

SCANNED

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,

Defendants,

and

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

Defendant/Third-Party Plaintiff,

v.

SKIDMORE, OWINGS & MERRILL, LLP,
GEOCONCEPTS ENGINEERING, INC., and
TURNER CONSTRUCTION COMPANY,

Third-Party Defendants.

FILED IN 15TH
CIRCUIT COURT
2015 SEP 14 PM 12:44

**DEFENDANT THRASHER ENGINEERING, INC.'S COUNTERCLAIM/THIRD-
PARTY COMPLAINT AGAINST TURNER CONSTRUCTION COMPANY**

NOW COMES Defendant Thrasher Engineering, Inc. (now The Thrasher
Group, Inc., and hereafter referred to simply as "Thrasher") and pursuant to Rule 13(h)

of the West Virginia Rules of Civil Procedure and letter-ruling of this Court dated August 24, 2015, asserts this Counterclaim/Third-Party Complaint against Turner Construction Company. In support of this pleading, Thrasher states the following:

1. Defendant/Counterclaim Plaintiff Thrasher is a West Virginia Corporation with its principal place of business located at 600 White Oaks Boulevard, Bridgeport, West Virginia 26330.

2. Plaintiff/Counterclaim Defendant Turner Construction Company (hereafter "Turner") is, upon information and belief, a New York corporation with its principal place of business located at 375 Hudson Street, New York, New York 10014.

3. On or about February 1, 2011, Thrasher and Turner entered into an Agreement to Provide Professional Services (hereafter the Agreement), with Addendum, which the Agreement states was "made as of the 9th day of November, 2010."

4. Pursuant to this agreement, Thrasher agreed to serve as Turner's Independent Inspection and Testing Agency, as defined by the design documents for phase two of the construction of the Biometric Technology Center at the FBI CJIS Division Complex near Clarksburg, West Virginia.

5. This counterclaim seeks damages for violations of the common law of the State of West Virginia, including breach of contract for Turner's failure to pay for services performed by Thrasher.

6. Thrasher's services for which it seeks payment were performed in Harrison

County West Virginia as part of the same project giving rise to Plaintiff's First Amended Complaint.

7. Moreover, Turner's debt to Thrasher requires payment to be made in Harrison County, West Virginia, and the manifestation of Turner's breach of contract, and attendant damages, has occurred in Harrison County, West Virginia.

8. Per the Agreement, Thrasher's services were contemplated to last for a period of 20 months.

9. After the contract period, on or about March 17, 2013, Turner agreed to pay Thrasher for its services on a T&M (time and material) basis beginning on or about December 11, 2012, and continuing through the duration of the project.

10. Thrasher has continued to provide certain testing and/or inspection services for Turner on the project to present, but has not been fully paid for these services.

11. At present, Thrasher's invoiced time to Turner for services which remain due and owing total in excess of \$500,000.00.

12. Despite Thrasher's efforts to collect on this debt, Turner has failed to pay Thrasher for these services.

COUNTERCLAIM COUNT ONE - BREACH OF CONTRACT

13. Thrasher re-alleges each and every allegation contained in paragraphs 1-12 as if the same were restated herein.

14. As referenced above, Thrasher had a written contract with Turner for

certain inspection services executed on or about February 1, 2011 (the Agreement).

15. Turner has breached this Agreement by failing to fully pay Thrasher for its services which were contracted for, as modified through subsequent change orders.

16. Additionally, following completion of Thrasher's services for the period of time contemplated by the February 1, 2011, Agreement, on or about March 17, 2013, Turner, by and through Senior Project Manager Lance Thesier, accepted Thrasher's demand that Turner begin paying Thrasher for its services on a time and material basis pursuant to Thrasher's fee schedule beginning December 11, 2012, and continuing for the remainder of the project. This agreement constituted an oral contract.

17. In reliance upon the February 1, 2011, Agreement, and subsequent oral contract, Thrasher performed substantial work on Turner's construction project, providing Turner with the benefit of the same.

18. Turner has breached its contracts with Thrasher by failing to remit payment for Thrasher's invoices, both under the original written Agreement and subsequent time & material oral contract, which total in excess of \$500,000.00.

19. Thrasher has suffered damages as a direct and proximate result of Turner's breach.

20. Thrasher is entitled to payment for its services performed for Turner, plus interest.

COUNTERCLAIM COUNT TWO - QUANTUM MERUIT

21. Thrasher re-alleges each and every allegation contained in paragraphs 1-20

as if the same were restated herein.

22. As an alternative theory to Counterclaim Count One, Thrasher alleges that it is entitled to payment in full for the services it performed for Turner by way of quantum meruit.

23. Thrasher performed its inspection and/or testing services for Turner in good faith and with the expectation that it would be paid for such services.

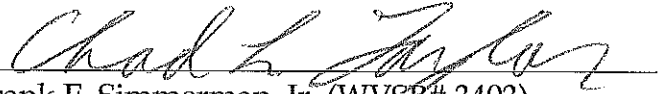
24. Turner requested, acknowledged, and acquiesced to Thrasher's performance of inspection and/or testing services and understood that Thrasher expected to be paid for its efforts.

25. By Thrasher's performance of inspection and/or testing services for Turner, and Turner's failure to pay for the same, Turner has been unjustly enriched.

26. Thrasher is entitled to recover the reasonable value of its services devoted to Turner's project, and such reasonable value totals in excess of \$500,000.00, plus interest.

WHEREFORE, The Thrasher Group, Inc., demands judgment against Turner Construction Company for the due and outstanding balance of its invoices, plus all applicable interest, its reasonable attorneys' fees and costs incurred bringing this counterclaim/third-party complaint, and any and all other damages allowed at law, in such sum as will fully and adequately compensate Thrasher for its injuries and damages caused and/or contributed to by Turner, as well as such further and general relief as the Court deems necessary and proper.

Respectfully submitted,
The Thrasher Group, Inc.,
By Counsel:



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