

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 black ink, appearing to read "Sarah A. Meadows", written over a horizontal line.

DANIEL R. HIGGINBOTHAM (WVSB #11680)

SARAH A. MEADOWS (WVSB #11639)

THOMAS COMBS & SPANN, PLLC

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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
(Judge Louis H. "Duke" Bloom)

BSA LIFESTRUCTURES, INC., et al.

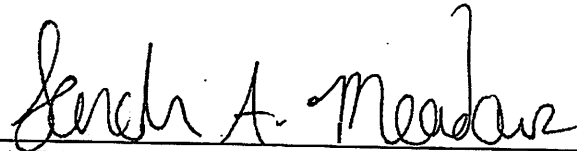
Defendants.

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)
SPILMAN, THOMAS & BATTLE, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Tel: 336.631.1061
Fax: 336.725.4476
bscott@spilmanlaw.com
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Gerald M. Titus, III (WVSB # 9392)
SPILMAN, THOMAS & BATTLE, PLLC
300 Kanawha Blvd., East
Charleston, WV 25301
Phone: 304.340.3800
Fax: 336.340.3801
Email: gtitus@spilmanlaw.com

A handwritten signature in black ink, reading "Sarah A. Meadows". The signature is fluid and cursive, with the first name "Sarah" being more prominent than the last name "Meadows".

DANIEL R. HIGGINBOTHAM (WVSB #11680)

SARAH A. MEADOWS (WVSB #11639)

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EXHIBIT G

CIPRIANI & WERNER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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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

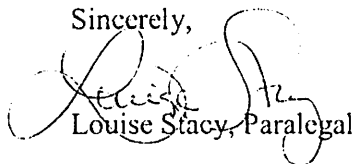
RE: CAMC v. BSA Lifestructures, Inc., et al.
Circuit Court of Kanawha County, West Virginia
Civil Action No.: 19-C-1259

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

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

PLAINTIFF: Charleston Area Medical Center

CASE NUMBER: 19-C-1259

DEFENDANT: ELCO Mechanical Contractors, LLC

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

☐ Plaintiff

☒ Defendant

Laidley Tower, Suite 900

500 Lee Street, East

Address: Charleston, WV 25301

☐ Cross-Complainant

Telephone: (304) 341-0500

☐ Cross-Defendant

Dated: June 8, 2020



Signature

☐ Pro Se

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLESTON AREA MEDICAL
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Plaintiff,

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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
Telephone: 304-341-0500
Fax: 304-341-0507
mmarkins@c-wlaw.com

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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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:

Alexander L. Turner, Esq.
SPILMAN, THOMAS & BATTLE, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

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