

6031110

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ZURICH AMERICAN INSURANCE COMPANY
as subrogee of TURNER CONSTRUCTION
COMPANY, TURNER CORPORATION, and
TOMPKINS BUILDERS, INC.,

Plaintiffs,

v.

Civil Action No. 14-C-391-2
The Honorable Thomas A. Bedell

THRASHER ENGINEERING, INC. d/b/a
THRASHER ENGINEERING and
MASCARO CONSTRUCTION COMPANY,
LP, a foreign entity,

Defendants,

THRASHER ENGINEERING, INC.
(now THE THRASHER GROUP, INC.),

Third-Party Plaintiff,

v.

SKIDMORE, OWINGS & MERRILL, LLP
and GEOCONCEPTS ENGINEERING, INC.,

Third-Party Defendants.

THIRD-PARTY DEFENDANTS' ANSWER TO THIRD-PARTY COMPLAINT

NOW COME Third-Party Defendant Skidmore, Owings & Merrill, LLP ("SOM") and Third-Party Defendant GeoConcepts Engineering, Inc. ("GeoConcepts") (together, the "Third-Party Defendants"), by and through undersigned counsel, and answer Third-Party Plaintiff Thrasher Engineering, Inc.'s ("Thrasher") Third-Party Complaint as follows:

FIRST DEFENSE

For their First Defense to the Third-Party Complaint, Third-Party Defendants respond to the individual allegations in the Third-Party Complaint as follows:

1. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 1. To the extent a response is required, Third-Party Defendants deny the allegations in Paragraph 1 and demand strict proof thereof.

2. Admitted.

3. Admitted.

4. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 4. To the extent a response is required, Third-Party Defendants deny the allegations in Paragraph 4 and demand strict proof thereof.

5. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 5. To the extent a response is required, Third-Party Defendants deny the allegations in Paragraph 5 and demand strict proof thereof.

6. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 6. To the extent a response is required, Third-Party Defendants deny the allegations in Paragraph 6 and demand strict proof thereof.

7. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 7. To the extent a response is required, Third-Party Defendants deny the allegations in Paragraph 7 and demand strict proof thereof.

8. Paragraph 8 states a legal conclusion to which no response is required. To the extent a response is required, Third-Party Defendants deny the allegations of Paragraph 8 and demand strict proof thereof.

9. Third-Party Defendants admit that the project at issue in the litigation was comprised of constructing a parking garage, retaining walls, and an office building. To the extent not expressly admitted, Third-Party Defendants deny the allegations of Paragraph 9 and demand strict proof thereof.

10. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 10. To the extent a response is required, Third-Party Defendants deny the allegations in Paragraph 10 and demand strict proof thereof.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, Third-Party Defendants deny the allegations of Paragraph 11 and demand strict proof thereof.

12. Denied.

13. Admitted that GeoConcepts performed a geotechnical investigation of the site and issued a report on or about July 14, 2009. To the extent not expressly admitted, Third-Party Defendants deny the remaining allegations of Paragraph 13 and demand strict proof thereof.

14. Admitted that SOM provided professional design services related to the project and that GeoConcepts provided professional geotechnical engineering services on the project. To the extent not expressly admitted, Third-Party Defendants deny the allegations in Paragraph 14 and demand strict proof thereof.

15. Admitted that SOM contracted with the Federal Bureau of Investigation. To the extent not expressly admitted, Third-Party Defendants deny the remaining allegations of Paragraph 15 and demand strict proof thereof.

16. Third-Party Defendants re-allege each and every response to the allegations contained in paragraphs 1-15 as if the same were restated herein.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Third-Party Defendants re-allege each and every response to the allegations contained in paragraphs 1-23 as if the same were restated herein.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

To the extent any allegation in the Third-Party Complaint is not expressly admitted in this Answer, Third-Party Defendants deny any remaining allegations in the Third-Party Complaint.

SECOND DEFENSE

The Third-Party Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

The Third-Party Complaint is barred, in whole or in part, by the economic loss doctrine.

FOURTH DEFENSE

The Third-Party Complaint is barred, in whole or in part, by the preemption doctrine.

FIFTH DEFENSE

The Third-Party Complaint is barred, in whole or in part, because Third-Party Defendants did not owe Thrasher any duty.

SIXTH DEFENSE

The Third-Party Complaint is barred, in whole or in part, because Third-Party Defendants did not owe any duty related to the contractors' deviations from the design documents and/or Thrasher's approval of the contractors' deviations.

SEVENTH DEFENSE

The Third-Party Complaint is barred, in whole or in part, by an intervening cause.

EIGHTH DEFENSE

The Third-Party Complaint is barred, in whole or in part, by Thrasher's failure to mitigate its damages.

NINTH DEFENSE

Third-Party Defendants state that the services they provided with respect to the project giving rise to this action were consistent with the applicable standard of care.

TENTH DEFENSE

Any injuries and damages that Thrasher may suffer were proximately caused or, in the alternative, were solely caused or brought about by acts, omissions, and/or conduct of persons or

entities other than Third-Party Defendants, and over whom Third-Party Defendants had no control or right of control.

ELEVENTH DEFENSE

The Third-Party Complaint is barred, in whole or in part, by the doctrine of comparative negligence.

TWELFTH DEFENSE

Third-Party Defendants plead the terms of their respective contracts as a defense, in whole or in part, to the Third-Party Complaint.

THIRTEENTH DEFENSE

Third-Party Defendants assert the affirmative defenses, including, but not limited to, as discovery reveals appropriate, comparative negligence, contributory negligence, accord and satisfaction, assumption of the risk, discharge, estoppel, fraud, waiver, and all other defenses which may be applicable and are required to be affirmatively pled under Rule 8(c) of the West Virginia Rules of Civil Procedure.

WHEREFORE, Third-Party Defendant Skidmore, Owings & Merrill, LLP and Third-Party Defendant GeoConcepts Engineering, Inc. respectfully request that this Honorable Court enter judgment in their favor, dismiss Third-Party Plaintiff Thrasher Engineering, Inc.'s Third-Party Complaint, and grant such other relief in favor of Third-Party Defendant Skidmore, Owings & Merrill, LLP and Third-Party Defendant GeoConcepts Engineering, Inc. as this Court deems necessary and just.

DEMAND FOR JURY TRIAL

Third-Party Defendants hereby demand a jury on all triable issues in this case.

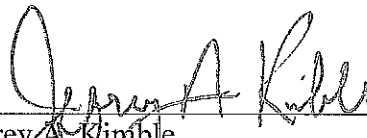
Respectfully Submitted,

SKIDMORE, OWINGS & MERRILL, LLP

and

GEOCONCEPTS ENGINEERING, INC.

By Counsel,



Jeffrey A. Kimble
(W. Va. State Bar I.D.: 4928)
E. Ryan Kennedy
(W. Va. State Bar I.D.: 10154)
ROBINSON & McELWEE PLLC
Post Office Box 128
140 West Main Street, Suite 300
Clarksburg, West Virginia 26302-0128
(304) 326-5314

James F. Lee, Jr.
(Admitted Pro Hac Vice)
Jonathan C. Shoemaker
(Admitted Pro Hac Vice)
LEE & McSHANE PC
1211 Connecticut Avenue, N.W., Suite 425
Washington, D.C. 20036
(202) 530-8100

*Counsel for Third-Party Defendants Skidmore,
Owings & Merrill, LLP and GeoConcepts
Engineering, Inc.*