemed applicable under further investigation or discovery.

TWELFTH AFFIRMATIVE DEFENSE

Based upon the terms and conditions of the contract or contracts, Engineering Economics should not be liable for special, incidental, exemplary or consequential damages including, but not limited to, loss of profits or revenue, loss of use of any equipment, cost of capital, cost of

purchased power, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of Plaintiff for such damages. Furthermore, Engineering Economics should not be liable for any loss or damage arising from any alleged failure to discover or repair latent defects, or alleged defects inherent in the design.

THIRTEENTH AFFIRMATIVE DEFENSE

Engineering Economics asserts that the incidents and damages set forth in the Complaint may have been caused or made worse by intervening or superseding events, causes, occurrences and/or conditions which were in no way caused by Engineering Economics and for which Engineering Economics cannot be held liable.

FOURTEENTH AFFIRMATIVE DEFENSE

Engineering Economics preserves its defenses under Rule 12 (b)(6) of the *West Virginia Rules of Civil Procedure*, more particularly the defenses of insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, improper venue, lack of jurisdiction over the person, lack of jurisdiction over the subject matter, and failure to join indispensable parties under Rule 19 of the West Virginia Rules of Civil Procedure.

FIFTEENTH AFFIRMATIVE DEFENSE

Engineering Economics denies that Plaintiff is entitled to recover any amount whatsoever against it, or any relief Plaintiff seeks.

SIXTEENTH AFFIRMATIVE DEFENSE

Engineering Economics specifically asserts the defense of the applicable statute of limitations.

SEVENTEENTH AFFIRMATIVE DEFENSE

The damages of which Plaintiff complains were not the proximate result of any act of omission or commission and/or breach of contract or warranty on the part of Engineering Economics.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim and damages may be barred by the doctrine of "unclean hands."

NINETEENTH AFFIRMATIVE DEFENSE

Engineering Economics complied with or exceeded the requirements of the terms of the contract or contracts at issue with Plaintiff and completed all of its obligations in a workmanlike manner and within industry standards in accordance with the standard of care, skill, and diligence normally provided by a professional consulting engineer in the performance of the same or similar services.

TWENTIETH AFFIRMATIVE DEFENSE

Any punitive damages sought in the Complaint would violate Engineering Economics' rights under the United States and West Virginia Constitutions, as more particularly explained hereafter:

A. An award of punitive damages would violate Engineering Economics' rights to due process and equal protection as guaranteed by the 5th, 8th and 14th Amendments to the United States Constitution and Article 5, Sections 5 and 10 of the West Virginia Constitution, in that: (i) West Virginia law provides no adequate or meaningful standard or guide for fixing, determining or reviewing the amount of a punitive damage award. Engineering Economics had no advance notice of or means of ascertaining the amount of the penalty it would or might be subject to for the conduct upon which the award ostensibly is to be based. (ii) Under West Virginia law, the

determination whether to award punitive damages is left to the arbitrary discretion of the trier of fact; there is no adequate or meaningful standard or guide for exercising said discretion. (iii) No provision of West Virginia law provides any adequate or meaningful standard or guide for determining the nature of the conduct upon which an award of punitive damages may be based. Additionally, Engineering Economics had no notice or means of ascertaining the nature of the conduct for which it might be held subject to a punitive damage award. (iv) No provision of West Virginia law provides adequate procedural safeguards, consistent with the criteria of Pacific Mutual Life Ins. Co. v. Haslip, et al., (U.S.), 111 S. Ct. 1032 (1991); Fleming Landfill, Inc., and John T. Fleming v. Julian Garmes and Sharon Garmes, 413 S.E.2d 897 (1991); TXO Production v. Alliance Resources, 419 S.E.2d 870 (W.Va. 1992), for the imposition of a punitive damage award. (v) The very concept of punitive damages, whereby an award is made to a private plaintiff not by way of compensation, but by way of a windfall, incident to punishing a defendant, represents the taking of property without due process of law.

B. A punitive damage award, if any, would deprive Engineering Economics of its property without due process of law in violation of the Fifth Amendment to the United States Constitution and Article 3, Section 5 of the Constitution of the State of West Virginia. Further, such an award would violate the prohibition against excessive fines contained in the Eighth Amendment to the United States Constitution, as embodied in the due process clause of the 14th Amendment to the United States Constitution, and in Article 3, Section 5 and 10 of the West Virginia Constitution.

C. Engineering Economics asserts that *West Virginia Code* § 55-7-29, which went into effect on June 8, 2010 and Engineering Economics denies that it acted in a willful, wanton, reckless and/or any other manner which would entitle Plaintiff to recover punitive damages

against it. However, to the extent punitive damages have been sought and are permitted against Engineering Economics, if any, the punitive damages are legally and/or statutorily capped.

TWENTY-FIRST AFFIRMATIVE DEFENSE

All actions, if any, taken by Engineering Economics were undertaken in good faith and in an objectively reasonable manner and were not malicious or did not violate any clearly articulated duty, standards, laws, regulations or rules. Engineering Economics further denies that it conspired with and/or acted deliberately in order to pursue a common plan or design to commit a tortious act or omission with any other individuals and/or entities. To the extent that Plaintiff has asserted the same, Plaintiff bears the burden of proof as to this assertion.

TWENTY-SECOND AFFIRMATIVE DEFENSE

If Engineering Economics is liable for any breach of duty, breach of contract, breach of warranty, violation, negligence, or wrongdoing, which are expressly denied, such breach, violation, negligence, and/or wrongdoing, if any, was not the proximate or contributing cause of the damages alleged by Plaintiff. However, to the extent that Engineering Economics is found liable, which is expressly denied, to Plaintiff, Engineering Economics is not jointly and severally liable with any other defendant, entity or individual since its fault, if any, is and/or would be found less than 25% of the total fault attributable to all parties or potential parties. Moreover, Engineering Economics should be entitled to an offset of all damages caused by Plaintiff and/or other entities or individuals.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Engineering Economics reserves the right to file counter-claims, cross-claims, third-party claims and/or any other pleading deemed necessary.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Engineering Economics raises so as not to waive the defenses of any and all immunities, limitations, protections, and defenses provided to it by the United States Constitution, the Constitution of the State of West Virginia, Federal law and/or applicable State law, and any and all applicable legal and/or statutory damages caps and defenses.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Engineering Economics asserts its legal rights of indemnification (express and implied), to be held harmless, and contribution against Plaintiff, all other parties, unnamed defendants, or unnamed entities or individuals.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim and damages, if any, asserted against Engineering Economics may be barred or limited to the extent that any potentially relevant evidence was spoliated before an opportunity to examine it fully was offered.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Engineering Economics denies that Plaintiff is entitled to recover any amount whatsoever against it, as Plaintiff's alleged injuries and damages are speculative in nature, and Plaintiff is not entitled to the recovery of any damages, which includes future damages.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Engineering Economics met all of its required standards of care and/or applicable duties and responsibilities. Engineering Economics did not violate any contract, warranty, duty, or applicable state or federal laws, rules, regulations, or statutes.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Engineering Economics affirmatively asserts all protections provided to it by the contract or contracts with Plaintiff.

THIRTIETH AFFIRMATIVE DEFENSE

Based upon the terms and conditions of the contract or contracts between Engineering Economics and Plaintiff, Engineering Economics' potential liability to Plaintiff is limited to the total fee paid to Engineering Economics for the services it rendered pursuant to the contract or contracts between Engineering Economics and Plaintiff. Engineering Economics' liability, if any, on property damage claims of any kind, whether based on contract, warranty, tort, including negligence or otherwise, for any loss or damage arising out of, connected with, or resulting from its actions or services shall not exceed the cost of re-performing its services to the same extent as its original services, or its compensation paid for the services rendered, and shall terminate one year after completion of the services rendered.

THIRTY-FIRST AFFIRMATIVE DEFENSE

To the extent that various other parties, named or unnamed as Defendants herein, have concluded or may conclude settlement with Plaintiff, Engineering Economics is entitled to a setoff for any amount paid or to be paid.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Engineering Economics denies that this Civil Action is one in which prejudgment interest can be properly awarded and, therefore, affirmatively moves that the portion of the Complaint demanding prejudgment interest be dismissed.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's own policies, institutional control, and/or its own negligence contributed to or caused any damages which Plaintiff may have sustained.

THIRTY-FOURTH AFFIRMATIVE DEFENSE


Engineering Economics at no time offered any warranties, implied or express, to Plaintiff.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Engineering Economics adopts and incorporates by reference all other applicable affirmative defenses stated by any and all other Defendants, but not specifically enumerated herein.

WHEREFORE having fully answered Plaintiff's Complaint to the extent necessary and denying any and all liability, Defendant Engineering Economics moves this Honorable Court for entry of an Order dismissing Plaintiff's Complaint, with prejudice; finding that Plaintiff recovers nothing from this Defendant; and granting this Defendant any and all other relief that this Honorable Court deems just and proper.

Engineering Economics, Inc.,
By Counsel,



Charles R. Bailey (WV Bar #0202)
Daniel T. LeMasters (WV Bar #12021)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: (304) 345-4222
F: (304) 343-3133

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA- L

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

Civil Action No. 19-C-1259
Honorable Louis H. Bloom

BSA LIFE STRUCTURES, INC., MI-DE-
CON, INC., ELCO MECHANICAL
CONTRACTORS, LLC, CARRIER
CORPORATION, MASON & BARRY,
INC., and ENGINEERING ECONOMICS,
INC.,

Defendants,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing "DEFENDANT
ENGINEERING ECONOMICS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT" was served upon the following parties by U.S. Mail on this
day, Monday, February 3, 2020:

Bryan G. Scott, Esq.
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Email Address: bscott@spilmanlaw.com
Attorney For: Charleston Area Medical Center

Gerald M. Titus, III, Esq.
Spilman, Thomas & Battle, PLLC
Spilman Center
300 Kanawha Boulevard, East (25301)
Post Office Box 273
Charleston, WV 25321-0273
Email Address: gtitus@spilmanlaw.com
Attorney For: Charleston Area Medical Center


Charles R. Bailey (WV Bar #0202)
Daniel T. LeMasters (WV Bar #12021)

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Charleston, West Virginia 25337-3710
T: (304) 345-4222
F: (304) 343-3133

EXHIBIT D

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES
(Other than Domestic Relations)

2020 FEB -5 PM 1:12

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PLAINTIFF: CHARLESTON AREA MEDICAL CENTER

CASE NUMBER: 19-C-1259

DEFENDANTS: BSA LIFE STRUCTURES, INC., MI-DE-CON, INC., ELGO MECHANICAL CONTRACTORES, LLC; CARRIER CORPORATION; MASON & BARRY, INC., and ENGINEERING ECONOMICS, INC.

II. TYPE OF CASE

☒ General Civil

☐ Mass Litigation
(As defined in T.C.R. Rule XIX (c))

- ☐ Asbestos
- ☐ Carpal Tunnel Syndrome
- ☐ Diet Drugs
- ☐ Environmental
- ☐ Industrial Hearing Loss
- ☐ Silicone Implants
- ☐ Other: _____

☐ Adoption

☐ Administrative Agency Appeal

☐ Civil Appeal from Magistrate Court

☐ Miscellaneous Civil Petition

☐ Mental Hygiene

☐ Guardianship

☐ Medical Malpractice

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (Month / Year): February 2021

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY? ☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other - Unknown at this time

Attorney Name: Wendy E. Greve/W. Austin Smith

Firm: Pullin, Fowler, Flanagan, Brown & Poe, PLLC


Address: 901 Quarrier Street, Charleston, WV 25301

Telephone: 304-344-0100

Dated: February 3, 2020

Representing:

Defendant: Mason & Barry, Inc.


Signature

☐ Proceeding Without an Attorney

SCA-C100.01 / 2 of 2

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

CIVIL ACTION NO.: 19-C-1259
Honorable Louis H. Bloom

BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC., ELCO MECHANICAL
CONTRACTORS, LLC, CARRIER
CORPORATION, MASON & BARRY,
INC., and ENGINEERING ECONOMICS,
INC.,

Defendants.

DEFENDANT'S, MASON & BARRY, INC., ANSWER TO PLAINTIFF'S COMPLAINT

NOW COMES the Defendant, Mason & Barry, Inc., by counsel, Wendy E. Greve, W. Austin Smith, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, without waiving any defenses, and hereby answers the Complaint filed by the Plaintiff herein.

GENERAL RESPONSE AND PREAMBLE

This responsive pleading has been prepared, served, and filed by counsel for this Defendant under the West Virginia Rules of Civil Procedure. As permitted by Rule 8(e) (2), defenses to the claims made in the Complaint are being asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of apparent consistency and are based both on legal and equitable grounds.

As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure. No discovery has been

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conducted to date in the above-captioned civil action. In order to preserve important legal rights and protection, this Defendant sets forth below certain affirmative defenses which, based upon the information set forth in the Complaint, it believes do or may apply to some or all of the claims raised therein. This Defendant reserve the right to withdraw, modify or amend some or all of the affirmative defenses set forth below, in whole or in part, depending on the outcome of discovery in this civil action.

PARTIES AND JURISDICTION

1. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 1 of Plaintiff's Complaint. However, to the extent Paragraph 1 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

2. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 2 of Plaintiff's Complaint. However, to the extent Paragraph 2 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

3. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 3 of Plaintiff's Complaint. However, to the extent Paragraph 3 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

4. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 4 of Plaintiff's Complaint. However, to the extent Paragraph 4 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

5. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 5 of Plaintiff's Complaint. However, to the extent Paragraph 5 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

6. This Defendant admits the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 7 of Plaintiff's Complaint. However, to the extent Paragraph 7 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

8. This Defendant denies Paragraph 8 of Plaintiff's Complaint.

GENERAL ALLEGATIONS

9. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 9 of Plaintiff's Complaint. However, to the extent Paragraph 9 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

10. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 10 of Plaintiff's Complaint. However, to the extent Paragraph 10 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

11. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 11 of Plaintiff's Complaint. However, to the extent Paragraph 11 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the

same and demands strict proof thereof

12. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 12 of Plaintiff's Complaint. However, to the extent Paragraph 12 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

13. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 13 of Plaintiff's Complaint. However, to the extent Paragraph 13 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

14. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 14 of Plaintiff's Complaint. However, to the extent Paragraph 14 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

15. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 15 of Plaintiff's Complaint. However, to the extent Paragraph 15 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

16. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 16 of Plaintiff's Complaint. However, to the extent Paragraph 16 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

17. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 17 of Plaintiff's Complaint. However, to the extent Paragraph 17 of

Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

18. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 18 of Plaintiff's Complaint. However, to the extent Paragraph 18 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

19. This Defendant denies Paragraph 19 of Plaintiff's Complaint.

20. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 20 of Plaintiff's Complaint. However, to the extent Paragraph 20 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

21. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 21 of Plaintiff's Complaint. However, to the extent Paragraph 21 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

22. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 22 of Plaintiff's Complaint. However, to the extent Paragraph 22 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

23. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 23 of Plaintiff's Complaint. However, to the extent Paragraph 23 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

24. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 24 of Plaintiff's Complaint. However, to the extent Paragraph 24 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

25. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 25 of Plaintiff's Complaint. However, to the extent Paragraph 25 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

26. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 26 of Plaintiff's Complaint. However, to the extent Paragraph 26 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

27. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 27 of Plaintiff's Complaint. However, to the extent Paragraph 27 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

28. This Defendant denies Paragraph 28 of Plaintiff's Complaint.

29. This Defendant denies Paragraph 29 of Plaintiff's Complaint.

30. This Defendant denies Paragraph 30 of Plaintiff's Complaint.

31. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 31 of Plaintiff's Complaint. However, to the extent Paragraph 31 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

32. This Defendant denies Paragraph 32 of Plaintiff's Complaint.

33. This Defendant denies Paragraph 33 of Plaintiff's Complaint.

34. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 34 of Plaintiff's Complaint. However, to the extent Paragraph 34 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

35. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 35 of Plaintiff's Complaint. However, to the extent Paragraph 35 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

36. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 36 of Plaintiff's Complaint. However, to the extent Paragraph 36 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

37. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 37 of Plaintiff's Complaint. However, to the extent Paragraph 37 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

38. This Defendant denies Paragraph 38 of Plaintiff's Complaint.

39. This Defendant denies Paragraph 39 of Plaintiff's Complaint.

40. This Defendant denies Paragraph 40 of Plaintiff's Complaint.

41. This Defendant denies Paragraph 41 of Plaintiff's Complaint.

42. This Defendant is without sufficient information or knowledge to either admit

or deny Paragraph 42 of Plaintiff's Complaint. However, to the extent Paragraph 42 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

**COUNT I
Breach of Contract
(Against BSA)**

43. This Defendant restates its responses to Paragraphs 1 through 42 and incorporates them herein in response to Paragraph 43 of Plaintiff's Complaint.

44. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 44 of Plaintiff's Complaint. However, to the extent Paragraph 44 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

45. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 45 of Plaintiff's Complaint. However, to the extent Paragraph 45 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

46. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 46 of Plaintiff's Complaint. However, to the extent Paragraph 46 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

47. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 47 of Plaintiff's Complaint. However, to the extent Paragraph 47 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

48. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 48 of Plaintiff's Complaint. However, to the extent Paragraph 48 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

49. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 49 of Plaintiff's Complaint. However, to the extent Paragraph 49 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

50. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 50 of Plaintiff's Complaint. However, to the extent Paragraph 50 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

COUNT II
Negligent Design and Administration
(Against BSA)

51. This Defendant restates its responses to Paragraphs 1 through 50 and incorporates them herein in response to Paragraph 51 of Plaintiff's Complaint.

52. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 52 of Plaintiff's Complaint. However, to the extent Paragraph 52 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

53. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 53 of Plaintiff's Complaint. However, to the extent Paragraph 53 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and

demands strict proof thereof.

54. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 54 of Plaintiff's Complaint. However, to the extent Paragraph 54 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof

55. This Defendant is without sufficient information or knowledge to either admit or deny Paragraph 55 of Plaintiff's Complaint. However, to the extent Paragraph 55 of Plaintiff's Complaint is construed against this Defendant, Defendant denies the same and demands strict proof thereof.

**COUNT III
Breach of Contract
(MDC, Carrier, MAB, and EEI)**

56. This Defendant restates its responses to Paragraphs 1 through 55 and incorporates them herein in response to Paragraph 56 of Plaintiff's Complaint.

57. This Defendant denies Paragraph 57 of Plaintiff's Complaint

58. This Defendant denies Paragraph 58 of Plaintiff's Complaint

59. This Defendant denies Paragraph 59 of Plaintiff's Complaint

60. This Defendant denies Paragraph 60 of Plaintiff's Complaint

61. This Defendant denies Paragraph 61 of Plaintiff's Complaint

62. This Defendant denies Paragraph 62 of Plaintiff's Complaint

63. This Defendant denies Paragraph 63 of Plaintiff's Complaint

64. This Defendant denies Paragraph 64 of Plaintiff's Complaint

COUNT IV
Negligence
(Against MDC, Carrier, MAB, EEI, and ELCO)

65. This Defendant restates its responses to Paragraphs 1 through 64 and incorporates them herein in response to Paragraph 65 of Plaintiff's Complaint.

66. This Defendant denies Paragraph 66 of Plaintiff's Complaint

67. This Defendant denies Paragraph 67 of Plaintiff's Complaint

68. This Defendant denies Paragraph 68 of Plaintiff's Complaint

COUNT V
Breach of Warranty
(All Defendants)

69. This Defendant restates its responses to Paragraphs 1 through 68 and incorporates them herein in response to Paragraph 69 of Plaintiff's Complaint.

70. This Defendant denies Paragraph 70 of Plaintiff's Complaint

71. This Defendant denies Paragraph 71 of Plaintiff's Complaint

72. This Defendant denies Paragraph 72 of Plaintiff's Complaint

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against this Defendant upon which relief can be granted and should, therefore, be dismissed.

SECOND DEFENSE

Defendant denies that it is liable to the Plaintiff in any amount, or that Plaintiff is otherwise entitled to the recovery and/or the relief sought from this Defendant in Plaintiff's Complaint.

THIRD DEFENSE

Defendant asserts the affirmative defenses of waiver, estoppel, comparative

negligence, contributory negligence, assumption of the risk, failure to mitigate damages, laches, release, res judicata, collateral estoppel, expiration of the statute of limitation, lack of personal jurisdiction, superseding intervening cause, act of God, and hereby preserves each and every defense set forth in Rules 8, 9 and 12 of the West Virginia Rules of Civil Procedure and further reserves the right to raise such additional defenses as may appear appropriate following further discovery and factual development in this case.

FOURTH DEFENSE

That any claims by Plaintiff against this Defendant are barred by the intervening and/or superseding activity of other entities and/or individuals over which this Defendant had no control.

FIFTH DEFENSE

The injuries, if any, of which the Plaintiff complains was caused by the misconduct of the Plaintiff or acts of others over which this Defendant had no control.

SIXTH DEFENSE

This Defendant owed no duty to the Plaintiff as it had no control over the manner in which the Plaintiff and other Defendants were to perform their work.

SEVENTH DEFENSE

This Defendant states that any revocation of acceptance did not occur within a reasonable time pursuant to W.Va. Code §46-2-608.

EIGHTH DEFENSE

This Defendant complied with any and all contracts for goods and/or services.

NINTH DEFENSE

This Defendant asserts that it is indemnified in whole or in part against claims

asserted by Plaintiff.

TENTH DEFENSE

This Defendant states any goods or services furnished by this defendant complied with specifications of Plaintiff and/or its agents and affiliates, sophisticated purchasers or learned intermediaries, who knew or should have known of the alleged defect or non-conforming nature of such goods or services, and who was as knowledgeable as this defendant concerning any possible problems with said goods or services.

ELEVENTH DEFENSE

This Defendant states insofar as Plaintiff's Complaint attempts to state a cause of action for fraud or deceit, the Complaint fails to aver with particularity the circumstances constituting fraud or deceit.

TWELFTH DEFENSE

This Defendant states no agreement or contract was ever intended by this Defendant, or consummated by Plaintiff and Defendant, therefore this Defendant is not liable in any way to Plaintiff.

THIRTEENTH DEFENSE

Defendant reserves the right to file additional affirmative defenses, counterclaims, cross-claims, motions to dismiss and/or third party claims if a sufficient factual basis therefore is developed through continuing investigation and discovery.


JURY DEMAND

This Defendant, Mason & Barry, Inc., respectfully requests a trial by jury on all issues so triable.

WHEREFORE, having fully answered Plaintiff's Complaint, this Defendant prays that Plaintiff's Complaint be dismissed and held for naught; that the Plaintiff recover nothing of this Defendant; that this Defendant recovers its costs, expenses of suit and a reasonable attorney's fee made necessary in defending this Complaint; and for such other and further relief, whether legal or equitable in nature, as to which this Defendant may appear to be entitled.

MASON & BARRY, INC.,

By Counsel,



Wendy E. Greve, WV State Bar No. 6599
W. Austin Smith, WV State Bar No. 13145

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
JamesMark Building
901 Quarrier Street
Charleston, WV 25301
Telephone: (304) 344-0100
Facsimile: (304) 342-1545

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

CIVIL ACTION NO.: 19-C-1259
Honorable Louis H. Bloom

BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC., ELCO MECHANICAL
CONTRACTORS, LLC, CARRIER
CORPORATION, MASON & BARRY,
INC., and ENGINEERING ECONOMICS,
INC.,



Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendant, Mason & Barry, Inc., does hereby certify on this 3rd day of February, 2020, that a true copy of the foregoing "**Defendant's, Mason & Barry, Inc., Answer to Plaintiff's Complaint** " was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Bryan G. Scott
Alexander L. Turner
SPILMAN, THOMAS & BATTLE, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Counsel for Plaintiff

Gerald M. Titus, III
SPILMAN, THOMAS & BATTLE, PLLC
300 Kanawha Blvd., East
Charleston, WV 25301
Counsel for Plaintiff



Wendy E. Greve, WV State Bar No. 6599
W. Austin Smith, WV State Bar No. 13145

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EXHIBIT E



Legal Counsel.

DINSMORE & SHOHL LLP
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February 28, 2020

Cathy S. Gatson, Clerk
Kanawha County Judicial Building
P.O. Box 2351
111 Court Street
Charleston, WV 25301

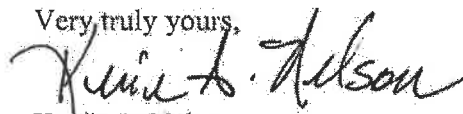
Re: *Charleston Area Medical Center v. BSA Lifestructures, Inc., et al.*
Civil Action No. 19-C-1259
Circuit Court of Kanawha County, West Virginia

Dear Clerk Gatson:

Enclosed for filing please find **Defendant BSA Lifestructures, Inc.'s Answer, and Affirmative Defenses Filed in Response to Plaintiff's Complaint** in the above-referenced matter. Please mark this document "filed" and place it in the appropriate court file.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Very truly yours,



Kevin A. Nelson

Enclosures

cc: Alexander L. Turner, Esq.
Gerald M. Titus, III, Esq.
Matther Breneman, Esq.
Charles Bailey, Esq.
Wendy E. Greve, Esq.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**CHARLESTON AREA MEDICAL
CENTER, INC.,**

Plaintiff,

v.

**Civil Action No.: 19-C-1259
Honorable Judge Bloom**

**BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BERRY, INC., and
ENGINEERING ECONOMICS, INC.,**

Defendants.

**DEFENDANT BSA LIFESTRUCTURES, INC.'S ANSWER, AND AFFIRMATIVE
DEFENSES FILED IN RESPONSE TO PLAINTIFF'S COMPLAINT**

Defendant BSA LifeStructures, Inc. ("BSA"), by counsel, in response to Plaintiff Charleston Area Medical Center, Inc.'s ("Plaintiff's") Complaint states the following Answer and Affirmative Defenses:

INTRODUCTION

BSA denies any and all allegations contained in the introductory paragraph of Plaintiff's Complaint and denies that it violated any state or federal law, rule, statute, or regulation identified in or alluded to in the introductory paragraph of Plaintiff's Complaint.

ANSWER

In response to the allegations contained in the Complaint, BSA answers as follows:

1. Upon information and belief, BSA admits that allegations contained in Paragraph 1 of the Complaint.
2. BSA admits the allegations contained in Paragraph 2 of the Complaint.

3. In response to the allegations contained in Paragraph 3 of the Complaint, BSA is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint and, accordingly, denies the same and demand strict proof thereof.

4. In response to the allegations contained in Paragraph 4 of the Complaint, BSA is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint and, accordingly, denies the same and demand strict proof thereof.

5. In response to the allegations contained in Paragraph 5 of the Complaint, BSA is without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Complaint and, accordingly, denies the same and demand strict proof thereof.

6. In response to the allegations contained in Paragraph 6 of the Complaint, BSA is without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Complaint and, accordingly, denies the same and demand strict proof thereof.

7. In response to the allegations contained in Paragraph 7 of the Complaint, BSA is without sufficient information to admit or deny the allegations contained in Paragraph 7 of the Complaint and, accordingly, denies the same and demand strict proof thereof.

8. The allegations contained in Paragraph 8 of the Complaint are conclusions of law for which no response is necessary or required; to the extent a response is required, BSA denies them to the extent that they may be inconsistent with applicable law.

GENERAL ALLEGATIONS

9. Upon information and belief, BSA admits the allegations contained in Paragraph 9 of the Complaint.

10. Upon information and belief, BSA admits the allegations contained in Paragraph 10 of the Complaint.

11. BSA admits the allegations contained in Paragraph 11 of the Complaint.
12. BSA admits the allegations contained in Paragraph 12 of the Complaint.
13. Upon information and belief, BSA admits the allegations contained in Paragraph 13 of the Complaint.
14. Upon information and belief, BSA admits the allegations contained in Paragraph 14 of the Complaint.
15. In response to the allegations contained in Paragraph 15 of the Complaint, BSA is currently without sufficient information to admit or deny the allegations contained therein and must, therefore, deny the same.
16. Upon information and belief, BSA admits the allegations contained in Paragraph 16 of the Complaint.
17. In response to the allegations contained in Paragraph 17 of the Complaint, BSA is currently without sufficient information to admit or deny the allegations contained therein and must, therefore, deny the same.
18. Upon information and belief, BSA admits the allegations contained in Paragraph 18 of the Complaint.
19. Upon information and belief, BSA admits the allegations contained in Paragraph 19 of the Complaint.
20. Upon information and belief, BSA admits the allegations contained in Paragraph 20 of the Complaint.
21. In response to the allegations contained in Paragraph 21 of the Complaint, BSA admits that its design was "required" to meet the specifications of BSA's contract with CAMC, absent subsequent agreement between the parties that modified those terms. Defendant denies

any allegations contained in Paragraph 21 of the Complaint that are contrary to the contents of the contract.

22. BSA denies the allegations contained in Paragraph 22 of the Complaint.

23. BSA denies the allegations contained in Paragraph 23 of the Complaint, including the allegations contained in subparagraphs a through f.

24. BSA denies the allegations contained in Paragraph 24 of the Complaint.

25. BSA denies the allegations contained in Paragraph 25 of the Complaint.

26. BSA denies the allegations contained in Paragraph 26 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

27. BSA denies the allegations contained in Paragraph 27 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

28. In response to the allegations contained in Paragraph 28 of the Complaint, BSA is without sufficient information to admit or deny the allegations contained in Paragraph 28 of the Complaint and, accordingly, denies the same and demands strict proof thereof.

29. BSA denies the allegations contained in Paragraph 29 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 29 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

30. BSA denies the allegations contained in Paragraph 30 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

31. BSA denies the allegations contained in Paragraph 31 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 31 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

32. BSA denies the allegations contained in Paragraph 32 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 32 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

33. BSA denies the allegations contained in Paragraph 33 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 33 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

34. In response to the allegations contained in paragraph 34 of the Complaint, BSA admits (without admitting any implied liability therefore) that it attempted to assist CAMC with solutions to its asserted problems with the HVAC system at issue. BSA denies the remaining allegations contained in Paragraph 34 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 34 that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

35. BSA denies the allegations contained in Paragraph 35 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 35 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

36. BSA is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint and, accordingly, denies the same and demand strict proof thereof.

37. In response to the allegations contained in Paragraph 37 of the Complaint BSA answers: (a) that it is without sufficient information to admit or deny the allegations as they relate to the event regarding the cooling coils and as a result must deny the same; (b) denies any allegation of negligence, design defect, or improper installation directed toward BSA; and (c) that it is currently without sufficient information to admit or deny the allegations contained in Paragraph 37 that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

38. In response to the allegations contained in Paragraph 38 of the Complaint, BSA admits that CAMC notified it in January, 2018 that two “freeze events” had occurred recently at the subject facility. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 38 of the Complaint that: (a) CAMC provided “immediate[]” notice regarding the December, 2017 “freeze event” or (b) are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

39. In response to the allegations contained in paragraph 39 of the Complaint, BSA admits (without admitting any implied liability therefore) that it attempted assist CAMC to find solutions to its asserted problems with the HVAC system at issue. BSA denies the remaining

allegations contained in Paragraph 39 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 34 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

40. Upon information and belief, BSA admits the allegations contained in Paragraph 40 of the Complaint.

41. BSA denies the allegations contained in Paragraph 41 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 41 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

42. Upon information and belief, BSA admits that CAMC rented portable cooling towers. BSA is without sufficient information to admit or deny the remaining allegations contained in Paragraph 42 of the Complaint that relate to BSA and, accordingly, denies the same and demands strict proof thereof. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 42 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

COUNT I
Breach of Contract
(Against BSA)

43. In response to the allegations contained in Paragraph 43 of the Complaint, BSA incorporates Paragraphs 1 through 42 of this Answer as if set forth herein verbatim.

44. The allegations contained in Paragraph 44 of the Complaint are conclusions of law for which no response is necessary or required; to the extent a response is required, BSA denies them to the extent that they may be inconsistent with applicable law.

45. The allegations contained in Paragraph 45 of the Complaint are conclusions of law for which no response is necessary or required; to the extent a response is required, BSA denies them to the extent that they may be inconsistent with applicable law or the contractual of both BSA and CAMC.

46. BSA denies the allegations contained in Paragraph 46 of the Complaint.

47. BSA denies the allegations contained in Paragraph 47 of the Complaint.

48. The allegations contained in Paragraph 48 of the Complaint are conclusions of law for which no response is necessary or required; to the extent a response is required, BSA denies them to the extent that they may be inconsistent with applicable law or the contractual obligations of CAMC.

49. The allegations contained in Paragraph 49 of the Complaint are conclusions of law for which no response is necessary or required; to the extent a response is required, BSA denies them to the extent that they may be inconsistent with applicable law or the contractual obligations of CAMC.

50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.

COUNT II
Negligent Design and Administration
(Against BSA)

51. In response to the allegations contained in Paragraph 51 of the Complaint, BSA incorporates Paragraphs 1 through 50 of this Answer as if set forth herein verbatim.

52. The allegations contained in Paragraph 52 of the Complaint are conclusions of law for which no response is necessary or required; to the extent a response is required, BSA denies them to the extent that they may be inconsistent with applicable law.

53. BSA denies the allegations contained in Paragraph 53 of the Complaint.

54. BSA denies the allegations contained in Paragraph 54 of the Complaint.

55. BSA denies the allegations contained in Paragraph 55 of the Complaint.

COUNT III
Breach of Contract
(MDC, Carrier, MAB, and EEI)

56. In response to the allegations contained in Paragraph 56 of the Complaint, BSA incorporates Paragraphs 1 through 55 of this Answer as if set forth herein verbatim.

57. Upon information and belief, the allegations contained in Paragraph 57 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 57 of the Complaint that are directed to MDC and must, therefore, deny the same.

58. Upon information and belief, the allegations contained in Paragraph 58 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 58 of the Complaint that are directed to Carrier and must, therefore, deny the same.

59. Upon information and belief, the allegations contained in Paragraph 59 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 59 of the Complaint that are directed to EEI and must, therefore, deny the same.

60. Upon information and belief, the allegations contained in Paragraph 60 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or

required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 60 of the Complaint that are directed to MAB and must, therefore, deny the same.

61. Upon information and belief, the allegations contained in Paragraph 61 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 61 of the Complaint that are directed to MDC, Carrier, MAB, and EEI and must, therefore, deny the same.

62. Upon information and belief, the allegations contained in Paragraph 62 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. Moreover, the allegations contained in Paragraph 62 are conclusions of law for which no response is necessary or required. If a response is required, BSA denies the allegations contained in Paragraph 62 to the extent that they may be inconsistent with applicable law or the contractual obligations of CAMC.

63. Upon information and belief, the allegations contained in Paragraph 63 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. Moreover, the allegations contained in Paragraph 63 are conclusions of law for which no response is necessary or required. If a response is required, BSA denies the allegations contained in Paragraph 63 to the extent that they may be inconsistent with applicable law or the contractual obligations of CAMC.

64. Upon information and belief, the allegations contained in Paragraph 64 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or

required. To the extent that a response to the allegations contained in Paragraph 64 is required, they are denied.

COUNT IV
Negligence
(Against MDC, Carrier, EEI, and ELCO)

65. In response to the allegations contained in Paragraph 65 of the Complaint, BSA incorporates Paragraphs 1 through 64 of this Answer as if set forth herein verbatim.

66. Upon information and belief, the allegations contained in Paragraph 66 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 66 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

67. Upon information and belief, the allegations contained in Paragraph 67 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 67 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

68. Upon information and belief, the allegations contained in Paragraph 68 of the Complaint are not directed to BSA and, therefore, no response from BSA is necessary or required. If a response is required, BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 68 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

COUNT V
Breach of Warranty
(All Defendants)

69. In response to the allegations contained in Paragraph 69 of the Complaint, BSA incorporates Paragraphs 1 through 68 of this Answer as if set forth herein verbatim.

70. The allegations contained in Paragraph 70 of the Complaint are conclusions of law for which no response is necessary or required; to the extent a response is required, BSA denies those that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 70 that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

71. BSA denies the allegations contained in Paragraph 71 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 71 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

72. BSA denies the allegations contained in Paragraph 72 of the Complaint that relate to BSA. BSA is currently without sufficient information to admit or deny the allegations contained in Paragraph 72 of the Complaint that are directed to MDC, Carrier, MAB, EEI, and Elco and must, therefore, deny the same.

73. BSA denies the allegations contained in the Prayer for Relief section of the Complaint and in the "WHEREFORE" clauses immediately following Paragraph 72 of the Complaint, denies any and all allegations set forth in the Complaint not specifically admitted herein, denies any liability to Plaintiff whatsoever, and denies that Plaintiff is entitled to any relief of any kind.

AFFIRMATIVE DEFENSES

Due to the nature of Plaintiff's Complaint, BSA has set forth below certain defenses and affirmative defenses in order to preserve important legal rights and protections which it believes apply, or may apply, to some or all of the claims raised by Plaintiff in the Complaint. BSA reserves the right to add, withdraw, and/or modify some or all of the affirmative defenses set forth below, in whole or in part, depending on the outcome of discovery.

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim against BSA upon which relief can be granted, and the Complaint must therefore be dismissed pursuant to West Virginia Rule of Civil Procedure 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to join an indispensable party or parties, and the Complaint must therefore be dismissed pursuant to West Virginia Rule of Civil Procedure 12(b)(7).

THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiff suffered any of the damages or losses of which Plaintiff complains, which allegations are not admitted, those damages were not in any manner caused or contributed to by any alleged wrongful act or omission on the part of BSA.

FOURTH AFFIRMATIVE DEFENSE

In the alternative, BSA asserts that Plaintiff's injuries and damages, if any, were proximately caused or contributed to by a superseding and intervening cause or causes other than an action or alleged omission on the part of BSA. Accordingly, any recovery against BSA is barred.

FIFTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, of which Plaintiff complains were caused by acts and/or omissions of persons, firms, companies, corporations, and/or third-parties other than BSA.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims, in whole or in part, are barred, to the extent revealed by discovery or testimony rendered at trial, by virtue of the doctrine of assumption of risk, the defenses of accord and satisfaction and release, and Plaintiff's negligence that contributed to, or caused in totality, its alleged damages.

SEVENTH AFFIRMATIVE DEFENSE

BSA denies that it was negligent or otherwise culpable in any fashion and furthermore denies that it breached any contract or any duty that may have been owed to Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

To the extent Plaintiff asserts a claim for punitive damages, such claim violates, and is therefore barred by, the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America on grounds including the following:

- (a) it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes upon the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;
- (c) the procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit to the amount of the award against a defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

- (d) the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (e) the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- (f) the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes upon the Due Process Clause of the Fifth and Fourteenth Amendments and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- (g) the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution;
- (h) the award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law; and
- (i) the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

NINTH AFFIRMATIVE DEFENSE

To the extent Plaintiff asserts a claim for punitive damages, such claim violates, and is therefore barred by, provisions of the Constitution of the State of West Virginia, including but not limited to, Article III, Sections 4, 5, 6, and 10, on grounds including the following:

- (a) it is a violation of the Due Process and Equal Protection Clauses to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
- (c) the procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the defendant;

- (d) the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of award of punitive damages;
- (e) the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;
- (f) the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct;
- (g) the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;
- (h) the award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law; and
- (i) the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

TENTH AFFIRMATIVE DEFENSE

BSA at all times acted in good faith and without malice or any intent to cause any harm to Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

BSA engaged in good faith efforts to comply with applicable laws and otherwise acted within the scope of the exceptions to vicarious liability for punitive damages enumerated by the United States Supreme Court in *Kolstad v. American Dental Association*, 527 U.S. 526 (1999).

TWELFTH AFFIRMATIVE DEFENSE

To the extent Plaintiff asserts a claim for punitive damages, such claim is barred because of Plaintiff's failure to plead the necessary elements to sustain an award of punitive damages.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent revealed by discovery, Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, unclean hands, unjust enrichment, and/or avoidable consequences.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to recover any attorney's fees as alleged in the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

To the extent revealed by discovery or testimony at trial, BSA avers that Plaintiff's claims are or may be barred by the applicable statute of limitations and the applicable statute of repose.

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff has failed to mitigate its damages, if any, its claims are barred.

SEVENTEENTH AFFIRMATIVE DEFENSE

BSA raises, so as not to waive, the defenses of lack of jurisdiction over the subject matter, lack of jurisdiction over the person, improper venue, and insufficiency of process.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff lacks a good faith factual basis for its claims against BSA, thereby entitling BSA to an award of attorney fees, costs, and expenses incurred in defending this action.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent it seeks damages in excess of the caps on damages under applicable law.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent punitive damages are available at trial, BSA request that the issues of liability and punitive damages be bifurcated pursuant to West Virginia Code § 55-7-29.

TWENTY-FIRST AFFIRMATIVE DEFENSE

BSA raises, so as not to waive, all defenses that may be available under the law including, without limitation, each and every defense set forth in Rules 8, 9, 12, and 19 of the

West Virginia Rules of Civil Procedure as well as, to the extent applicable, any and all affirmative defenses under West Virginia Code § 22-3-1, *et seq.*

TWENTY-SECOND AFFIRMATIVE DEFENSE

BSA reserves the right to raise other affirmative defenses if factual support for additional defenses arises during the litigation of this action.

WHEREFORE, BSA LifeStructures, Inc. respectfully demands that the Plaintiff's Complaint be dismissed as to BSA LifeStructures, Inc., with prejudice, and that BSA have its costs expended, including reasonable attorney fees and such other relief, both general and special, as appears to the Court just and proper.

Respectfully submitted,

BSA LIFESTRUCTURES, INC.

By Counsel

A handwritten signature in black ink, appearing to read "Kevin A. Nelson", is written over a horizontal line.

Kevin A. Nelson (WVSB #1715)

Kelsey Haught Parsons (WVSB #13205)

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

Civil Action No.: 19-C-1259
Honorable Judge Bloom

BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BERRY, INC., and
ENGINEERING ECONOMICS, INC.,

Defendants.

CERTIFICATE OF SERVICE

I, Kevin A. Nelson, certify that a copy of the foregoing **Defendant BSA LifeStructures, Inc.'s Answer and Affirmative Defenses Filed in Response to Plaintiff's Complaint** was served on the following counsel of record on this the 28th day of February, 2020 via First Class U.S. Mail, postage prepaid:

Alexander L. Turner, Esq.
Spilman, Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Counsel for Plaintiff

Gerald M. Titus, III, Esq.
Spilman, Thomas & Battle, PLLC
300 Kanawha Blvd., East
Charleston, WV 25301
Counsel for Plaintiff

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Counsel for Defendant Mi-De-Con, Inc.

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Counsel for Mason & Barry, Inc.



Kevin A. Nelson (WVSB #2715)
Kelsey Haught Parsons (WVSB #13205)
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EXHIBIT F

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL CENTER, INC.,

Plaintiff,

v.

Civil Action No. 19-C-1259

**BSA LIFE STRUCTURES, INC.,
MI-DE-CON, INC.,
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BARRY, INC., AND
ENGINEERING ECONOMICS, INC.**

Defendants.

**DEFENDANT CARRIER CORPORATION'S ANSWER AND AFFIRMATIVE
DEFENSES TO CHARLESTON AREA MEDICAL CENTER, INC.'S COMPLAINT**

Defendant Carrier Corporation ("Carrier"), by and through its attorneys, submits its Answer and Affirmative Defenses to Plaintiff Charleston Area Medical Center's ("CAMC") Complaint as follows.

PARTIES AND JURISDICTION

1. Admitted upon information and belief.
2. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 2, and therefore denies the same.
3. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 3, and therefore denies the same.
4. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 4, and therefore denies the same.

5. With respect to the allegations in paragraph 5, Carrier admits it is a Delaware corporation with its principal place of business in Palm Beach Gardens, Florida. Carrier further admits that it manufactures certain HVAC equipment and HVAC building controls systems. Any installation or service work on such systems is defined by a particular contract which would be in writing and speaks for itself. Except as admitted, the allegations are denied.

6. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 6, and therefore denies the same.

7. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 7, and therefore denies the same.

8. The allegations in paragraph 8 purport to state legal conclusions to which no response is required.

GENERAL ALLEGATIONS

9. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 9, and therefore denies the same.

10. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 10, and therefore denies the same

11. Admitted upon information and belief.

12. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 12, and therefore denies the same.

13. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 13, and therefore denies the same.

14. Admitted upon information and belief.

15. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 15, and therefore denies the same.

16. Admitted upon information and belief.
17. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 17, and therefore denies the same.
18. With respect to the allegations in paragraph 18, Carrier admits that it and CAMC agreed to certain scopes of work and associated terms and conditions of sale, which are set forth in documents in writing that speak for themselves. Except as admitted, the allegations are denied.
19. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 19, and therefore denies the same.
20. Admitted upon information and belief.
21. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 21, and therefore denies the same.
22. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 22, and therefore denies the same.
23. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 23, and therefore denies the same.
24. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 24, and therefore denies the same.
25. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 25, and therefore denies the same.
26. Carrier denies the allegations in paragraph 26 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 26, and therefore denies the same.

27. Carrier denies the allegations of paragraph 27 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 27, and therefore denies the same.

28. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 28, and therefore denies the same.

29. Carrier denies the allegations of paragraph 29 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 29, and therefore denies the same.

30. Carrier denies the allegations of paragraph 30 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 30, and therefore denies the same.

31. Carrier denies the allegations of paragraph 31 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 31, and therefore denies the same.

32. Carrier denies the allegations of paragraph 32 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 32, and therefore denies the same.

33. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 33, and therefore denies the same.

34. With respect to the allegations of paragraph 34, Carrier admits that it was on site at CAMC during the fall of 2017 to perform work specifically requested by CAMC and other parties. Except as specifically admitted, the allegations of paragraph 34 are denied as to Carrier. Carrier

lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 34, and therefore denies the same.

35. Carrier denies the allegations of paragraph 35 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 35, and therefore denies the same.

36. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 36, and therefore denies the same.

37. Denied.

38. With respect to the allegations of paragraph 38, Carrier admits it received notification from CAMC of the freeze event on or about December 28, 2017.

39. Carrier denies the allegations of paragraph 39 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 39, and therefore denies the same.

40. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 40, and therefore denies the same.

41. Carrier denies the allegations of paragraph 41 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 41, and therefore denies the same.

42. Carrier denies the allegations of paragraph 42 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 42, and therefore denies the same.

COUNT I
Breach of Contract
(Against BSA)

43. Carrier incorporates by reference the answers in paragraphs 1–42 as if fully repeated here.

44. These allegations are not directed to Carrier, so no response is required.

45. These allegations are not directed to Carrier, so no response is required.

46. These allegations are not directed to Carrier, so no response is required.

47. These allegations are not directed to Carrier, so no response is required.

48. These allegations are not directed to Carrier, so no response is required.

49. These allegations are not directed to Carrier, so no response is required.

50. These allegations are not directed to Carrier, so no response is required.

COUNT II
Negligent Design and Administration
(Against BSA)

51. Carrier incorporates by reference the answers in paragraphs 1–50 as if fully repeated here.

52. These allegations are not directed to Carrier, so no response is required.

53. These allegations are not directed to Carrier, so no response is required.

54. These allegations are not directed to Carrier, so no response is required.

55. These allegations are not directed to Carrier, so no response is required.

COUNT III
Breach of Contract
(MDC, Carrier, MAB, and EEI)

56. Carrier incorporates by reference the answers in paragraphs 1–55 as if fully repeated here.

57. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 57, and therefore denies the same.

58. With respect to paragraph 58, Carrier admits that it and CAMC agreed to certain scopes of work and associated terms and conditions of sale, which are set forth in documents in writing that speak for themselves. Except as admitted, the allegations are denied.

59. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 59, and therefore denies the same.

60. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 60, and therefore denies the same.

61. Carrier denies the allegations of paragraph 61 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 61, and therefore denies the same.

62. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 62, and therefore denies the same.

63. Carrier lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 63, and therefore denies the same.

64. Carrier denies the allegations of paragraph 64 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 64, and therefore denies the same.

COUNT IV
Negligence
(MDC, Carrier, MAB, EEI, and ELCO)

65. Carrier incorporates by reference the answers in paragraphs 1–64 as if fully repeated here.

66. The allegations of paragraph 66 purport to state a legal conclusion to which no response is required.

67. Carrier denies the allegations of paragraph 67 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 67, and therefore denies the same.

68. Carrier denies the allegations of paragraph 68 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 68, and therefore denies the same.

COUNT V
Breach of Warranty
(All Defendants)

69. Carrier incorporates by reference the answers in paragraphs 1–68 as if fully repeated here.

70. With respect to paragraph 70, Carrier admits that it and CAMC agreed to certain scopes of work and associated terms and conditions of sale, which are set forth in documents in writing that speak for themselves. By way of further response, a limited warranty provided by Carrier is set forth in one or more writings that speak for themselves, and all other warranties were expressly excluded. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 70, and therefore denies the same.

71. Carrier denies the allegations of paragraph 71 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 71, and therefore denies the same.

72. Carrier denies the allegations of paragraph 72 as to itself. Carrier lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 72, and therefore denies the same.

Carrier denies all aspects of the WHEREFORE clause in CAMC's Prayer for Relief.

AFFIRMATIVE DEFENSES

Carrier asserts the following affirmative defenses to the Complaint:

FIRST AFFIRMATIVE DEFENSE

Carrier alleges that the Complaint and the causes of action therein fail to state facts sufficient to constitute causes of action against Carrier.

SECOND AFFIRMATIVE DEFENSE

CAMC's claims are barred or limited, in whole or in part, by CAMC's own comparative fault and because any damages suffered by CAMC were the result of its comparative fault.

THIRD AFFIRMATIVE DEFENSE

CAMC's recovery may be barred or subject to reduction based on evidence of the comparative fault of CAMC, other parties named in this lawsuit, and/or the fault of non-party tortfeasors in causing the alleged damages described in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

CAMC's claims are barred or limited, in whole or in part, by the failure of CAMC to mitigate losses.

FIFTH AFFIRMATIVE DEFENSE

Any loss, damage, or injury suffered by CAMC was due to the actions, inactions, or omissions of parties over which Carrier had no control and for which Carrier is not responsible.

SIXTH AFFIRMATIVE DEFENSE

Carrier reserves the right to amend its Answer to add any additional affirmative defenses or other defenses as additional information is obtained.

JURY DEMAND

Carrier requests a trial to a jury on all issues so triable.

March 2, 2020

CARRIER CORPORATION,

Defendant,

BY COUNSEL:

A handwritten signature in cursive script, reading "Sarah A. Meadows". The signature is written in dark ink and is positioned above a horizontal line.

DANIEL R. HIGGINBOTHAM (WVSB #11680)

SARAH A. MEADOWS (WVSB #11639)

THOMAS COMBS & SPANN, PLLC

300 Summers Street, Suite 1380 (25301)

P.O. Box 3824

Charleston, WV 25338-3824

Telephone: 304.414.1800

Fax: 304.414.1801

Email: dhigginbotham@tcspllc.com

Email: smeadows@tcspllc.com

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

Civil Action No. 19-C-1259
(Judge Louis H. "Duke" Bloom)

BSA LIFESTRUCTURES, INC., et al.

Defendants.

CERTIFICATE OF SERVICE

I, Sarah A. Meadows, counsel for Defendant, Carrier Corporation, hereby certify that service of ***"Defendant Carrier Corporation's Answer and Affirmative Defenses to Charleston Area Medical Center, Inc.'s Complaint"*** has been made upon counsel of record, via United States mail, postage prepaid, on this 2nd day of March, 2020, addressed as follows:

Bryan G. Scott (WVSB #12902)
Alexander L. Turner (WVSB #10839)
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EXHIBIT G

CIPRIANI & WERNER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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lstacy@c-wlaw.com

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www.C-WLAW.com

A Mid-Atlantic Litigation Firm

Visit us online at
www.C-WLAW.com

June 8, 2020

Cathy Gatson, Clerk
Kanawha County Judicial Annex
111 Court Street
Charleston, WV 25301

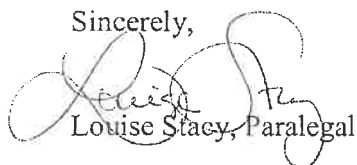
RE: CAMC v. BSA Lifestructures, Inc., et al.
Circuit Court of Kanawha County, West Virginia
Civil Action No.: 19-C-1259

Dear Clerk:

Enclosed to be filed with your office, please find **ELCO Mechanical Contractors, LLC's Answer to Plaintiff's Complaint**. A copy of the same has this day been forwarded to counsel of record.

Thank you for your attention to this matter.

Sincerely,



Louise Stacy, Paralegal

/gls
Enclosure
cc (w/enc): Counsel of Record

PLAINTIFF: Charleston Area Medical Center
DEFENDANT: ELCO Mechanical Contractors, LLC

CASE NUMBER: 19-C-1259

II. TYPE OF CASE:

TORTS

OTHER CIVIL

<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input checked="" type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY
(MONTH/YEAR):

June 2021

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

☐ Yes
☒ No

- ☐ Wheelchair accessible hearing room and other facilities
☐ Interpreter or other auxiliary aid for the hearing impaired
☐ Reader or other auxiliary aid for the visually impaired
☐ Spokesperson or other auxiliary aid for the speech impaired
☐ Other: _____

Attorney Name: Michael P. Markins

Representing:

Firm: Cipriani & Werner, PC
Laidley Tower, Suite 900
500 Lee Street, East

Address: Charleston, WV 25301

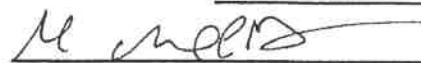
Telephone: (304) 341-0500

☐ Plaintiff ☒ Defendant

☐ Cross-Complainant

☐ Cross-Defendant

Dated: June 8, 2020


Signature

☐ Pro Se

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

Civil Action No. 19-C-1259

BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.,
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BARRY, INC., and
ENGINEERING ECONOMICS, INC.,

Defendants.

ELCO MECHANICAL CONTRACTORS, LLC'S
ANSWER TO PLAINTIFF'S COMPLAINT

COMES NOW the Defendant, ELCO Mechanical Contractors, LLC, by counsel, and for its Answer to Plaintiff's Complaint states as follows:

GENERAL RESPONSE AND PREAMBLE

This responsive pleading has been prepared, served, and filed by counsel for the Defendant under the West Virginia Rules of Civil Procedure. As permitted by the Rules, defenses to the claims made in the Complaint are being asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of apparent consistency and are based both on legal and equitable grounds. As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure.

No discovery has been conducted to date in the above-captioned civil action. In order to preserve important legal rights and protection, this Defendant sets forth below certain affirmative

defenses which, based upon the information contained in the Complaint, it believes does or may apply to some or all of the claims raised therein. This Defendant reserves the right to withdraw, modify or amend some or all of the affirmative defenses set forth below, in whole or in part, depending on the outcome of discovery in this civil action.

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted, and the Complaint should be dismissed pursuant to West Virginia Rules of Civil Procedure 12(b)(6).

SECOND DEFENSE

PARTIES AND JURISDICTION

1. Answering Paragraph 1 of Plaintiff's Complaint, this Defendant admits the allegations contained therein.

2. Answering Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

3. Answering Paragraph 3 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

4. Answering Paragraph 4 of Plaintiff's Complaint, this Defendant admits the allegations contained therein.

5. Answering Paragraph 5 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

6. Answering Paragraph 6 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

7. Answering Paragraph 7 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

8. Answering Paragraph 8 of Plaintiff's Complaint, this Defendant admits the allegations contained therein.

GENERAL ALLEGATIONS

9. Answering Paragraph 9 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

10. Answering Paragraph 10 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

11. Answering Paragraph 11 of Plaintiff's Complaint, this Defendant admits the allegations contained therein.

12. Answering Paragraph 12 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

13. Answering Paragraph 13 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

14. Answering Paragraph 14 of Plaintiff's Complaint, this Defendant admits the allegations contained therein.

15. Answering Paragraph 15 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

16. Answering Paragraph 16 of Plaintiff's Complaint, this Defendant admits the allegations contained therein.

17. Answering Paragraph 17 of Plaintiff's Complaint, this Defendant denies the allegations as phrased.

18. Answering Paragraph 18 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

19. Answering Paragraph 19 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

20. Answering Paragraph 20 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

21. Answering Paragraph 21 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

22. Answering Paragraph 22 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

23. Answering Paragraph 23 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

24. Answering Paragraph 24 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

25. Answering Paragraph 25 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

26. Answering Paragraph 26 of Plaintiff's Complaint, to the extent allegations are asserted against Elco, those allegations are denied.

27. Answering Paragraph 27 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

28. Answering Paragraph 28 of Plaintiff's Complaint, this Defendant denies the allegations contained therein as phrased.

29. Answering Paragraph 29 of Plaintiff's Complaint, this Defendant denies the allegations contained therein as phrased.

30. Answering Paragraph 30 of Plaintiff's Complaint, this Defendant denies the allegations contained therein as phrased.

31. Answering Paragraph 31 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

32. Answering Paragraph 32 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

33. Answering Paragraph 33 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

34. Answering Paragraph 34 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

35. Answering Paragraph 35 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

36. Answering Paragraph 36 of Plaintiff's Complaint, this Defendant admits the allegations contained therein.

37. Answering Paragraph 37 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

38. Answering Paragraph 38 of Plaintiff's Complaint, this Defendant is without sufficient information or knowledge to form a belief to the truth of the matters asserted therein.

39. Answering Paragraph 39 of Plaintiff's Complaint, this Defendant denies the allegations contained therein as phrased.

40. Answering Paragraph 40 of Plaintiff's Complaint, this Defendant denies the allegations contained therein as phrased.

41. Answering Paragraph 41 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

42. Answering Paragraph 42 of Plaintiff's Complaint, this Defendant denies the allegations contained therein as phrased.

COUNT I
Breach of Contract
(Against BSA)

43. – 50. This Defendant states that Paragraphs 43 through 50 are not directed toward this Defendant and no response is necessary.

COUNT II
Negligent Design and Administration
(Against BSA)

51. – 55. This Defendant states that Paragraphs 51 through 55 are not directed toward this Defendant and no response is necessary.

COUNT III
Breach of Contract
(MDC, Carrier, MAB, and EEI)

56. – 64. This Defendant states that Paragraphs 56 through 64 are not directed toward this Defendant and no response is necessary.

COUNT IV
Negligence
(Against MDC, Carrier, MAB, EEI, and ELCO)

65. This Defendant restates its responses to Paragraphs 1 through 65 as though fully set forth herein.

66. Answering Paragraph 66 of Plaintiff's Complaint, this Defendant states that Paragraph 66 calls for a legal conclusion to which no responses is necessary.

67. Answering Paragraph 67 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

68. Answering Paragraph 68 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

COUNT V
Breach of Warranty
(All Defendants)

69. This Defendant restates its responses to Paragraphs 1 through 69 as though fully set forth herein.

70. Answering Paragraph 70 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

71. Answering Paragraph 71 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

72. Answering Paragraph 72 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

73. Answering Plaintiff's Prayer for Relief and "WHEREFORE" clause, this Defendant denies it is liable for any demand, sum or judgment.

74. This Defendant denies each and every allegation not specifically admitted herein.

75. To extent any issue in this matter is not subject to dispositive motion, this Defendant demands a trial by jury on all issues so triable.

THIRD DEFENSE

To the extent any of the forthcoming affirmative defenses are applicable based upon the evidence adduced in this matter, this Defendant invokes the following defenses of accord and satisfaction, arbitration and award, contributory negligence, comparative negligence, assumption of

the risk, waiver, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, expiration of the statute of limitations, any applicable statute of repose, lack of personal jurisdiction, and any other matter constituting an avoidance or affirmative defense.

FOURTH DEFENSE

This Defendant hereby raises and preserves each and every defense set forth in Rules 8, 9, and 12 of the West Virginia Rules of Civil Procedure, and further reserves the right to raise such additional defenses as may appear appropriate following further discovery and factual development in this case.

FIFTH DEFENSE

The damages of the Plaintiff, if any, were caused by acts of others over which this Defendant had no control.

SIXTH DEFENSE

This Defendant asserts that the Plaintiff's damages, if any, were proximately caused or contributed to by a superseding and intervening cause or causes other than an action or alleged omission of this Defendant. Accordingly, recovery against this Defendant is barred.

SEVENTH DEFENSE

At all times material to this case, this Defendant acted in good faith and in an objectively reasonable manner under the circumstances.

EIGHTH DEFENSE

Defendant acted in good faith and did not perform any actions that were manifestly outside the scope of its contract.

NINTH DEFENSE

The alleged damages of the Plaintiff were caused by natural occurrences.

TENTH DEFENSE

Defendant complied with or exceeded the requirements of the design professional and the terms of the contract at issue and completed all of its obligations in a workmanlike manner and within industry standards.

ELEVENTH DEFENSE

The acts, omissions and/or decisions of the Plaintiff proximately caused the damages of Plaintiff and it is guilty of comparative fault.

TWELTH DEFENSE

CAMC impliedly warranted the design plans and specifications to this Defendant and this Defendant cannot be held liable for any deficiencies in those design plans and specifications.

THIRTEENTH DEFENSE

If Defendant is found guilty of any negligence whatsoever, which it denies, such negligence did not proximately cause or contribute to the damages allegedly sustained by Plaintiff.

FOURTEENTH DEFENSE

To the extent various other parties, named or unnamed as Defendants in the Complaint have settled or may settle with Plaintiff, this Defendant should be entitled to a setoff for the amount paid to Plaintiff. Further, this Defendant is not jointly liable for any of the acts or omissions of its co-defendants.

FIFTEENTH DEFENSE

This Defendant adopts and incorporates by reference all other applicable affirmative defenses stated by any and all other Defendants, but not specifically set forth herein.

SIXTEENTH DEFENSE

This Defendant denies that this civil action is one in which “costs” and “attorneys fees” can be properly awarded and, therefore, affirmatively moves that the portion of the Plaintiff’s Complaint seeking payment of “costs” be dismissed.

SEVENTEENTH DEFENSE

This Defendant denies that this civil action is one in which prejudgment interest can be properly awarded and, therefore, affirmatively moves that the portion of the Complaint demanding prejudgment interest be dismissed.

WHEREFORE, for the reasons set forth hereinabove, Defendant ELCO Mechanical Contractors, LLC, prays that Plaintiff’s Complaint filed against it be dismissed with prejudice and that it be awarded the costs incurred in defense of this case.

**ELCO MECHANICAL
CONTRACTORS, LLC**

By Counsel



Michael P. Markins (WVSB #8825)

CIPRIANI & WERNER, PC

500 Lee Street East, Suite 900

Charleston, WV 25301

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Fax: 304-341-0507

mmarkins@c-wlaw.com

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

v.

Civil Action No. 19-C-1259

BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.,
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BARRY, INC., and
ENGINEERING ECONOMICS, INC.,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **“ELCO MECHANICAL CONTRACTORS, LLC’S ANSWER TO PLAINTIFF’S COMPLAINT”** was served via US Mail, this 8th day of June, 2020 to the following:

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Winston-Salem, NC 27103

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Counsel for Plaintiff

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Kelsey Haught Parsons, Esq.
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Counsel for BSA Lifestructures, Inc.

Wendy E. Greve, Esq.
Adam B. Poe, Esq.
PULLIN, FOWLER, FLANAGAN, BROWN
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Sarah A. Meadows, Esq.
THOMAS COMBS & SPANN, PLLC
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Counsel for Carrier Corporation

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BAILEY & WYANT, PLLC
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Charleston, WV 25337
Counsel Engineering Economics, Inc.



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