

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS,  
a statutory corporation, for and on behalf of West Virginia  
University,

Plaintiff,

v.

Civil Action No.: 16-C-383

JACOBS FACILITIES, INC., a Missouri  
business corporation, f/k/a Sverdrup Facilities, Inc.;  
MOODY/NOLAN LTD., INC., an Ohio business corporation,  
OVERLY MANUFACTURING COMPANY,  
a Pennsylvania business corporation, and  
DONALD M. MILLER COMPANY, a Pennsylvania  
business corporation,

EXHIBIT  
A

Defendants.

COMPLAINT

COMES NOW, Plaintiff, the West Virginia University Board of Governors, for  
and on behalf of West Virginia University, by its counsel, and states as follows:

Nature of Action

1. This is an action alleging various causes of action for recovery of damages related to a metal roof installed at the West Virginia University Student Recreation Center. The contract plans and specifications used for the Student Recreation Center contained specific requirements for the manufacture and installation of the metal roof, including a thirty (30) year warranty against leakage as provided by specification section 07410, paragraph 1.06.A.1. During the fall of 2015, and well within the warranty period, significant damage to the metal roof was discovered during a routine maintenance inspection.

ORIGINAL DOCUMENT FILED  
WITH CIRCUIT CLERK  
7-18-16

### The Parties

2. Plaintiff, the West Virginia University Board of Governors, is a statutory corporation pursuant to West Virginia Code § 18B-2A-1 et seq., that is the governing body with the mission of general supervision and control over the academic and business affairs of West Virginia University (hereinafter collectively referred to as the "University"). While the University resides in the State of West Virginia, as the alter ego of the State, it is not a citizen for purposes of diversity jurisdiction.

3. Defendant, Jacobs Facilities, Inc. ("Jacobs"), is a Missouri business corporation, formerly known as Sverdrup Facilities, Inc. (collectively "Sverdrup"), with its principal place of business located at 400 South Fourth Street, St. Louis, Missouri. Sverdrup CRSS is a division of Jacobs. Jacobs is a wholly owned subsidiary of Jacobs Engineering Group Inc.

4. Defendant, Moody/Nolan Ltd., Inc. ("Moody/Nolan"), is an Ohio business corporation with its principal place of business located at 1776 East Broad Street, Columbus, Ohio.

5. Defendant, Overly Manufacturing Company ("Overly"), is a Pennsylvania business corporation with its principal place of business located at 574 West Otterman Street, Greensburg, Pennsylvania.

6. Defendant, Donald M. Miller, Inc. ("Miller"), is a Pennsylvania business corporation with its principal place of business located at 3 Wood Street, Uniontown, Pennsylvania.

### Jurisdiction and Venue

7. The roofing system giving rise to this action is located in Morgantown, Monongalia County, West Virginia.

8. This Court has jurisdiction over this action, personal jurisdiction over the parties named herein, and venue is proper in this Court.

### Operative Facts

9. On April 22, 1998, the University contracted with Sverdrup to act as the Construction Manager and as a Constructor of a New Student Recreation Center to be located on the West Virginia University Evansdale Campus in Morgantown, West Virginia (the "Project").

10. The University contracted with Moody/Nolan who acted as the Project architect.

11. The scope of work, schematic designs and specifications for the Project included the design, manufacture and installation of a thirty (30) year metal roofing system on the Recreation Center.

12. Moody/Nolan designed the metal roofing system and developed specifications for a thirty (30) year metal roofing system that met its design intent.

13. Installation of the metal roofing system was contained in Sverdrup's scope of work.

14. In completing its scope of work related to the metal roofing system, Sverdrup submitted to the architect for approval a thirty (30) year metal roofing system manufactured by Overly and subcontracted with Miller to install the metal roofing system.

15. Project specifications under section 07410, paragraph 1.06.A. required that the metal roofing system include a thirty (30) year warranty against leakage from the panel manufacturer and include a twenty (20) year warranty against structural defect from the panel manufacturer.

16. Project specifications under section 07410, paragraphs 1.03.C. and 1.04.C. required the manufacturer of the metal roofing system to certify that the installer was qualified and approved by the manufacturer to install the specified roofing system.

17. Pursuant to the Project specifications, Overly, as the manufacturer, certified that Miller "... has proven the ability to install metal roofing systems in accordance with approved drawings and instructions" and, at the beginning of the installation of the metal roofing, Overly showed Miller how to install the metal roofing.

18. Pursuant to the Project specifications, Overly certified that "Manufacturing Company approves of this company [Miller] as the installer of the Batten Roofing System as specified for the project listed above [Student Recreation Center]."

19. Overly also certified that it would conduct a "final inspection" of the installation of the metal roofing system to make sure that Miller's work conformed to the Project requirements and design specifications prior to issuing the Warranty from Overly.

20. Periodically during the course of the Project, and particularly during the installation of the metal roofing system, Miller certified to Sverdrup, Sverdrup certified to Moody/Nolan, and Moody/Nolan certified to the University, that the installation of the metal roofing system had been completed in accordance with the contract documents.

21. Based upon the various certifications that the installation of the metal roofing system had been completed in accordance with the contract documents, the University approved payment for the installation of the metal roofing system.

22. When the installation of the metal roofing system had been completed, Overly performed a final inspection of the roofing system, determined that Miller's installation was performed in accordance with the contract documents and issued the 30-year Overly Warranty.

23. In April of 2015, representatives of the University noticed that the metal roof was leaking over the pool equipment room.

24. In May and June of 2015, representatives of the University had a local roofing contractor, Kalkreuth Roofing & Sheet Metal, Inc. ("Kalkreuth"), and Overly inspect the area where the roof was leaking.

25. As a result of the June, 2015, roof inspection, Overly reported on June 11, 2015, that the roof leaks over the pool area were caused by the failure of Miller to properly install full width sheet cleats under the metal roofing.

26. As a result of the June, 2015, roof inspection, Overly recommended that the leaking sections of the roof be repaired by, *inter alia*, reinstalling the metal roofing with the full width sheet cleats.

27. In October of 2015, representatives of the University engaged Kalkreuth to complete the Overly-recommended roofing repairs over the pool area.

28. While preparing for the repair work, Kalkreuth noticed that other areas of the roof showed similar signs of failure.

29. In December of 2015, Kalkreuth and Overly inspected the entire metal roofing system.

30. As a result of roof inspection in December of 2015, Overly reported, by letter dated December 10, 2015, that roofing sheets were improperly anchored in place by machine screws rather than full width sheet cleats and Rawl fasteners.

31. Overly further reported that practically all of the metal roofing system lacked full width sheet cleats, which allowed uncontrolled movement of the roofing sheets due to thermal expansion and contraction and the effects of gravitational pull.

32. The roofing systems have been compromised with respect to two (2) of their primary functions: prevention of water entry and withstanding of wind uplift forces.

33. Damages resulting from the improper anchoring and uncontrolled movement of roofing sheets include, but are not limited to, the following:

- a. Opening of top and bottom roof sheet hooks, allowing undue wind pressure effects and precipitation to enter into the sub base below the metal;
- b. Tears in the metal;
- c. Torn and destroyed secondary water resistance sub base layering;
- d. Deterioration of the side rails of the roofing sheets and the side rails of the extruded batten bars;
- e. Damage to the batten caps and cap attachment fasteners;
- f. Stress to existing components; and,
- g. Further unrevealed damages.

34. As a result of the December, 2015, roofing inspection, Overly recommended that the entire metal roofing system be removed and reinstalled with the proper anchors.

35. After discovery of the problems with the metal roofing system, representatives of the University asked Overly to replace the defective roofing system pursuant to the thirty (30) year anti-leak warranty.

36. To date, Overly has refused to honor its warranty obligations to replace the metal roofing system.

37. After discovery of the problems with the metal roofing system, representatives of the University asked the named Defendants to replace the defective roofing system pursuant to the thirty (30) year anti-leak warranty.

38. To date, the named Defendants have refused to honor their warranty obligations to replace the metal roofing system.

39. As a direct, proximate and foreseeable result of the events complained of herein, the University has been damaged in an amount in excess of the jurisdictional limits of this Court.

## COUNT I

### (Breach of Contract Against Jacobs Facilities, Inc.)

40. The University incorporates herein by reference each and every allegation set forth in paragraphs 1 through 39 of this Complaint as though each and every allegation and paragraph were set forth herein verbatim.

41. On April 22, 1998, the University and Sverdrup entered into a contract for construction management and construction services for the Project.

42. The contract incorporated by reference the drawings and specifications governing the work for the Project, including the requirement that the building be covered by a thirty (30) year metal roofing system as provided in specification section 07410, paragraph 1.06.A.1.

43. In performing its work on the Project, Sverdrup, through one of its subcontractors, failed to provide thirty (30) year metal roofing system in accordance with the Project drawings and specifications and instead provided a roofing system that was deficient, did not in fact meet the requirements of the Project drawings and specifications and has now failed,



44. The failure of Sverdrup to provide a thirty (30) year metal roofing system in compliance with the Project drawings and specifications constitutes a breach of the April 22, 1998 agreement.

45. As a direct, proximate and foreseeable result of Sverdrup's breach of the April 22, 1998, agreement, the University has been damaged in an amount equal to the cost of repairing, replacing, and/or reinstalling the roofing system so as to provide the University with a roofing system that is free of defects and performs properly.

## COUNT II

### (Negligence Against Donald M. Miller Company)

46. The University incorporates herein by reference each and every allegation set forth in paragraphs 1 through 45 of this Complaint as though each and every allegation and paragraph were set forth herein verbatim.

47. On September 30, 1999, Miller entered into a subcontract with Sverdrup wherein Miller agreed to perform roofing and architectural sheet metal work on the Project.

48. The subcontract incorporated by reference the drawings and specifications governing the work for the Project, including the requirement that the building be covered by a thirty (30) year metal roofing system as provided in specification section 07410, paragraph 1.06.A.1.

49. In performing its work on the Project, Miller failed to provide a thirty (30) year metal roofing system in accordance with the Project drawings and specifications and instead

provided a roofing system that was deficient, did not in fact meet the requirements of the Project drawings and specifications and has now failed.

50. Specifically, Miller failed to properly install full width sheet cleats under the metal roofing as required by the Project drawings and specifications.

51. Miller's failure to properly install the metal roofing system constitutes negligence.

52. As a direct, proximate and foreseeable result of Miller's negligent work, the University has been damaged in an amount equal to the cost of repairing, replacing, and/or reinstalling the roofing system so as to provide the University with a roofing system that is free of defects and performs properly.

### COUNT III

#### (Breach of Express Warranty Against All Defendants)

53. The University incorporates herein by reference each and every allegation set forth in paragraphs 1 through 52 of this Complaint as though each and every allegation and paragraph were set forth herein verbatim.

54. All of the named Defendants expressly agreed to provide a metal roofing system that would be free from leaks for a period of thirty (30) years, as specifically provided in specification section 07410, paragraph 1.06.A.1.

55. The University relied upon the express promise that the building would be covered by a metal roofing system with a leak free thirty (30) year warranty when it decided to enter into contracts regarding the Project.

56. In performing their work on the Project, the Defendants failed to provide a thirty (30) year metal roofing system in accordance with the Project drawings and specifications and instead provided a roofing system that was deficient, did not in fact meet the requirements of the Project drawings and specifications and has now failed.

57. The Defendants' failure to provide a thirty (30) year metal roofing system that was leak free for thirty (30) year constitutes a breach of an express warranty.

58. As a direct, proximate and foreseeable result of the Defendants' breach of an express warranty, the University has been damaged in an amount equal to the cost of repairing, replacing, and/or reinstalling the roofing system so as to provide the University with a roofing system that is free of defects and performs properly.

#### COUNT IV

##### (Breach of Implied Warranty Against All Defendants)

59. The University incorporates herein by reference each and every allegation set forth in paragraphs 1 through 58 of this Complaint as though each and every allegation and paragraph were set forth herein verbatim.

60. All of the named Defendants impliedly agreed to provide a metal roofing system that was fit for a particular purpose; namely, that the roofing system would be free from leaks for a period of thirty (30) years.

61. The University relied upon the implied promise that the building would be covered by a metal roofing system with a leak free thirty (30) year warranty when it decided to enter into contracts regarding the Project.

62. In performing their work on the Project, the defendants failed to provide a metal roofing system that was fit for a particular purpose -- namely, a roofing system free from leaks for a period of thirty (30) years -- and instead provided a roofing system that was deficient and did not in fact provide a leak free cover for the building for thirty (30) years.

63. The defendants' failure to provide a metal roofing system that was leak free for thirty (30) years constitutes a breach of an implied warranty.

64. As a direct, proximate and foreseeable result of the Defendants' breach of an implied warranty, the University has been damaged in an amount equal to the cost of repairing, replacing, and/or reinstalling the roofing system so as to provide the University with a roofing system that is free of defects and performs properly.

## COUNT V

### (Breach of Express Limited Warranty Against Overly)

65. The University incorporates herein by reference each and every allegation set forth in paragraphs 1 through 64 of this Complaint as though each and every allegation and paragraph were set forth herein verbatim.

66. At the conclusion of the roofing work by Miller and after an inspection of the Miller work by Overly, on November 1, 2001, Overly issued a thirty (30) year Limited Warranty to the University warranting the metal roofing system against leakage due to defects in workmanship.

67. Within the limited warranty period, the University noticed leaks in the metal roofing system and promptly notified Overly who inspected the leaks and confirmed that the leaks were due to defects in workmanship.

68. After discovery of the problems with the metal roofing system, representatives of the University asked Overly to replace the defective roofing system pursuant to the thirty (30) year anti-leak warranty.

69. To date, Overly has refused to honor its warranty obligations to replace the metal roofing system.

70. Under the express terms of the Overly Limited Warranty, Overly is liable to the University in an amount equal to the cost of repairing, replacing, and/or reinstalling the

roofing system so as to provide the University with a roofing system that is free of defects and performs properly.

## COUNT VI

### (Negligent Misrepresentation Against Overly)

71. The University incorporates herein by reference each and every allegation set forth in paragraphs 1 through 70 of this Complaint as though each and every allegation and paragraph were set forth herein verbatim.

72. As required by the Project specifications under section 07410, paragraphs 1.03.C. and 1.04.C., Overly represented to the University that Miller was a qualified installer of the Overly metal roofing system.

73. In a letter certifying to the University that Miller was a qualified installer of the Overly metal roofing system, Overly also represented to the University that it would inspect Miller's work for defects in workmanship prior to issuing the Overly Limited Warranty.

74. At the conclusion of the roofing work by Miller, Overly issued the Overly thirty (30) year Limited Warranty.

75. Overly made the foregoing affirmative representations to the University without any reasonable factual basis for the representation.

76. Based upon these representations, the University approved Miller as an installer of the Overly metal roofing system and the University approved payment applications that included Miller's work on the project.

77. As a direct, proximate and foreseeable result of the negligent misrepresentations of Overly, the University has been damaged in an amount equal to the cost of repairing, replacing, and/or reinstalling the roofing system so as to provide the University with a roofing system that is free of defects and performs properly.

## COUNT VII

### (Negligent Misrepresentation Against Sverdrup and Moody/Nolan)

78. The University incorporates herein by reference each and every allegation set forth in paragraphs 1 through 77 of this Complaint as though each and every allegation and paragraph were set forth herein verbatim.

79. Periodically during the course of the Project, and particularly during the installation of the metal roofing system, Miller certified to Sverdrup, Sverdrup certified to Moody/Nolan, and Moody/Nolan certified to the University, that the installation of the metal roofing system had been completed in a workmanlike manner and in accordance with the contract documents, including the plans and specifications.

80. Sverdrup and Moody/Nolan made the foregoing affirmative representations to the University without any reasonable factual basis for the representations.

81. Based upon the various certifications that the installation of the metal roofing system had been completed in a workmanlike manner and in accordance with the contract documents, including the plans and specifications, the University approved payment for the installation work.

82. As a direct, proximate and foreseeable result of the negligent misrepresentations of Sverdrup and Moody/Nolan, the University has been damaged in an amount equal to the cost of repairing, replacing, and/or reinstalling the roofing system so as to provide the University with a roofing system that is free of defects and performs properly.

WHEREFORE, the University respectfully requests that this Honorable Court:

(a) Enter a judgment in its favor against the defendants, jointly and severally, in an amount determined at trial for the repair and/or replacement of the metal roofing system;

(b) . Award the University pre and post judgment interest, costs and expenses, including reasonable attorneys' fees, incurred in connection with this suit;

(c) Order that Overly specifically perform its Limited Warranty obligations;  
and

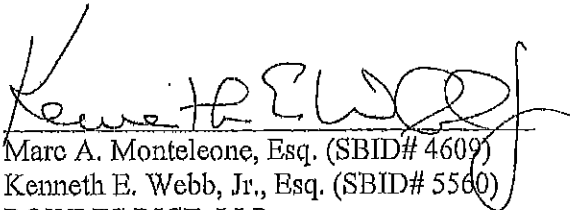
(d) Award the University such other and further relief as is just and proper under the circumstances.



PLAINTIFF DEMANDS A TRAIL BY JURY.

WEST VIRGINIA UNIVERSITY BOARD  
OF GOVERNORS, a statutory corporation,  
for and on behalf of West Virginia  
University,

By Counsel,



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