

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

J.F. ALLEN CORPORATION
a West Virginia Corporation,

Plaintiff,

v.

CIVIL ACTION NO.: 14-C-1182
Presiding Judge: Joanna I. Tabit
Resolution Judge: Paul T. Farrell

THE SANITARY BOARD OF
THE CITY OF CHARLESTON,
WEST VIRGINIA, and
BURGESS AND NIPLE, INC.
an Ohio Corporation.

Defendants.

JUDGMENT ORDER ON JURY VERDICT

This action came on for jury trial before the Honorable Joanna I Tabit, Circuit Judge commencing January 22, 2018. All issues having been tried, the jury returned its verdict on January 31, 2018 in favor of the Plaintiff, J.F. Allen Corporation against both Defendants as follows:

1. Verdict in favor of Plaintiff, J.F. Allen Corporation against the Defendant, The Sanitary Board of the City of Charleston, West Virginia in the principal amount of \$1,300,000.20 plus pre-judgment interest;
2. Verdict in favor of Plaintiff, J.F. Allen Corporation against the Defendant, Burgess and Niple, Inc., in the principal amount of \$3,000,000.20 with an assessment of comparative fault as follows: Burgess and Niple, Inc. 90% and J.F. Allen Corporation 10%.

A copy of the fully executed Jury Verdict Form is attached as *Exhibit A*.

Based upon the foregoing, it is **ORDERED, ADJUDGED** and **DECREED** that judgment be entered in favor of the Plaintiff J.F. Allen Corporation as follows:

1. Judgment is entered in favor of the Plaintiff, J.F. Allen Corporation against the Defendant, The Sanitary Board of the City of Charleston, West Virginia in the principal

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KANAWHA COUNTY CIRCUIT COURT

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amount of \$1,300,000.20 together with pre-judgment interest to be determined by the Court and post-judgment interest until paid;

2. Judgment is entered in favor of the Plaintiff, J.F. Allen Corporation and against the Defendant, Burgess and Niple, Inc. in the amount of \$2,700,000.10 (\$3,000,000.20 x 90%) together with post-judgment interest until paid; and

3. Plaintiff J.F. Allen shall also recover its costs of the action which shall be taxed equally between the Defendants.

The Clerk shall, forthwith, mail attested copies of this Order to all parties of record including the following:

Charles M. Johnstone, II, Esquire
Johnson W. Gabhart, Esquire
Johnstone & Gabhart, LLP
P.O. Box 313
Charleston, West Virginia 25321

David A. Barnette, Esquire
Vivian H. Basdekis
Jackson Kelly, PLLC
P. O. Box 553
Charleston, WV 25322-0553

Peter T. DeMasters, Esquire
Flaherty Sensabaugh Bonasso, PLLC
48 Donley Street, Suite 501
Morgantown, WV 26501

Keith Hoover, Esquire
Flaherty Sensabaugh Bonasso, PLLC
200 Capitol Street
Charleston, WV 25338-3843

Entered this 28th day of February, 2018.

Joanna I. Tabit
The Honorable Joanna I. Tabit, Circuit Judge

Prepared by:

[Signature]
Charles M. Johnstone, II, Esquire
Johnson W. Gabhart, Esquire
JOHNSTONE & GABHART, LLP
P.O. Box 313
Charleston, West Virginia 25321

Attorney for Plaintiff, J.A. Allen Corporation

3-218
Date: _____
Certified copies sent to: _____
By: [Signature]
Deputy Circuit Clerk
[Signature]

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

J.F. ALLEN CORPORATION
a West Virginia Corporation,

Plaintiff,

v.

CIVIL ACTION NO. 14-C-1182
Judge Joanna Tabit

THE SANITARY BOARD OF
THE CITY OF CHARLESTON,
WEST VIRGINIA, and BURGESS AND
NIPLE, INC., an Ohio Corporation,

Defendants.

JURY VERDICT FORM

[Instructions: Once you have answered all applicable questions based on the instructions provided, please have the jury foreperson sign and date this form on the bottom of Page 5.]

PART I

[Instructions: Answer all questions in Part I]

1. Do you find from a preponderance of the evidence that the Charleston Sanitary Board breached its contract with J.F. Allen Corporation?

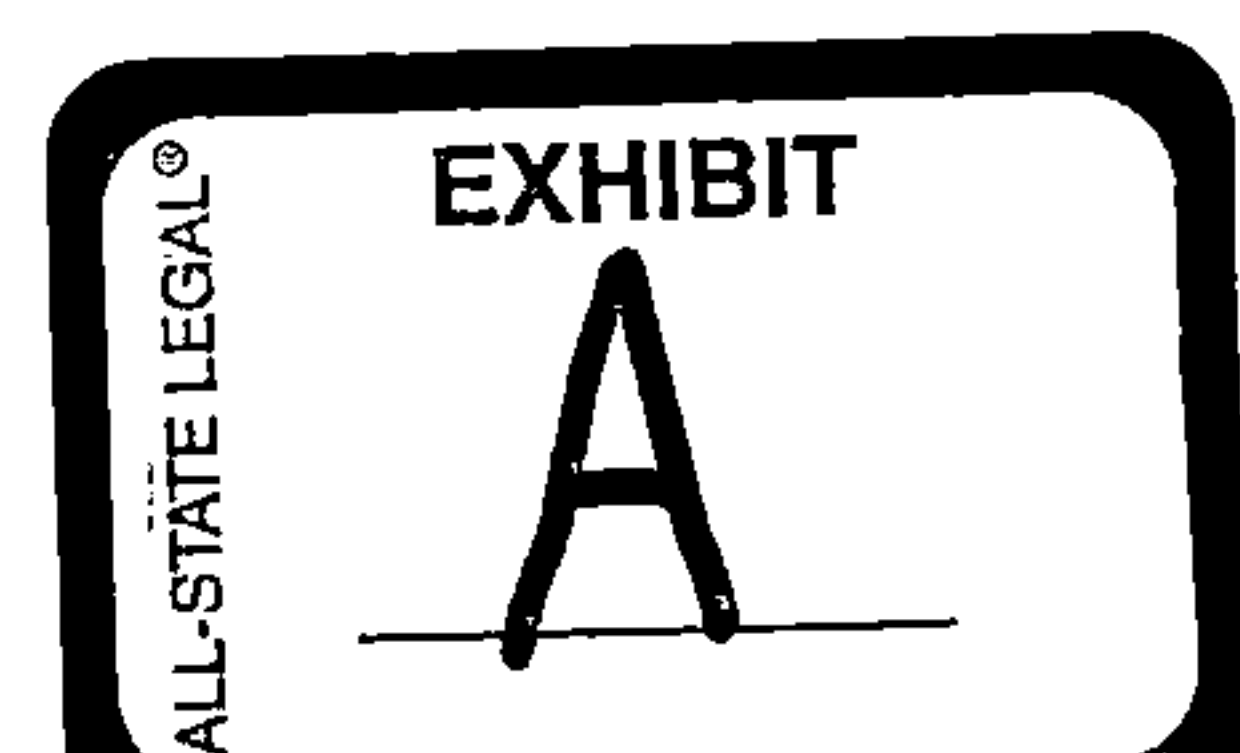
YES: X NO: _____

(If you answer NO to Question 1, you are finished as to all claims against the Charleston Sanitary Board and you must skip Part II beginning on Page 2. If you answer YES, please fill in Part II beginning on Page 2 below.)

2. Do you find from a preponderance of the evidence that Burgess and Niple, Inc. breached its standard of care as a professional engineer owed to J.F. Allen Corporation?

YES: X NO: _____

(If you answer NO, you are finished as to all claims against Burgess & Niple and you must skip Part IV beginning on Page 4 below. If you answer YES, please fill in Part IV beginning on Page 4 below.)



3. Do you find from the preponderance of the evidence that J.F. Allen Corporation owes the Charleston Sanitary Board liquidated damages for delay at the contract rate of \$1,000 per calendar day?

YES: _____ NO: X _____

(If you answer NO, you are finished as to all claims against J.F. Allen Corporation and you must skip Part III beginning on Page 3 below. If you answer YES, please fill in Part III beginning on Page 3 below.)

PART II:
PLAINTIFF J.F. ALLEN'S CLAIM FOR BREACH OF CONTRACT AGAINST THE
CHARLESTON SANITARY BOARD

[Instructions: Please proceed to Part II only if you answered YES to Question No. 1 in Part I above. If you answered NO, leave this Part blank.]

1. Do you find by a preponderance of the evidence that Plaintiff, J.F. Allen, did all or substantially all of the significant things that the contract required it to do?

YES: X _____ NO: _____

2. Do you find by a preponderance of the evidence that all conditions required for the Charleston Sanitary Board's performance had occurred?

YES: X _____ NO: _____

3. If the answer to Questions 1 and 2 are YES, please assess the breach of contract damages, if any, in dollars and cents below:

\$1,300,000.20

3a. If you assessed damages in 3, do you find that J.F. Allen is entitled to pre-judgment interest on the damages assessed?

YES: X NO:

PART III:
DEFENDANT CHARLESTON SANITARY BOARD'S COUNTERCLAIM AGAINST J.F. ALLEN
FOR LIQUIDATED DAMAGES ARISING FROM BREACH OF CONTRACT

[Instructions: Please proceed to Part III only if you answered YES to Question No. 3 in Part I above. If you answered NO, leave this Part blank.]

1. Do you find by a preponderance of the evidence that Counter-Plaintiff, the Charleston Sanitary Board, did all or substantially all of the significant things that the contract required it to do?

YES: NO:

2. Do you find by a preponderance of the evidence that all conditions required for Counter-Defendant J.F. Allen's performance had occurred?

YES: NO:

3. Do you find by a preponderance of the evidence that J.F. Allen breached its contract with the Charleston Sanitary Board by not performing its obligations within the time frame specified in Section 3.1 of the Contract plus any extensions allowed in accordance with Article 12 of the General Conditions?

YES: NO:

(If you answered NO to this question, STOP and proceed below to J.F. Allen's claim for negligence against Burgess & Niple in Part IV on Page 4. If you answered YES to this question, please proceed to the next question.)

4. If the answer to question 3 is YES, please assess liquidated damages for delay, as provided in Section 3.2 of the Contract, in the amount of \$1,000 for each calendar day that you find transpired between when the contract should have been completed and when it was actually completed, as follows.

_____ calendar days x \$1,000/day = \$_____

PART IV:
PLAINTIFF J.F. ALLEN'S CLAIM FOR NEGLIGENCE
AGAINST BURGESS & NIPLE, INC.

[Instructions: Please proceed to Part IV only if you answered YES to Question No. 2 in Part I above. If you answered NO, leave this Part blank.]

1. Do you find from a preponderance of the evidence that Burgess and Niple's breach of its standard of care was the proximate cause of J.F. Allen's damages?

YES: X NO: _____

(If you answered NO to this question, STOP and proceed to the signature line on page 5. If you answered YES to this question, please proceed to the next question.)

2. Do you find from the preponderance of the evidence that J.F. Allen Corporation was negligent in its conduct related to filing and substantiating claims in accordance with the contract?

YES: X NO: _____

If the answer to this question is YES, assign a percentage of fault below. The total of the two numbers must add up to 100%.

Percentage of Fault of Burgess & Niple:

90 %

Percentage of Fault of J.F. Allen:

+ 10 %

TOTAL:

=100%

3. What amount of compensatory damage, if any, do you find from a preponderance of the evidence was suffered by J.F. Allen due to the negligence of Burgess & Niple?

\$ 3,000,000.20

* * * * *

Vickie Decker
Foreperson

1/31/18
Date