

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
Hon. Russell M. Clawges

**EXHIBIT
B**

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.

**MOODY/NOLAN LTD.'s MOTION TO
DISMISS COUNT III AND IV OF
WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS'
COMPLAINT**

**MOODY/NOLAN LTD.'s MOTION TO DISMISS COUNT III AND IV OF WEST
VIRGINIA UNIVERSITY BOARD OF GOVERNORS' COMPLAINT**

Pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure defendant
Moody/Nolan Ltd., Inc. ("Moody/Nolan") moves this Court to dismiss Count III (Breach of
Express Warranty) and Count IV (Breach of Implied Warranty) of West Virginia University
Board of Governors' ("WVU") Complaint.

1. Introduction.

As alleged, WVU cannot prove its claim of breach of express warranty against
Moody/Nolan. WVU's warranty claim relies entirely on a document that, on its face, contradicts
their allegations. Additionally, the breach of implied warranty claim is barred by the applicable
statute of limitations. A warranty only survives beyond the statute of limitations if it explicitly
extends to the future. By definition, an implied warranty cannot explicitly extend into the future.

2. Standard of Review.

Rule 12(b)(6) of the West Virginia Rules of Civil Procedure “permits a party to file a motion in the circuit court, prior to filing an answer, to dismiss a claim for failure to state a cause of action.” *Shaffer V. Charleston Area Medical Center*, 199 W.Va. 428, 485 S.E.2d 12 (1997). Rule 12(b)(6) is designed to test the formal sufficiency of the complaint. *Mandolidis v. Elkins Indus., Inc.*, 161 W. Va. 695, 246 S.E.2d 907 (1978). A motion under Rule 12(b)(6) enables a court to weed out unfounded suits. *Harrison v. Davis*, 197 W.Va. 651 n.17, 478 S.E.2d 104 n.17 (1996).

For the purposes of a motion to dismiss, the allegations contained in the plaintiff's complaint must be accepted as true and construed in the light most favorable to the plaintiff. *See Wiggins v. Eastern Associated Coal Corporation*, 178 W. Va. 63, 357 S.E.2d 745 (1987); *See also Harless v. First National Bank in Fairmont*, 162 W. Va. 116, 246 S.E.2d 270 (1978). If it appears beyond doubt that the Plaintiff can prove no set of facts in support of a claim that would entitle him to relief, the motion to dismiss should be granted. *Owen v. Board of Educ.*, 190 W. Va. 677, 441 S.E.2d 398 (1994).

3. Argument.

A. WVU has alleged no facts that could support the existence of an express warranty by Moody/Nolan.

It is clear that “in ruling upon a motion to dismiss under Rule 12(b)(6), a court may consider, in addition to the pleadings, documents annexed to it, and other materials fairly incorporated within it. This sometimes includes documents referred to in the complaint but not annexed to it.” *Forshey v. Jackson*, 222 W.Va. 743, 747, 671 S.E.2d 748, 752 (2008) (quoting Franklin D. Cleeckley, Robin J. Davis, & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 12(b)(6)[2], at 348 (3d ed. 2008)). “The complaint is deemed to include any written instrument attached to it as an exhibit or any statement or documents in it by reference.” *Id.* at 748 (quoting *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152-53 (2d Cir.2002)). When a plaintiff relies on a document in their pleadings, they have actual notice of its contents. *See Id.*

Therefore, there would be no prejudice in dismissing a complaint that relies on untrue statements about a referenced document. *See Id.*

WVU claims that Moody/Nolan “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.” (Complaint ¶ 54.) WVU’s claim against Moody/Nolan for breach of express warranty rests entirely on the contents of specification section 07410, paragraph 1.06.A.1. For obvious reasons, WVU failed to attach the relevant section of the relied on document to their Complaint. Section 07410, paragraph 1.06.A.1, only mentions the, “Panel manufacturer’s 30 year warranty against leakage of the installed metal batten roofing system.” (Section 07410 attached as Exhibit A.)

The warranty referenced in Section 07410, paragraph 1.06.A.1, clearly only applies to the panel manufacturer. WVU does not allege that Moody/Nolan is the panel manufacturer. To the contrary, WVU only alleges that Moody/Nolan designed and developed specifications for the roof. (Complaint ¶ 12.) The panel manufacture is Overly Manufacturing Company (Complaint ¶ 17.) WVU’s Complaint relies on Section 07410, paragraph 1.06.A.1, as the basis for the express warranty against Moody/Nolan, but the plain text of the section contradicts their allegations. WVU can prove no set of facts in support of their claim and, thus, Count III should be dismissed.

B. WVU’s claim for Breach of implied warranty is barred by the WVUCC’s statute of limitations.

Under the West Virginia Uniform Commercial Code (“WVUCC”), “A breach of warranty occurs when tender of delivery is made[...].” W. Va. Code §46-2-725(2). After delivery is made, a warranty claim has a statute of limitations of four years unless it “*explicitly* extends to future performance of the goods.” W. Va. Code §46-2-725(1) (emphasis added). An implied warranty cannot possibly *explicitly* extend to the future performance of the goods. Implied warranties, like the implied warranty of merchantability, exist irrespective of whether the seller has expressly promised them orally or in writing. By contrast, an express warranty includes “[a]ny affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of

the basis of the bargain[...]" W. Va. Code §46-2-313(1)(a). If a warranty is explicit, it is clearly an express warranty.

WVU alleges that Moody/Nolan "impliedly agreed" and made an "implied promise" that the roof would be leak free for thirty (30) years. (Complaint ¶¶ 60-61.) For the exception to the statute of limitations to apply, the warranty must be explicit. Any explicit claim that the roof would be leak free for thirty (30) years would be an express warranty and not an implied warranty. WVU's claims put Moody/Nolan in the impossible position of implying an express warranty.

Roofing work was concluded by November 1, 2001. (Complaint ¶ 66.) By November 1, 2001 tender of the delivery was clearly made, and the statute of limitations began to run. This suit was filed on July 18, 2016, which is over ten years after the statute of limitations ran. WVU's implied warranty claim should, therefore, be barred as being outside the four year statute of limitations.

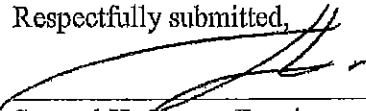
4. Conclusion:

WVU mischaracterized a document that their pleading relied on to establish an express warranty by Moody/Nolan. Without the document's support, WVU Complaint contains no other allegations that could prove an express warranty existed. Finally, the implied warranty must be barred by the statute of limitations because an implied warranty cannot explicitly extend into the future.

Dated: August 19, 2016

HOUSTON HARBAUGH, P.C.

Respectfully submitted,



Samuel H. Simon, Esquire

WV L.D. #9244

HOUSTON HARBAUGH, P.C.

Three Gateway Center

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Attorney for Defendant,

Moody/Nolan Ltd., Inc.

SECTION 07410

METAL ROOFING

PART 1 GENERAL

1.01 WORK INCLUDED

- A. Provide metal batten roofing system complete, including prefabricated roof sheets, batten bars, batten caps, fasteners, flashing, trim, gutters, snow guards and accessories as indicated and specified.

1.02 WORK SPECIFIED IN OTHER SECTIONS

- A. Nailable Roof Insulation: Section 07220.
- B. Sealant: 07900.
- C. Vapor Barrier (Nataorium): Section 07260.

1.03 QUALITY ASSURANCE

A. Reference Standards

1. American Society for Testing and Materials (ASTM).
 - a. B209: Aluminum Alloys Sheet and Plate.
 - b. A792: Steel Sheet, Aluminum-Zinc Alloy Coated by the Hot-Dip Process, Structural Quality, minimum 50,000 psi yield strength in appropriate gage.
2. National Roofing Contractors Association (NRCA).
"The NRCA Construction Details".
3. Sheet Metal and Air Conditioning Contractors National Association (SMACNA)
"Architectural Sheet Metal Manual".
4. American Iron and Steel Institute
"Light Gage Cold-Formed Steel Design Manual".

B. Manufacturer Qualifications and Responsibilities

1. Minimum 10 years experience in architectural roofing; and roof panel supplied shall have been in use for a minimum 10 years.
2. Review and comment to Architect on shop drawings submitted.

C. Installer Qualifications

1. Approved and authorized by roofing manufacturer. Provide supervisory personnel trained by roofing manufacturer in the proper application of product with a minimum related experience of 10 years.



2. Minimum 5 years experience in sheet metal roofing with previous experience in comparable size projects.

D. Wind Uplift: Meet or exceed requirements of U.L. for Class 90 Wind Uplift Resistance.

E. Water Penetration: Provide panel system with no water penetration as defined in the test method when tested in accordance with ASTM E331 at an inward static pressure differential of 12.5 psf.

1.04 SUBMITTALS

A. Shop Drawings: Submit for all items in accordance with the General Conditions and Section 01332. Include the following:

1. Panel profile and gage.
2. Erection layout.
3. Special framing details.
4. Flashing details.

B. Samples: Submit minimum 9 inch long by full width sample showing finish, pattern, color, gage and profile.

C. Certification

1. Submit written evidence from manufacturer of roofing system that installer is approved by manufacturer for installation of specified roofing system.
2. Submit copies of production quality control test and written assurance from an officer of manufacturer that materials furnished for the project are the same type and dimension as that produced for tests.

1.05 HANDLING AND STORAGE

A. Exercise care so as not to damage or deform materials.

B. Stack on platforms or pallets and cover to protect from weather.

C. Provide anti-stick compound or ply on finished surfaces to protect finish. Compound or ply shall be readily removable type with no adverse effects on finish.

1.06 WARRANTY

A. Prior to completion of project, submit copies of the following:

1. Panel manufacturer's 30 year warranty against leakage of the installed metal batten roofing system.
2. Panel manufacturer's 20 year warranty against structural defects and corrosion.
3. See Section 05030.

1.07 SYSTEM PERFORMANCE REQUIREMENTS

- A. Design metal roof system to provide the following:
1. Continuous backup gutter channel for drainage of leakage and condensation to exterior.
 2. Independent movement of roof components consistent with a thermal range from -20 to +180 degrees F and consistent with anticipated movement of building structure.
 3. Provision for non-destructive selective removal and replacement of individual roof components.
 4. Provide batten system watertight without reliance on sealants or elastomeric membranes.
 5. Design flashing assemblies and gutter assemblies watertight without reliance on sealants or elastomeric membranes.
 6. Wind uplift resistance as determined by ANSI A58 analysis with a safety factor of 1.5.

PART 2 PRODUCTS

2.01 MATERIALS

- A. Roofing Sheets and Flashings: .040 gage, 3003-H14 alloy aluminum.
- B. Joints: Batten bars and caps. Approximately 1-3/4" high x 1-3/8" wide. Caps to overlap roofing sheet standing legs approximately 1".
1. Batten Bar: Continuous extruded aluminum bar engaged in continuous aluminum clip; provide with clamp nut spaced as recommended by roofing manufacturer.
 2. Batten Cap: .051 gage 6063-T5 aluminum.
 3. OVERLY Type B joint.
 4. Batten Spacing: 45-3/4". Provide tapered panels where indicated.
- C. Panel Length: As long as practicable.
- D. Fluoropolymer baked enamel finish with Kynar 500 (70%) resins by ELF ATOCHEM OF NORTH AMERICA INC. See Section 05030, Fluoropolymer Coatings.

2.02 ACCESSORIES

- A. Flashing, Trim and Accessories: Same material and finish as roofing panel. Gage of various components as designed by roofing manufacturer to meet design conditions encountered. Fabricate to profiles indicated.
- B. Batten Bar Fasteners: Stainless steel, type and length as recommended by roofing manufacturer for substrates encountered.
- C. Exposed Flashing Fasteners: #300 stainless steel round head machine screws.

- D. Sealant used with the roofing shall be applied between surfaces during assembly with a minimum amount exposed on the completed installation.
1. Concealed sealant shall be a non-curing polyisobutylene tape of sufficient thickness to make full contact with both surfaces.
 2. Exposed Sealant: Urethane elastomeric type with excellent weathering and sunlight resistance. See Section 07900.
 - a. Color: Match prefinished exterior metal.
 - b. Apply sealant in accordance with manufacturer's recommendations.
- E. Roofing Felt Underlayment
1. Type: Asphalt-saturated felt. ASTM D4869, Type I.
 2. Weight: 15 lbs per 100 square feet.
 3. Size: 36 inch minimum roll width.
- F. Eave Protection
1. Material: Polyethylene sheet backed rubberized asphalt membrane, 40 mils thick.
 2. Properties
 - a. Tensile Strength – ASTM D1970: 40 lbf/in. minimum.
 - b. Permeance – ASTM E96: 0.1 perms maximum.
 - c. Peel Adhesion – ASTM D903: 12 lbs/in. width
 - d. Elongation – ASTM D1970: 10% min.
 3. Manufacturers: WIP 200 by MIRADRI; Bituthene Ice and Water Shield by W.R. GRACE; Polyken 640 Underlayment Membrane by POLYKEN TECHNOLOGIES; Polyguard Deck Guard by POLYGUARD PRODUCTS; Weather Watch by GAF; Winterguard by CERTAINTEED.
- G. Snow Guards: Provide snow guards fabricated from aluminum shapes consisting of: U-shaped batten caps screwed to battens; mounting plates at each batten welded to batten caps; continuous snow guard angles bolted to mounting plates. Provide two (2) rows at each eave. Finish snow guards to match roof.
1. First Row: 18" above gutter.
 2. Second Row: Halfway point to apex.

2.03 FABRICATION

- A. Shop fabricate to the maximum extent practicable.
1. Brake-form to the indicated arrangement and profile with sharply defined lines and with braked shapes sharp and true. Seams, (battens,) ridges and other edges and corners are straight and well aligned.
 2. Tolerances: Maximum 1/16" in 8' of length (non-accumulative) and maximum 3/8" in 40' or more.
 3. Flat Planes: Free of wave, warp, buckle, oil canning or other deficiencies in appearance.
 4. Battens: Straight, of uniform height and profile and without wave.

5. Lay out panels so cross seams, when required, will be made in the direction of flow with higher pans overlapping lower pans.
 - a. Provide special lock seam 1-3/4" wide at top and bottom of each roofing sheet.
 - b. Do not carry lock seam over the batten but notch so the sheet has a lap of 3-1/2" where seam turns up against the batten.
6. Cross Seams: Provide continuous sight line.
7. Gutters: Profile as indicated on drawings; approximately 9" x 9". Provide segmented at curved roofs. Short segment lengths to be utilized, as determined by manufacturer and approved by Architect.

2.05 MANUFACTURER AND DESIGN

- A. Basis of Design: Drawings and specifications are based on batten roof system manufactured by OVERLY MANUFACTURING COMPANY.
- B. Other Manufacturers: Systems designed and manufactured by MM SYSTEMS CORPORATION or equal are acceptable providing they meet the requirements specified herein. System MM SYSTEMS or other manufacturers must be approved during bidding.
- C. Design roofing system in accordance with the dimensions and general arrangements indicated on the drawings.

PART 3 EXECUTION

3.01 INSPECTION

- A. Before installation of panels, verify that the structure is ready to receive work. Check field dimensions and alignment of structural members to assure that the roof panels and flashing are straight and true.
- B. Notify Architect of conditions which may adversely affect the appearance of the installed roof; work on that location will not proceed until resolved by the Architect.

3.02 UNDERLAYMENT INSTALLATION

- A. Perimeter Underlayment
 1. Apply eave protection underlayment in accordance with manufacturer's instructions.
 2. Provide two (2) rows of eave protection, approximately 5'-9" wide. Continue to vertical surface (fascia) where indicated.
 3. Place around entire perimeter of roof.
- B. Roofing Felt
 1. Apply one layer of felt underlayment horizontal over entire roof surface, including surfaces receiving perimeter underlayment. Lap succeeding courses a minimum of 2 inches; end laps a minimum of 4 inches.

2. Secure felt underlayment to deck with roofing nails 1 inch in from edge and 12 inches o.c. Three rows per sheet width.

3.03 INSTALLATION

- A. Erect in accordance with Drawings, Shop Drawings and manufacturer's instructions under the direct supervision of an experienced sheet metal craftsman trained in application of metal roofing.
- B. General
 1. Do not allow installed work of this section to be used as a storage space for other materials.
 2. Do not permit unnecessary walking on the finished roof. Require personnel to wear rubber-soled shoes when installing or walking on finished roof.
- C. Erect panels true and to the slopes indicated on the drawings. Final appearance of the roof shall be visually flat, straight and free from defects, oilcans and dents.
- D. Install all work so as to allow for thermal movement without distortion or elongation of fastener holes.
- E. Installation Tolerance: Shim and align panel units within installed tolerance of 3/8" in 40' on level/plumb/slope and location/line as indicated, and within 1/8" offset of adjoining faces and of alignment of matching profiles.

3.04 FIELD TESTING

- A. Conduct 20 random fastener pull tests in areas designated by Architect. Submit test results for comparison to design requirements.
- B. Block gutter drains, fill gutters with water, and allow water to stand for 24 hours. Repair gutters as required and retest until gutters are proven watertight.

3.05 DAMAGED PANELS

- A. Do not install panels that are bent, chipped, or otherwise damaged.
- B. Refinish all abraded surfaces to match original finish, using materials and methods recommended by roofing manufacturer. Materials shall be fully compatible with the original finish system.
- C. Repaired surfaces shall be uniform and free from variations in color and surface texture from that of adjacent, like surfaces.
- D. If repaired sheet is not acceptable to the Architect, remove sheet and replace with a new sheet, at no additional cost to the Owner.

3.06 CLEAN UP

- A. Clean all roofing surfaces of dirt, grime, excess sealant and other surface blemishes.
- B. Remove from the site all excess material, shipping cartons debris and etc., related to the roofing work.

3.07 PROTECTION

- A. Protect installed panels from abuse by other trades.
- B. Installing Contractor shall advise General Contractor of any necessities for protection from the work of other trades.

END OF SECTION

SECTION 07550

MODIFIED BITUMEN ROOFING

PART 1 GENERAL

1.01 WORK INCLUDED

- A. Provide a mop applied two ply modified bitumen roof system over tapered rigid and flat rigid insulation on metal deck as indicated and specified. Work includes:
 - 1. Two ply (base and granular surfaced top) mop applied SBS modified membrane.
 - 2. Flashing, pipe seals, insulation vents and accessories.
 - 3. Installing roof flashing and roofing related sheet metal furnished under Section 07600.
- B. Related Work
 - 1. Wood Blocking: Section 06100.
 - 2. Flashing: Section 07600.
 - 3. Roof Drains, Vents and Curbs: Division 15.

1.02 QUALITY ASSURANCE

- A. Manufacturer Qualifications: Minimum five (5) years as the sole manufacturer of the brand name; furnish notarized certification that manufacturer has been in business and had roofs installed for a minimum of ten (10) years.
- B. Installer Qualifications: Experienced roofing installer approved or licensed by roofing materials manufacturer and with not less than five (5) years of successful experience installing a minimum of five (5) modified bitumen roofing systems similar to those required for this project.
- C. Manufacturer's Representative: Prior to, during installation and at the completion of the installation, an inspection shall be made in order to ascertain that the roofing system has been installed according to their published specifications, standards and details.
- D. Fire Classification: U.L. Class A.
- E. Factory Mutual (FM): Roof assembly classification of Class 1 Construction, wind uplift requirements of I-90 in accordance with FM Construction Bulletin 1-28.
- F. Owner reserves the right to cut test panels from the finished roof in order to determine that minimum requirements have been met.

1. Roof Installer: Repair, at no additional cost to the Owner, the roof where test panels were taken.

- G. Insulation Compatibility: Types of roof membrane and roof insulation selected for use shall be compatible as determined by roof membrane manufacturer. If a separation board or sheet is required, the cost shall be included in the bid.

1.03 SUBMITTALS

- A. Shop Drawings: Submit for all items in accordance with the procedures outlined in the General Conditions and Section 01332. Include as a minimum the following:

1. Layout of roof.
2. Setting plans for tapered insulation.
3. Location and type of penetrations.
4. Layout of mechanical fasteners, including perimeter requirements.
5. Perimeter, penetration and special details.
6. Description of all materials.

- B. Manufacturer's Approval: Obtain manufacturer's written approval of final shop drawings prior to beginning roofing operations.

- C. Samples: Submit samples of all roofing and flashing materials; 12" square samples of membrane indicating color and thickness.

- D. Submit certification from roofing manufacturer that:

1. Roofing membrane and the selected roofing insulation are compatible.
2. Specifications and drawing details are acceptable for the deck and surfacing materials to which materials are to be applied.

- E. Specimen copy of manufacturer's roofing warranty.

1.04 DELIVERY, STORAGE AND HANDLING

- A. Deliver materials in manufacturer's original, unopened, undamaged, labeled bundles or containers.

- B. Store roofing materials and accessories at the site in storage trailers or in the building in a dry, well-ventilated, weather tight place. Exterior storage not permitted. Comply with manufacturer's recommendations for handling and protection during installation.

1. Handle rolled goods to prevent damage to edge or ends.
2. Do not apply roofing materials to damp, frozen, dirty or dusty substrate surfaces.

- C. Protection

1. Protect adjacent materials and surfaces from damage and soiling during roofing system installation.
2. Provide special protection or avoid heavy traffic on completed roofing work.
3. Protect paving and structure walls adjacent to holsts before starting work.
4. Do not overload the building structure with storage of materials or installation equipment on the substrate decking.
5. Handle and store materials and equipment to avoid damage to substrate decking.

1.05 WARRANTY

A. Written Guarantee

1. Contractor, in conjunction with the Roofing Contractor and the manufacturer used, shall furnish a written ten (10) year guarantee on the complete roof installation.
 - a. Submit guarantee, in triplicate, to the Architect for review and filing.
 - b. Said guarantee shall begin when the project is completed and is accepted by the Owner.
2. Guarantee shall cover, at no cost to the Owner, labor and materials required to repair or replace roofing, flashing, sheet metal, copings and metal work against leaks or faulty workmanship. Costs for any of the above shall be absorbed by the Contractor, primarily, and his Roofing Contractor and materials manufacturer secondarily.

B. Contractor is to cover damages to the building resulting from failure to prevent penetration of water during construction.

C. If manufacturer, Contractor or roofing installer has any variance with these specifications in order to comply with required guarantees, submit concerns in writing to the Architect within ten (10) days prior to bid.

PART 2 PRODUCTS

2.01 MANUFACTURERS

- A. Basis of Design: Specifications are based on products manufactured by SOPREMA System 2042.
- B. Other Acceptable Manufacturers: Equal products manufactured by TREMCO, SIPLAST are acceptable providing they meet or exceed the requirements specified herein and are approved for use with the substrate specified.
 1. Barrier boards or other similar items required for substrate/roofing compatibility or warranty requirements is the responsibility of the roofing system manufacturer.

2.02 MATERIALS

- A. General: No asbestos containing materials are permitted.

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,

Civil Action No: 16-C-383

Plaintiff,

v.

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.

ORDER OF COURT

AND NOW, this ____ day of _____, 2016, upon consideration of the Motion
to Dismiss filed by Defendant Moody/Nolan Ltd., Inc., that Motion is GRANTED and Count III
(Breach of Express Warranty) and Count IV (Breach of Implied Warranty) of West Virginia
University Board of Governors ("WVU") Complaint are DISMISSED with prejudice.

BY THE COURT,

J.

CERTIFICATE OF SERVICE

I, Samuel H. Simon, Esquire, hereby certify that a true and correct copy of the foregoing Motion to Dismiss was served by first-class U.S. mail, postage prepaid, on the 19th day of August 2016 on the individuals identified as follows:

Marc A. Monteleone, Esq.
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Samuel H. Simon



Houston Harbaugh

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File # 30043-0024

August 19, 2016

VIA FIRST CLASS MAIL

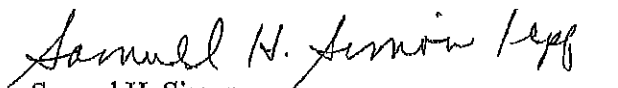
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**RE: Moody/Nolan Ltd., Inc.'s Motion to Dismiss
West Virginia University Board of Governors vs. Jacobs Facilities, Inc., et al.
Case No. 16-C-383 (Monongalia County)**

Dear Counsel:

Enclosed please find a copy of Moody/Nolan Ltd.'s Motion to Dismiss Count III and IV of West Virginia University Board of Governors' Complaint which was filed with the court today.

Very truly yours,


Samuel H. Simon

SHS/emb
Enclosure

cc: Jacobs Facilities, Esquire (w/ encl.; via first class mail)
Overly Manufacturing Company, Esquire (w/ encl.; via first class mail)
Donald M. Miller (w/encl.; via first class mail)

AUG 22 '16

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