

PLAINTIFF: WW CONSULTANTS, Inc., a Virginia Corporation

CASE NUMBER: 18-C-115

DEFENDANTS: POCAHONTAS COUNTY PUBLIC SERVICE district, a public corporation and local political subdivision of the State of West Virginia, MARK SMITH, DAVID gandee, AND David dragan, IN THEIR OFICIAL CAPACITY as board members of Pocahontas County Public Service District, the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL protection, A Department of the State of West Virginia, and the WEST VIRGINIA WATER DEVELOPMENT authority, AN INSTRUMENTALITY OF THE State of West Virginia

Judge: Louis Duke Bloom

FILED

2018 APR -2 A 9:39

BATHY S. GATSON, CLERK
POCAHONTAS COUNTY CIRCUIT COURT

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort:	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? YES NO

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

Attorney Name: Christopher D. Negley (WVSB #6086) Representing: McLaughlin Total Services, Inc.

Firm: Shuman, McCuskey & Slicer, PLLC Plaintiff Defendant

Address: 1411 Virginia St., E., Suite 200
P.O. Box 3953
Charleston, WV 25339

Telephone: (304) 345-1400

Dated: March 26, 2018

Handwritten notes: 200⁰⁰ LSF, acct # 56035

Signature

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WW CONSULTANTS, Inc.,
a Virginia Corporation,

Plaintiff,

v.

FILED
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2018 APR -2 A 9:39

CATHY S. GATSON, CLERK
CIVIL ACTION No.: 18-C-115

POCAHONTAS COUNTY PUBLIC SERVICE DISTRICT, a public corporation and local political subdivision of the State of West Virginia, MARK SMITH, DAVID GANDEE, and DAVID DRAGAN, in their official capacity as board members of Pocahontas County Public Service District, the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, a Department of the State of West Virginia, and the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, an instrumentality of the State of West Virginia,

Defendants.

**ANSWER AND COUNTERCLAIM OF THE
POCAHONTAS COUNTY PUBLIC SERVICE DISTRICT**

COMES NOW the Pocahontas County Public Service District ("District"), by counsel, Christopher D. Negley, Michael D. Dunham, and in response to Plaintiff's Complaint, Answers as follows:

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff, by its own conduct, is completely and entirely estopped from asserting this cause of action.

R-13

THIRD AFFIRMATIVE DEFENSE

Defendant denies that the Plaintiff is entitled to recover any amount whatsoever against them.

FOURTH AFFIRMATIVE DEFENSE

Any alleged injuries and/or damages to Plaintiff was, or may have been, caused by the acts of others, or through the Plaintiff's own fault, and is in no way attributable to any wrongdoing on the part of this Defendant.

FIFTH AFFIRMATIVE DEFENSE

Defendant denies that it has breached any affirmative duty with respect to the Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Defendant specifically reserves the right to plead any and all other affirmative defenses not specifically raised herein that may arise during discovery or otherwise. Further, Defendant specifically reserves the right to file an Amended Answer if additional discovery demonstrates the need to do so.

SEVENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert claims, whether third-party claims or counterclaims for indemnification and contribution, as investigation and discovery may prove applicable.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint may be barred by the doctrines of contributory negligence, comparative negligence, assumption of the risk, and any other defenses contained within Rule 8(c) of the West Virginia Rules of Civil Procedure, which this Defendant will affirmatively assert as defenses to Plaintiff's Complaint filed herein, should discovery reveal facts supporting those defenses.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint against this Defendant may be barred in whole or in part by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint against this Defendant is or may be barred by the doctrine of laches, unclean hands, waiver, and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint against this Defendant is or may be barred by fraud, illegality, or payment.

TWELFTH AFFIRMATIVE DEFENSE

Defendant has not breached any contract with the Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint against this Defendant is or may be barred by the defenses of immunity and/or or qualified immunity.

FOURTEENTH AFFIRMATIVE DEFENSE

In response to the specific allegations contained in Plaintiff's Complaint, Defendant states as follows:

1. This Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 1 of Plaintiff's Complaint relating to WW Consultants, Inc., and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

2. This Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. The Defendant admits that Mark Smith and David Dragan are current board members of the Pocahontas Count Public Service District but denies that David Gandee is a current board member and states that David Gandee voluntarily resigned from the board of the District in 2017.

4. This Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 4 of Plaintiff's Complaint pertaining to the West Virginia Department of Environmental Protection and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

5. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 5 of Plaintiff's Complaint pertaining to the West Virginia Water Development Fund and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

Venue

6. This Defendant denies that venue is proper in the Circuit Court of Kanawha County and specifically reserves a right to file a motion pertaining to venue under W.Va. Code § 29-12A-13.

Background

7. This Defendant denies the allegations contained in Paragraph 8 of Plaintiffs Complaint and demands strict proof thereof.

8. In response to Paragraph 8 of Plaintiff's Complaint, this Defendant avers that the Agreement speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 8.

9. Paragraph 9 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 9 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

10. Paragraph 10 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 10 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

11. Paragraph 11 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 11 of Plaintiff's Complaint, this Defendant denies the allegations contained therein but agrees that certain landowners filed a petition with the state Public Service Commission regarding the District and the construction of the WWTP.

12. Paragraph 12 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 12 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

13. Paragraph 13 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 13 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

14. This Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Complaint and demands strict proof thereof.

First Dispute: WWC Works for Three Years on the Project Without Receiving Payment

15. Paragraph 15 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 15 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

16. Paragraph 16 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 16 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

17. Paragraph 17 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 17 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

18. Paragraph 18 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 18 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

19. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 19 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

20. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 20 of Plaintiff's Complaint and, therefore, neither admits nor denies

same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

21. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 21 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

22. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 22 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

23. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 23 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

24. This Defendant denies the allegations contained in paragraph 24 of Plaintiff's Complaint.

25. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 25 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

26. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 26 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

27. Paragraph 27 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 27 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

28. Paragraph 28 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 28 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

29. Paragraph 29 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 29 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

30. Paragraph 30 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 30 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

31. Paragraph 31 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 31 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

32. This Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Complaint and demands strict proof thereof.

33. This Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Complaint and demands strict proof thereof.

Second Dispute: WWC Performed Engineering Work to Address Engineering Deficiencies in Pre-Cast Concrete Without Receiving Payment.

34. This Defendant admits that it approved Change Order #1 but denies the remaining allegations contained in Paragraph 34 of Plaintiff's Complaint.

35. In response to Paragraph 35 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 35.

36. Paragraph 36 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 36 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

37. Paragraph 37 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 37 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

38. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 38 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

39. Paragraph 39 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 39 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

40. Paragraph 40 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 40 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

41. Paragraph 41 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 41 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

42. Paragraph 42 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 42 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

43. Paragraph 43 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 43 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

44. This Defendant admits that Orders approached the District regarding the Ravel Lining system but denies the remaining allegations contained in Paragraph 44 of Plaintiff's Complaint.

45. In response to Paragraph 45 of Plaintiff's Complaint, this Defendant avers that the correspondence speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 45.

46. In response to Paragraph 46 of Plaintiff's Complaint, this Defendant avers that the correspondence speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 46.

47. In response to Paragraph 47 of Plaintiff's Complaint, this Defendant avers that the correspondence speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 47.

48. Paragraph 48 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 48 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

49. Paragraph 49 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required although this Defendant is aware the Plaintiff billed time to the "Engineering During Construction" section of the Agreement this Defendant denies that Plaintiff is entitled to additional payments for the pre-cast concrete engineer. Further, to the extent a response is deemed required to the allegations contained in Paragraph 49 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

50. Paragraph 50 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 50 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

51. This Defendant denies the allegations contained in Paragraph 51 of Plaintiff's Complaint and demands strict proof thereof.

Third Dispute: WWC Performed Additional Engineering During Construction Due to
Contractors Failure to Complete the Project on Time

52. This Defendant denies the allegations contained in Paragraph 52 of Plaintiff's Complaint and demands strict proof thereof.

53. Paragraph 53 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 53 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

54. This Defendant denies the allegations contained in Paragraph 54 of Plaintiff's Complaint and demands strict proof thereof.

55. Paragraph 55 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 55 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

56. Paragraph 56 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 56 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

57. Paragraph 57 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 57 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

58. Paragraph 58 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 58 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

59. This Defendant denies the allegation contained in Paragraph 59 of Plaintiff's Complaint and demands strict proof thereof.

COUNT I – BREACH OF CONTRACT

60. In response to Paragraph 60 of Plaintiff's Complaint, this Defendant incorporates by reference Paragraphs 1 through 59 of its Answer as if fully set forth herein.

61. In response to Paragraph 61 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 61.

62. This Defendant admits that it received a Request for Equitable Adjustment on or around November 28, 2016.

63. In response to Paragraph 63 of Plaintiff's Complaint, this Defendant avers that the Request for Equitable Adjustment speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 63.

64. This Defendant denies the allegations contained in Paragraph 64 of Plaintiff's Complaint.

65. This Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Complaint.

66. This Defendant denies the allegations contained in Paragraph 66 of Plaintiff's Complaint.

67. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 67 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

68. This Defendant denies the allegations contained in Paragraph 68 of Plaintiff's Complaint.

69. This Defendant denies the allegation contained in Paragraph 69 of Plaintiff's Complaint as it avers that no work was performed by the Plaintiff outside the scope of the aforementioned contract.

70. Paragraph 70 of Plaintiff's Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 70 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

71. This Defendant denies the allegations contained in Paragraph 71 of Plaintiff's Complaint.

72. This Defendant denies the allegations contained in Paragraph 72 of Plaintiff's Complaint.

73. This Defendant denies the allegations contained in Paragraph 73 of Plaintiff's Complaint.

74. Paragraph 74 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 74 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

COUNT II – BREACH OF CONTRACT – PRECAST CONCRETE

75. In response to Paragraph 75 of Plaintiff's Complaint, this Defendant incorporates by reference Paragraphs 1 through 74 of its Answer as if fully set forth herein.

76. This Defendant denies the allegation contained in Paragraph 76 of Plaintiff's Complaint and demands strict proof thereof.

77. In response to Paragraph 77 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 77.

78. In response to Paragraph 78 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 78.

79. Paragraph 79 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 79 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

80. This Defendant denies the allegation contained in Paragraph 80 of Plaintiff's Complaint and demands strict proof thereof.

81. Paragraph 81 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 81 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

82. In response to Paragraph 82 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 82.

83. In response to Paragraph 83 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 83.

84. In response to Paragraph 84 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 84.

85. In response to Paragraph 85 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 85.

86. This Defendant admits that it received the Sixth Amended Letter of Agreement on or around September 6, 2016.

87. This Defendant admits that it denied payment of the Sixth Letter of Agreement but denies the remainder of the allegations contained in Paragraph 87 of Plaintiff's Complaint.

88. This Defendant denies the allegation contained in Paragraph 88 of Plaintiff's Complaint and demands strict proof thereof.

89. This Defendant denies the allegation contained in Paragraph 89 of Plaintiff's Complaint and demands strict proof thereof.

90. This Defendant denies the allegation contained in Paragraph 90 of Plaintiff's Complaint and demands strict proof thereof.

91. In response to Paragraph 91 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 91.

92. This Defendant denies the allegation contained in Paragraph 92 of Plaintiff's Complaint and demands strict proof thereof.

93. This Defendant denies the allegation contained in Paragraph 93 of Plaintiff's Complaint and demands strict proof thereof.

94. This Defendant denies the allegation contained in Paragraph 94 of Plaintiff's Complaint and demands strict proof thereof.

95. This Defendant denies the allegation contained in Paragraph 95 of Plaintiff's Complaint and demands strict proof thereof.

96. This Defendant denies the allegation contained in Paragraph 96 of Plaintiff's Complaint and demands strict proof thereof.

COUNT III – BREACH OF CONTRACT – EIGHTH LETTER OF AGREEMENT

97. In response to Paragraph 97 of Plaintiff's Complaint, this Defendant incorporates by reference Paragraphs 1 through 96 of its Answer as if fully set forth herein.

98. In response to Paragraph 98 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 98.

99. The Defendant has insufficient information, knowledge or belief to respond to the allegations in Paragraph 99 of Plaintiff's Complaint and, therefore, neither admits nor denies same. To the extent that the Defendant is required to answer this allegation, this Defendant denies this allegation.

100. This Defendant admits it received the Eight Letter of Agreement but denies the remaining allegation contained in Paragraph 100 of Plaintiff's Complaint and demands strict proof thereof.

101. This Defendant denies the allegation contained in Paragraph 101 of Plaintiff's Complaint and demands strict proof thereof.

102. This Defendant denies the allegation contained in Paragraph 102 of Plaintiff's Complaint and demands strict proof thereof.

103. This Defendant denies the allegation contained in Paragraph 103 of Plaintiff's Complaint and demands strict proof thereof.

104. This Defendant denies the allegation contained in Paragraph 104 of Plaintiff's Complaint and demands strict proof thereof.

105. This Defendant denies the allegation contained in Paragraph 105 of Plaintiff's Complaint and demands strict proof thereof.

106. This Defendant denies the allegation contained in Paragraph 106 of Plaintiff's Complaint and demands strict proof thereof.

107. In response to Paragraph 107 of Plaintiff's Complaint, this Defendant avers that the contract speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 107.

108. Paragraph 108 of Plaintiff's Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 108 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

109. This Defendant denies the allegation contained in Paragraph 109 of Plaintiff's Complaint and demands strict proof thereof.

110. This Defendant denies the allegation contained in Paragraph 110 of Plaintiff's Complaint and demands strict proof thereof.

111. This Defendant denies the allegation contained in Paragraph 111 of Plaintiff's Complaint and demands strict proof thereof.

COUNT IV – BREACH OF MEDIATION AGREEMENT

112. In response to Paragraph 112 of Plaintiff's Complaint, this Defendant incorporates by reference Paragraphs 1 through 111 of its Answer as if fully set forth herein.

113. This Defendant admits the allegations contained in Paragraph 113 of Plaintiff's Complaint.

114. In response to Paragraph 114 of Plaintiff's Complaint, this Defendant avers that the Mediation Agreement speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 114.

115. In response to Paragraph 115 of Plaintiff's Complaint, this Defendant avers that the Mediation Agreement speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 115.

116. This Defendant denies the allegations contained in Paragraph 116 of Plaintiff's Complaint and demands strict proof thereof.

117. This Defendant denies the allegations contained in Paragraph 117 of Plaintiff's Complaint and demands strict proof thereof.

118. This Defendant denies the allegations contained in Paragraph 118 of Plaintiff's Complaint and demands strict proof thereof.

COUNT V – PERSONAL LIABILITY OF DEFENDANTS' SMITH, GANDEE AND DRAGAN

119. In response to Paragraph 119 of Plaintiff's Complaint, this Defendant incorporates by reference Paragraphs 1 through 118 of its Answer as if fully set forth herein.

120. In response to Paragraph 120 of Plaintiff's Complaint, this Defendant avers that the West Virginia Code speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 120.

121. This Defendant denies the allegations contained in Paragraph 121 of Plaintiff's Complaint and demands strict proof thereof. Further, this Defendant avers that David Gandee voluntarily resigned from the board in 2017.

122. This Defendant denies the allegations contained in Paragraph 122 of Plaintiff's Complaint and demands strict proof thereof.

123. This Defendant denies the allegations contained in Paragraph 123 of Plaintiff's Complaint and demands strict proof thereof.

124. This Defendant denies the allegations contained in Paragraph 124 of Plaintiff's Complaint and demands strict proof thereof.

125. This Defendant denies the allegations contained in Paragraph 125 of Plaintiff's Complaint and demands strict proof thereof.

126. This Defendant denies the allegations contained in Paragraph 126 of Plaintiff's Complaint and demands strict proof thereof.

127. This Defendant denies the allegations contained in Paragraph 127 of Plaintiff's Complaint and demands strict proof thereof.

COUNT VI – SPECIAL RECEIVERSHIP AGAINST THE WVDEP, WVWDA, AND PSD

128. In response to Paragraph 128 of Plaintiff's Complaint, this Defendant incorporates by reference Paragraphs 1 through 127 of its Answer as if fully set forth herein.

129. In response to Paragraph 129 of Plaintiff's Complaint, this Defendant avers that the Wes Virginia Code speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 129.

130. This Defendant denies the allegations contained in Paragraph 130 of Plaintiff's Complaint and demands strict proof thereof.

131. This Defendant denies the allegations contained in Paragraph 131 of Plaintiff's Complaint and demands strict proof thereof.

132. This Defendant denies the allegations contained in Paragraph 132 of Plaintiff's Complaint and demands strict proof thereof.

133. This Defendant denies the allegations contained in Paragraph 133 of Plaintiff's Complaint and demands strict proof thereof.

134. This Defendant denies the allegations contained in Paragraph 134 of Plaintiff's Complaint and demands strict proof thereof.

135. This Defendant denies the allegations contained in Paragraph 135 of Plaintiff's Complaint and demands strict proof thereof.

136. This Defendant denies the allegations contained in Paragraph 136 of Plaintiff's Complaint and demands strict proof thereof.

137. This Defendant denies the allegations contained in Paragraph 137 of Plaintiff's Complaint and demands strict proof thereof.

138. This Defendant denies the allegations contained in Paragraph 138 of Plaintiff's Complaint and demands strict proof thereof.

139. This Defendant denies the allegations contained in Paragraph 139 of Plaintiff's Complaint and demands strict proof thereof.

140. This Defendant denies the allegations contained in Paragraph 140 of Plaintiff's Complaint and demands strict proof thereof.

141. In response to Paragraph 141 of Plaintiff's Complaint, this Defendant avers that the Wes Virginia Code speaks for itself and no responsive pleading is required by this Defendant. To the extent a response to this Paragraph is required, this Defendant denies the allegations contained in Paragraph 141.

142. This Defendant denies the allegations contained in Paragraph 142 of Plaintiff's Complaint and demands strict proof thereof.

143. This Defendant denies the allegations contained in Paragraph 143 of Plaintiff's Complaint and demands strict proof thereof.

144. Paragraph 144 of Plaintiffs Complaint contains legal conclusions for which a response by this Defendant is not required. To the extent a response is deemed required to the allegations contained in Paragraph 144 of Plaintiff's Complaint, this Defendant denies the allegations contained therein.

145. This Defendant denies the allegations contained in Paragraph 145 of Plaintiff's Complaint and demands strict proof thereof.

146. This Defendant denies the allegations contained in Paragraph 146 of Plaintiff's Complaint including subparts (a) through (f) and demands strict proof thereof.

147. This Defendant denies the allegations contained in Paragraph 147 of Plaintiff's Complaint and demands strict proof thereof.

148. This Defendant denies the allegations contained in Paragraph 148 of Plaintiff's Complaint and demands strict proof thereof.

149. This Defendant denies the allegations contained in Paragraph 149 of Plaintiff's Complaint and demands strict proof thereof.

150. This Defendant denies the allegations contained in Paragraph 150 of Plaintiff's Complaint and demands strict proof thereof.

151. This Defendant denies the allegations contained in Paragraph 151 of Plaintiff's Complaint and demands strict proof thereof.

152. This Defendant denies the allegations contained in Paragraph 152 of Plaintiff's Complaint and demands strict proof thereof.

153. This Defendant denies the allegations contained in Paragraph 153 of Plaintiff's Complaint and demands strict proof thereof.

154. This Defendant denies the allegations contained in Paragraph 154 of Plaintiff's Complaint and demands strict proof thereof.

All allegations not admitted are herein denied.

Wherefore, having fully answered Plaintiff's Complaint for damages filed herein, these Defendants request that this action be dismissed, with prejudice; that Plaintiff recovers nothing from this Defendant; that this Defendant be awarded its costs and fees associated in defending this action; and for such additional and further relief as this Court deems to be just and appropriate.

**POCAHONTAS COUNTY PUBLIC SERVICE
DISTRICT'S COUNTERCLAIM**

Defendant Pocahontas County Public Service District hereby asserts the following Counterclaim against the Plaintiff WW Consultants, Inc.

PARTIES

1. Pocahontas County Public Service District ("District") is a public corporation and political subdivision of the state of West Virginia organized and chartered under West Virginia Code § 16-13A-3. The District has authority to enter into contracts "necessary or incidental to its purposes." *Id.*

2. WWC is a duly organized and chartered Virginia corporation with a principal place of business of Fairfax, Virginia.

BACKGROUND

3. On January 6, 2011, WWC (or its predecessor) signed the *Standard Form of Agreement Between Owner and Engineer for Professional Services*.

4. The contract called for, among other things, WWC to "develop and implement a cost effective and technically sound improvement and capacity upgrade through the refurbishment of facilities currently in operation and the construction of additional components

for a new regional system to treat the sewage of customers previously by Snowshoe Water and Sewer and to serve future wastewater customers . . .”

5. On January 6, 2011, state law forbade a Public Service District from entering into any Contract for services exceeding \$25,000 without the “consent and approval” of the Public Service Commission (the section has since been repealed).

6. When the District petitioned the Public Service Commission to approve the *Standard Form of Agreement Between Owner and Engineer for Professional Services* the Commission Staff of the Public Service Commission objected stating that the proposed Agreement did not “contain language that payment of engineering fees are contingent upon the receipt of funding.”

7. Thereafter, WWC and the District negotiated a *Letter of Agreement*. That Letter of Agreement provides, in pertinent part:

This Agreement will be modified in that the Engineer agrees that payment of Engineering fees are contingent upon the receipt of funding, and Commission approval of that funding, to construct the project which is the subject of the contract.

8. As with the initial *Standard Form of Agreement Between Owner and Engineer for Professional Services* WWC signed the *Letter of Agreement* while the District did not.

9. Thereafter, the Public Service Commission granted the District permission to sign the Standard Form agreement which it did on June 28, 2011, and only after WWC agreed to the revised contract terms.

COUNTERCLAIM COUNT I – BREACH OF STANDARD OF CARE AND PROFESSIONAL NEGLIGENCE

10 The District hereby incorporates paragraphs 1 through 9 of its Counterclaim as if set forth individually herein.

11 Defendant WWC provides professional services in the field of wastewater engineering and owed the District a standard of professional care to design the waste water system upgrade.

12. WWC breached that standard of care by, among other things, designing a wastewater treatment plant and accompanying facilities that,

(a) Are not in the proper location to properly serve the Snowshoe Mountain and Linwood valley areas;

(b) Lack capacity as designed;

(c) Do not provide any method to field locate the collection system;

(d) Do not include electric/phone/internet/water to the wastewater treatment plant or any other location;

(e) Do not provide access to the coarse screen;

(f) Mandated fine screens that were not the type recommended by the MBR supplier, resulting in high maintenance cost and the bypassing of solids. Further the design failed to provide for allowing District employees to lift the cover or belt assembly from the fine screen for maintenance;

(g) Utilizes a pressurized collection system resulting in high operation and maintenance costs;

(h) Are undersized, specifically, the Mountain Laundry lift station, the Meadows lift station and the Mountain EQ lift station which, in addition to being undersized, is missing components recommended by the equipment supplier to operate the lift station properly;

(i) Located the control panels for the screens in a remote location;

(j) Failed to provide for heat in headworks area resulting in equipment freeze up;

(k) Failed to correct I & I issues at the Hawthorne Loop;

(l) Failed to provide supervision over the contractor when the ceiling in the EQ and sludge tank room was being constructed resulting in a larger space than the ventilation system was designed for and a change order required to move the location of the lighting;

(m) Failed to design a system to get the wastewater back out of the lagoon and to the wastewater treatment plant despite it being WWC's recommendation to keep the lagoon despite that the original plan called to decommission the lagoon as a part of the project;

(n) Failed to evaluate disposal options for removed substances resulting in the wastewater treatment plant having the wrong equipment for solids handling;

(o) Accepted the defective pre-cast panels resulting in poor surface finish and future maintenance and reliability issues which are presently unknown;

(p) Failed to provide proper feed equipment for the chemicals needed to operate the MBR.

(q) Failed to design lighting in the mezzanine area that can be accessed for maintenance;

(r) Utilize MBR technology that is not necessary to meet permit limits and which has resulted in exorbitant operations and maintenance costs;

(s) Utilized undersized waste sludge pumps that had to be replaced;

(t) Designed membrane racks in Train "A" that cannot be picked up by the crane;

(u) Utilizes a membrane cleaning solution tank that is undersized;

(v) Failed to consider wastewater temperature below design;

(x) Failed to supervise contractors so that proper as-built drawings for the force mains could not be made;

(y) Designed an inadequate heating system for the office areas of the wastewater treatment plant

- (z) Designed office areas without windows;
 - (aa) Designed water piping to run in an unheated area resulting in frozen lines during cold weather conditions;
 - (bb) Designed the chemical room so that heavy chemicals must be moved by hand;
- and
- (cc) Designed the MBR area so that many valves can only be accessed by climbing over safety railings and/or removal of grates.

13. As a result of WWC's breach of the standard of care and professional negligence the District and its customer have and will continue to suffer damages.

14. As a result of WWC's breach of the standard of care and professional negligence the District is entitled to collect damages from WWC.

COUNTERCLAIM COUNT II – BREACH OF CONTRACT

15. The District hereby incorporates paragraphs 1 through 14 of its Counterclaim as if set forth individually herein.

16. District and WWC have entered in the aforementioned *Standard Form of Agreement Between Owner and Engineer for Professional Services* and several post-agreement Amended Letters of Agreement all of which have been incorporated into one contract.

17. Said Agreement comprises the entire contractual history between the District and WWC.

18. WWC has breached the Agreement by, among other things,

- (a) Failed to complete an Operation & Maintenance manual for the equipment recommended by WWC for the regional project;
- (b) Failed to provide to the District "as-built drawings" of certain facilities which reflect the revised set of drawing submitted by a contractor upon completion of a project and which document all changes made in the specifications and working drawings during the construction process to

ultimately show the exact dimensions, geometry, and location of all elements of the work completed under the contract;

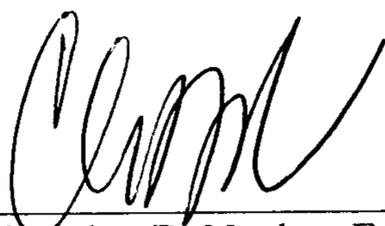
- (c) Failed to prepare an Asset Management Plan;
- (d) Failed to provide Engineering support for the first year of operation of the wastewater treatment plant;
- (e) Signed off on the Final Payment to a contractor where the punch list was not complete; and
- (f) Submitting invoices that exceeded allowable hourly reimbursements without prior approval of the District.

19. As a result of WWC's breach of contract the District and its customer have and will continue to suffer damages.

20. As a result of WWC's breach of contract the District is entitled to collect damages from WWC.

A JURY TRIAL IS DEMANDED.

**POCAHONTAS COUNTY PUBLIC
SERVICE DISTRICT
BY COUNSEL**



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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WW CONSULTANTS, Inc.,
a Virginia Corporation,

Plaintiff,

v.

POCAHONTAS COUNTY PUBLIC SERVICE
DISTRICT, a public corporation and local
political subdivision of the State of West
Virginia, MARK SMITH, DAVID GANDEE, and
DAVID DRAGAN, in their official capacity as
board members of Pocahontas County Public
Service District, the WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
a Department of the State of West Virginia, and
the WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY, an instrumentality of the
State of West Virginia,

Defendants.

Civil Action No.: 18-C-115

FILED CP
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S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

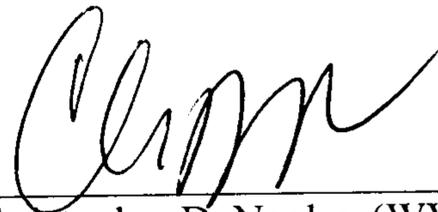
Certificate of Service

The undersigned, counsel for Defendant Pocahontas County Public Service District hereby certifies that on this 28th day of March, 2018, a copy of the foregoing *Answer and Counterclaim of the Pocahontas County Public Service District* was served upon counsel of record, by depositing a true and exact copy thereof in the U. S. mail, postage prepaid, in an envelope properly addressed and stamped as follows:

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