

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

EXHIBIT
C

Plaintiff,

v.

Civil Action No.: 16-C-383
Judge Russell M. Clawges, Jr.

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,

Defendants.

ANSWER, AFFIRMATIVE DEFENSES, AND CROSS-CLAIMS OF DEFENDANT
JACOBS FACILITIES, INC.

Comes now Defendant, Jacobs Facilities, Inc., (referred to in the Complaint as "Sverdrup," which will be used herein for consistency and ease of reference), and in response to the Complaint filed in this action, states as follows:

1. Sverdrup is without knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.
2. Sverdrup avers that the statements and allegations made in Paragraph 2 of the Complaint are legal conclusions to which no response is necessary, but to the extent Paragraph 2 of the Complaint contains factual allegations, Sverdrup denies them.
3. Sverdrup denies the allegations contained in Paragraph 3 of the Complaint and states that Jacobs Facilities, Inc., was dissolved effective September 24, 2010, and that all assets that Jacobs Facilities, Inc., used in the performance of its PM and CM contracts, including those contracts, and all obligations and liabilities of Jacobs Facilities, Inc., under those assets, have been

transferred, conveyed, assigned, and turned over to Jacobs Project Management Company, a Delaware corporation.

4. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. Sverdrup admits the allegations contained in Paragraph 7 of the Complaint.

8. Sverdrup avers that the allegations contained in Paragraph 8 of the Complaint are legal conclusions to which no response is necessary, but to the extent Paragraph 8 of the Complaint contains factual allegations, Sverdrup denies them.

9. Sverdrup admits the allegations contained in Paragraph 9 of the Complaint.

10. Sverdrup admits the allegations contained in Paragraph 10 of the Complaint.

11. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint.

12. Sverdrup is without knowledge with respect to Paragraph 12 of the Complaint.

13. Sverdrup admits the allegations contained in Paragraph 13 of the Complaint.

14. Sverdrup denies the allegations contained in Paragraph 14 of the Complaint.

15. Sverdrup avers that the Project specifications speak for themselves and otherwise denies the allegations contained in Paragraph 15 of the Complaint.

16. Sverdrup avers that the Project specifications speak for themselves and otherwise denies the allegations contained in Paragraph 16 of the Complaint.

17. Sverdrup avers that the phrase "Pursuant to the Project specifications" in Paragraph 17 of the Complaint is a legal conclusion to which no response is necessary, but to the extent Paragraph 17 of the Complaint contains factual allegations, Sverdrup denies them.

18. Sverdrup avers that phrase "Pursuant to the Project specifications" in Paragraph 18 is a legal conclusion to which no response is necessary, but to the extent Paragraph 18 of the Complaint contains factual allegations, Sverdrup is without knowledge or information sufficient to form a belief as to their truth.

19. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.

22. Sverdrup admits the allegation contained in Paragraph 22 of the Complaint that Overly "issued the 30-year Overly warranty" but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 22 of the Complaint.

23. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint.

24. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint.

25. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint.

26. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint.

27. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint.

28. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint.

29. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint.

30. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint.

31. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint.

32. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint.

33. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint.

34. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint.

35. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint.

36. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint.

37. Sverdrup denies the allegation contained in Paragraph 37 of the Complaint that Sverdrup was asked to replace the roofing system for the Project, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 37 of the Complaint.

38. Sverdrup denies the allegation contained in Paragraph 38 of the Complaint that Sverdrup "refused to honor...[its]...warranty obligations to replace the metal roofing system," because Sverdrup has no such warranty obligations, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 38 of the Complaint.

39. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint.

COUNT I

40. Sverdrup incorporates by reference each and every response to the allegations set forth in Paragraphs 1-39 of the Complaint as if those responses were set forth here verbatim.

41. Sverdrup admits the allegations contained in Paragraph 41 of the Complaint.

42. Sverdrup denies the allegations contained in Paragraph 42 of the Complaint.

43. Sverdrup denies the allegations contained in Paragraph 43 of the Complaint.

44. Sverdrup denies the allegations contained in Paragraph 44 of the Complaint.

45. Sverdrup denies the allegations contained in Paragraph 45 of the Complaint.

COUNT II

46. Sverdrup incorporates by reference each and every response to the allegations set forth in Paragraphs 1-45 of the Complaint as if those responses were set forth here verbatim.

47. Sverdrup admits the allegations contained in Paragraph 47 of the Complaint.

48. Sverdrup denies the allegations contained in Paragraph 48 of the Complaint.

49. Sverdrup denies the allegations contained in Paragraph 49 of the Complaint.

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

51. Sverdrup denies the allegations contained in Paragraph 51 of the Complaint.

52. Sverdrup denies the allegations contained in Paragraph 52 of the Complaint.

COUNT III

53. Sverdrup incorporates by reference each and every response to the allegations set forth in Paragraphs 1-52 of the Complaint as if those responses were set forth here verbatim.

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

55. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint.

56. Sverdrup denies the allegations contained in Paragraph 56 of the Complaint.

57. Sverdrup denies the allegations contained in Paragraph 57 of the Complaint.

58. Sverdrup denies the allegations contained in Paragraph 58 of the Complaint.

COUNT IV

59. Sverdrup incorporates by reference each and every response to the allegations set forth in Paragraphs 1-58 of the Complaint as if those responses were set forth here verbatim.

60. Sverdrup denies the allegations contained in Paragraph 60 of the Complaint.

61. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint.

62. Sverdrup denies the allegations contained in Paragraph 62 of the Complaint.

63. Sverdrup denies the allegations contained in Paragraph 63 of the Complaint.

64. Sverdrup denies the allegations contained in Paragraph 64 of the Complaint.

COUNT V

65. Sverdrup incorporates by reference each and every response to the allegations set forth in Paragraphs 1-64 of the Complaint as though those responses were set forth here verbatim.

66. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint.

67. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint.

68. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint.

69. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint.

70. Sverdrup denies the allegations contained in Paragraph 70 of the Complaint.

COUNT VI

71. Sverdrup incorporates by reference each and every response to the allegations set forth in Paragraphs 1-70 of the Complaint as if those responses were set forth here verbatim.

72. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint.

73. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint.

74. Sverdrup admits the allegations contained in Paragraph 74 of the Complaint.

75. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 of the Complaint.

76. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint.

77. Sverdrup denies the allegations contained in Paragraph 77 of the Complaint.

COUNT VII

78. Sverdrup incorporates by reference each and every response to the allegations set forth in Paragraphs 1-77 of the Complaint as if those responses were set forth here verbatim.

79. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint.

80. Sverdrup denies the allegations contained in Paragraph 80 of the Complaint.

81. Sverdrup is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint.

82. Sverdrup denies the allegations contained in Paragraph 82 of the Complaint.

83. Sverdrup denies each and every allegation of the Complaint not herein expressly admitted.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

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

SECOND DEFENSE

The claims against Sverdrup are barred by the Statute of Repose, West Virginia Code §55-2-6(a).

THIRD DEFENSE

The claims against Sverdrup are all barred by the applicable Statute of Limitations.

FOURTH DEFENSE

The claims against Sverdrup are barred by the terms of a prior settlement agreement dated August 11, 2005.

FIFTH DEFENSE

Sverdrup complied and performed all of its obligations under the terms of its agreement with WVU, and therefore the claims against Sverdrup are without merit.

SIXTH DEFENSE

WVU released Sverdrup from any further obligations with respect to the Project is executing a prior settlement agreement and release dated August 11, 2005.

SEVENTH DEFENSE

In executing a prior settlement agreement, dated August 11, 2005, WVU expressly assumed the risk that a claim or claims against Sverdrup might later arise.

EIGHTH DEFENSE

WVU has waived all claims against Sverdrup arising out of the Project.

NINTH DEFENSE

Sverdrup reserves the right to raise additional defenses or affirmative defenses as they may appear through discovery, or otherwise, in the future.

WHEREFORE, Sverdrup prays that all claims against it be dismissed and held for naught, that it be dismissed as a party with prejudice, and that it recover its costs, including reasonable attorneys' fees, incurred in defense of this action.

CROSS-CLAIM OF SVERDRUP AGAINST DONALD M. MILLER COMPANY

For its cross-claim against Defendant Donald M. Miller, Inc., Sverdrup states:

1. Defendant Jacobs Facilities, Inc. was a Missouri business corporation formerly known as Sverdrup Facilities, Inc., having its principal place of business located at 400 South 4th Street, St. Louis, Missouri. Jacobs Facilities, Inc., was a wholly owned subsidiary of Jacobs Engineering Group, Inc. On September 24, 2010, Jacobs Facilities, Inc., was dissolved into Jacobs Engineering Group, Inc. All of the PM and CM contracts of Jacobs Facilities, Inc., were transferred, assumed by, and assigned to Jacobs Project Management Company, a Delaware Corporation. Jacobs Project Management Company assumed all obligations and liabilities of

Jacobs Facilities, Inc., under those PM and CM contracts. For ease of reference, Jacobs Project Management Company is referred to in this Answer and in the cross-claim as "Sverdrup."

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

3. On or about April 22, 1998, WVU contracted with Sverdrup to act as the construction manager and constructor of a new student recreation center to be located on the West Virginia University Evansdale campus in Morgantown, West Virginia (the "Project").

4. Miller represented to Sverdrup, both implicitly and expressly, that it was capable and qualified to install the roofing system specified for the Project.

5. Sverdrup entered into a subcontract agreement with Miller, whereby Miller would install the metal roofing specified for the Project.

6. Miller installed the specified roofing system for the Project, and represented to Sverdrup that it was installed in accordance with the plans and specifications for the Project.

7. WVU now asserts that the roofing system specified for the Project was not installed in accordance with the plans and specifications, despite Miller's representations to the contrary.

8. Miller is obligated to indemnify Sverdrup for the claims made against Sverdrup related to Miller's work under its subcontract agreement with Sverdrup.

9. As a direct and proximate result of Miller's action, errors, or omissions in installing the roofing system specified for the Project, Miller is or may be liable to Sverdrup for all or part of WVU's claims against Sverdrup.

WHEREFORE, Sverdrup demands judgment against Miller requiring Miller to indemnify Sverdrup for the claims made against Sverdrup in this action and for all or part of any claims of WVU against Sverdrup upon which WVU recovers.

CROSS-CLAIM AGAINST MOODY/NOLAN LIMITED, INC.

For its cross-claim against Moody/Nolan Limited, Inc., Sverdrup states:

1. Defendant Jacobs Facilities, Inc. was a Missouri business corporation formerly known as Sverdrup Facilities, Inc., having its principal place of business located at 400 South 4th Street, St. Louis, Missouri. Jacobs Facilities, Inc., was a wholly owned subsidiary of Jacobs Engineering Group, Inc. On September 24, 2010, Jacobs Facilities, Inc., was dissolved into Jacobs Engineering Group, Inc. All of the PM and CM contracts of Jacobs Facilities, Inc., were transferred, assumed by, and assigned to Jacobs Project Management Company, a Delaware Corporation. Jacobs Project Management Company assumed all obligations and liabilities of Jacobs Facilities, Inc., under those PM and CM contracts.

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

3. On or about April 22, 1998, WVU contracted with Sverdrup to act as the construction manager and constructor of a new student recreation center to be located on the West Virginia University Evansdale campus in Morgantown, West Virginia (the "Project").

4. WVU contracted with Moody/Nolan to serve as the Project architect.

5. Moody/Nolan designed the metal roofing system Moody/Nolan specified for the Project and developed specifications for the metal roofing system that met its design intent.

6. WVU now asserts that the metal roofing system for the Project has failed and asserted claims against Sverdrup.

7. As a direct and proximate result of Moody/Nolan's actions, errors, or omissions, Moody/Nolan is or may be liable to Sverdrup for all or part of WVU's claims against Sverdrup.

WHEREFORE, Sverdrup demands judgment against Moody/Nolan for the claims made against Sverdrup in this action and for all or part of any claim of WVU against Sverdrup upon which WVU recovers.

CROSS-CLAIM AGAINST OVERLY MANUFACTURING COMPANY

For its cross-claim against Overly Manufacturing Company, Sverdrup states as follows:

1. Defendant Jacobs Facilities, Inc. was a Missouri business corporation formerly known as Sverdrup Facilities, Inc., having its principal place of business located at 400 South 4th Street, St. Louis, Missouri. Jacobs Facilities, Inc., was a wholly owned subsidiary of Jacobs Engineering Group, Inc. On September 24, 2010, Jacobs Facilities, Inc., was dissolved into Jacobs Engineering Group, Inc. All of the PM and CM contracts of Jacobs Facilities, Inc., were transferred, assumed by, and assigned to Jacobs Project Management Company, a Delaware Corporation. Jacobs Project Management Company assumed all obligations and liabilities of Jacobs Facilities, Inc., under those PM and CM contracts.

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

3. On or about April 22, 1998, WVU contracted with Sverdrup to act as the construction manager and constructor of a new student recreation center to be located on the West Virginia University Evansdale campus in Morgantown, West Virginia (the "Project").

4. Defendant Moody/Nolan was engaged by WVU to act as the Project architect.

5. Moody/Nolan designed the metal roofing system for the Project and developed specifications for it that met its design intent.

6. In performing its scope of work related to the metal roofing system specified for the Project, Sverdrup submitted to Moody/Nolan for approval a thirty (30) year metal roofing system manufactured by Overly.

7. Overly, as the manufacturer of the metal roofing system, certified that Defendant Donald M. Miller Company ("Miller") "...has proven the ability to install metal roofing systems in accordance with the approved drawings and instructions" and, at the beginning of the installation of the metal roofing, showed Miller how to install the metal roofing system specified for the Project.

8. 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]."

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

10. When installation of the metal roofing system for the Project had been completed, Overly performed a final inspection of the installed roofing system, determined that Miller's installation was performed in accordance with the plans and specifications for the Project, and issued a thirty (30) year warranty.

11. After allegedly discovering leaks in the metal roofing system specified for the Project in 2015, representatives of WVU requested that Overly replace the roofing system pursuant to the warranty Overly had issued.

12. Overly has to date refused to replace the metal roofing system for the Project under the warranty it issued.

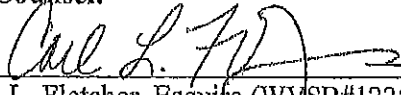
13. As a direct and proximate result of Overly's actions, errors, or omissions, Overly is or may be liable to Sverdrup for all or part of WVU's claims against Sverdrup asserted in this action.

WHEREFORE, Sverdrup demands judgment against Overly for the claims made against Sverdrup in this action and for all or part of any claim of WVU against Sverdrup upon which WVU recovers.

Respectfully submitted,

**Jacobs Project Management Company on behalf
of Defendant, Jacobs Facilities, Inc.**

By Counsel:



Carl L. Fletcher, Esquire (WVSB#1225)
Gene W. Bailey, Esquire (WVSB#203)
HENDRICKSON & LONG, PLLC
214 Capitol Street
Charleston, West Virginia 25301
Counsel for Defendant Jacobs Facilities, Inc.

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
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Plaintiff,

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Civil Action No.: 16-C-383
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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,

Defendants.

CERTIFICATE OF SERVICE

I, Carl L. Fletcher, Counsel for Jacobs Facilities, Inc., hereby certify that on September 9, 2016, I served the foregoing "ANSWER, AFFIRMATIVE DEFENSES, AND CROSS-CLAIMS OF DEFENDANT, JACOBS FACILITIES, INC. upon counsel of record as listed below, by placing the same in the United States mail, postage prepaid, addressed as follows:

Marc A. Monteleone, Esquire (WVSB#4609)
Kenneth E. Webb, Jr., Esquire (WVSB#5560)
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600 Quarrier Street
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Counsel for Plaintiff

By: 

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September 9, 2016

Monongalia County Circuit Clerk
75 High Street, #12
Morgantown, WV 26605

RE: West Virginia University Board of Governors v. Jacobs Facilities, Inc., et al., CAN
16-C-383

Dear Sir:

Enclosed for filing in the above referenced matter please find the original "ANSWER, AFFIRMATIVE DEFENSES, AND CROSS-CLAIMS OF DEFENDANT JACOBS FACILITIES, INC," as well as a check in the amount of \$200.00. A complete copy has this day been provided to counsel of record via First Class US Mail.

Thank you for your time and assistance with this matter. If you have any questions or concerns, please feel free to contact me.

Very truly yours,

HENDRICKSON & LONG, PLLC

Carl L. Fletcher

CLF/as

Enclosure

cc: All Counsel of Record

SEP 12 '16