

FILED

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

COVESTRO, LLC,

2019 APR -8 CIVIL ACTION NO. 18-c-202

Plaintiff,

JOSEPH A. RUCKI

Honorable David W. Hummel, Jr.

v.

AXIALL CORPORATION,
ALLTRANSTEK, LLC and RESCAR
COMPANIES,

Defendants,

and

AXIALL CORPORATION,

Third-Party Plaintiff,

v.

SUPERHEAT FGH SERVICES, INC.,

Third-Party Defendant.

----- CONSOLIDATED WITH -----

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

AXIALL CORPORATION,

Plaintiff,

v.

CIVIL ACTION NO. 18-C-203

ALLTRANSTEK, LLC, RESCAR
COMPANIES and SUPERHEAT FGH
SERVICES, INC.,

Defendants,

DEFENDANT SUPERHEAT FGH SERVICES, INC.'S, ANSWER AND AFFIRMATIVE DEFENSES TO AXIALL CORPORATION'S COMPLAINT IN 18-C-203

AND NOW, comes Defendant, Superheat FGH Services, Inc., (hereinafter "Superheat"), by and through its attorneys, Marshall Dennehey Warner Coleman & Goggin, and Ryan M. Krescanko, and hereby sets forth its Answer and Affirmative Defenses to Axiall Corporation's Complaint in 18-C-203 and, in support thereof, avers as follows:

ANSWER

1. The averments of paragraph 1 of the plaintiff's Complaint require no response from Superheat.

2. The averments of paragraph 2 of the plaintiff's Complaint require no response from Superheat.

3. The averments of paragraph 3 of the plaintiff's Complaint require no response from Superheat.

4. The averments of paragraph 4 of the plaintiff's Complaint are admitted.

5. The averments of paragraph 5 of the plaintiff's Complaint are conclusions of law to which no response is required.

6. The averments of paragraph 6 of the plaintiff's Complaint are conclusions of law to which no response is required.

7. The averments of paragraph 7 of the plaintiff's Complaint are admitted to the extent that Axiall operates a facility in Natrium, West Virginia. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 7 of the plaintiff's Complaint.

8. The averments of paragraph 8 of the plaintiff's Complaint are admitted to the extent that Axiall operates a fleet of railroad tank cars to transport chlorine. After reasonable

investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 8 of the plaintiff's Complaint.

9. The averments of paragraph 9 of the plaintiff's Complaint are admitted to the extent that there is a maintenance program for the railroad tank cars. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 9 of the plaintiff's Complaint.

10. The averments of paragraph 10 of the plaintiff's Complaint are directed toward a defendant other than Superheat and, as such, require no response from Superheat.

11. The averments of paragraph 11 of the plaintiff's Complaint are directed toward a defendant other than Superheat and, as such, require no response from Superheat.

12. The averments of paragraph 12 of the plaintiff's Complaint are admitted.

13. Superheat is not a party to any contracts between Axiall and the co-defendants and, as such, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 13 of the plaintiff's Complaint.

14. Superheat is not a party to any contracts and/or purchase orders between Axiall and the co-defendants and, as such, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 14 of the plaintiff's Complaint. By way of further response, the averments of paragraph 14 of the plaintiff's Complaint require no response as the terms and provisions of the written purchase orders speak for themselves.

15. Superheat is not a party to any contracts and/or purchase orders between Axiall and the co-defendants and, as such, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 15 of the plaintiff's Complaint. By

way of further response, the averments of paragraph 15 of the plaintiff's Complaint require no response as the terms and provisions of the written purchase orders speak for themselves.

16. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 16 of the plaintiff's Complaint, incorrectly numbered paragraph 2 within the Complaint.

17. The averments of paragraph 17 of the plaintiff's Complaint are admitted only to the extent that Superheat performs remote monitoring of heat treatment operations.

18. In response to the averments of paragraph 18 of the plaintiff's Complaint, Superheat hereby incorporates by reference the averments set forth in paragraph 17 of this Answer which is hereby incorporated by reference as if fully set forth herein. It is admitted that Superheat was a subcontractor of Rescar.

19. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 19 of the plaintiff's Complaint, incorrectly numbered paragraph 3 within the Complaint.

20. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 20 of the plaintiff's Complaint.

21. The averments of paragraph 21 of the plaintiff's Complaint, incorrectly numbered paragraph 4 within the Complaint, are admitted in part and denied in part. It is admitted that Superheat performed remote monitoring of heat treatment operations. It is denied that Superheat performed remote heat treating operations.

22. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 22 of the plaintiff's Complaint.

23. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 23 of the plaintiff's Complaint.

24. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 24 of the plaintiff's Complaint.

25. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 25 of the plaintiff's Complaint.

26. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 26 of the plaintiff's Complaint.

27. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 27 of the plaintiff's Complaint.

28. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 28 of the plaintiff's Complaint.

29. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 29 of the plaintiff's Complaint.

30. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 30 of the plaintiff's Complaint.

31. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 31 of the plaintiff's Complaint.

32. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 32 of the plaintiff's Complaint.

33. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 33 of the plaintiff's Complaint.

34. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 34 of the plaintiff's Complaint.

35. After reasonable investigation, Superheat is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 35 of the plaintiff's Complaint.

COUNT I

36. Superheat hereby incorporates by reference the averments set forth in paragraphs 1 through 35 of this Answer as if fully set forth herein.

37.-41. The averments of paragraphs 37 through 41 of the plaintiff's Complaint are directed toward parties other than Superheat and, as such, require no response from Superheat. However, to the extent that said averments purport to aver or imply that Superheat is liable to any party in this action, said averments are denied.

WHEREFORE, the defendant, Superheat FGH Services, Inc., denies that it is liable to the plaintiff in any sum or sums whatsoever and demands judgment in its favor with costs of suit.

COUNT II

42. Superheat hereby incorporates by reference the averments set forth in paragraphs 1 through 41 of this Answer as if fully set forth herein.

43.-52. The averments of paragraphs 43 through 52 of the plaintiff's Complaint are directed toward parties other than Superheat and, as such, require no response from Superheat. However, to the extent that said averments purport to aver or imply that Superheat is liable to any party in this action, said averments are denied.

WHEREFORE, the defendant, Superheat FGH Services, Inc., denies that it is liable to the plaintiff in any sum or sums whatsoever and demands judgment in its favor with costs of suit.

COUNT III

53. Superheat hereby incorporates by reference the averments set forth in paragraphs 1 through 53 of this Answer as if fully set forth herein.

54. The averments of paragraph 54 of the plaintiff's Complaint, as they relate to Superheat, set forth conclusions of law to which no response is required. However, to the extent that a response may be required, Superheat fully complied with any legal duties imposed upon it.

55. The averments of paragraph 55 of the plaintiff's Complaint, as they relate to Superheat, are denied.

56. The averments of paragraph 56 of the plaintiff's Complaint, incorrectly numbered paragraph 566 in the Complaint, are denied. It is specifically denied that Superheat was negligent.

WHEREFORE, the defendant, Superheat FGH Services, Inc., denies that it is liable to the plaintiff in any sum or sums whatsoever and demands judgment in its favor with costs of suit.

COUNT IV

57. Superheat hereby incorporates by reference the averments set forth in paragraphs 1 through 56 of this Answer as if fully set forth herein.

58.-64. The averments of paragraphs 58 through 64 of the plaintiff's Complaint are directed toward parties other than Superheat and, as such, require no response from Superheat. However, to the extent that said averments purport to aver or imply that Superheat is liable to any party in this action, said averments are denied.

WHEREFORE, the defendant, Superheat FGH Services, Inc., denies that it is liable to the plaintiff in any sum or sums whatsoever and demands judgment in its favor with costs of suit.

COUNT V

65. Superheat hereby incorporates by reference the averments set forth in paragraphs 1 through 64 of this Answer as if fully set forth herein.

66. The averments of paragraph 66 of the plaintiff's Complaint, as they relate to Superheat, are denied.

67. The averments of paragraph 67 of the plaintiff's Complaint, as they relate to Superheat, set forth conclusions of law to which no response is required. However, to the extent that a response may be required, Superheat denies it was negligent and further denies any party is entitled to recovery from Superheat pursuant to the doctrine of implied indemnity and/or contribution.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The cause of action contained within Axiall's Complaint to Join is barred due to the applicable statute of limitations, statute of repose, or other statutory or common law protection due to the passage of time, including, but not limited to, W.Va.Code § 55-2-12 and W.Va. Code § 46A-5-101.

Second Affirmative Defense

Superheat avers that Axiall was comparatively negligent for the damages and/or losses alleged in the Complaint to Join.

Third Affirmative Defense

Superheat avers that Plaintiff's recovery is limited or barred due to Plaintiff's own negligence or omissions.

Fourth Affirmative Defense

Superheat avers that Axiall's damages and/or losses were caused solely and/or partially by the negligence or omissions of third persons over which Superheat had no control and for whom Superheat is not responsible.

Fifth Affirmative Defense

Superheat avers that Axiall's damages and/or losses, if any, were the result of a superseding or intervening cause that was not related to the acts or omissions of Superheat.

Sixth Affirmative Defense

Axiall has failed to mitigate any damages allegedly sustained as a result of the complained of acts or incident.

JURY TRIAL DEMANDED

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: _____

RYAN M. KRESCANKO, ESQUIRE

WV Bar #13008

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CERTIFICATE OF SERVICE

2019 APR -8 PM 12:41
The undersigned hereby certifies that a true and correct copy of the foregoing
ANSWER AND AFFIRMATIVE DEFENSES has been served upon the below listed
counsel of record via U.S. First Class mail, postage prepaid, this 4TH day of April, 2019,
as follows:

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Counsel for Defendants, AllTranstek, L.L.C and Rescar Companies

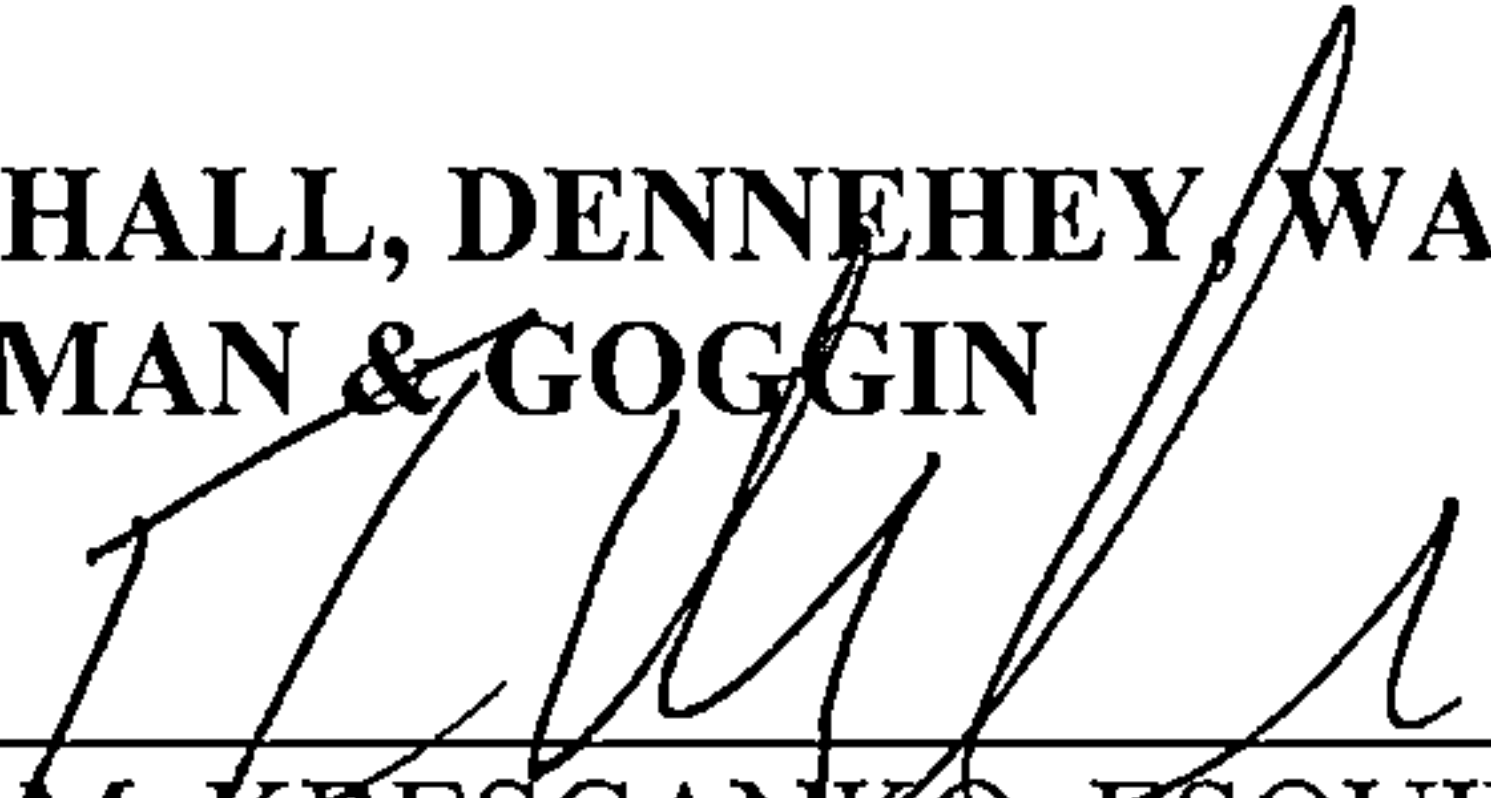
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COLEMAN & GOGGIN**

BY: _____


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April 4, 2019

Joseph M. Rucki, Circuit Clerk
Circuit Court of Marshall County, WV
600 7th Street, Room 127
Moundsville, WV 26041

**RE: Axiall Corporation v. Alltranstek LLC, et al.
18-C-203; Circuit Court of Marshall County, WV; Hon. Jeffrey D. Cramer
Our File No.: 41111.00101**

Dear Mr. Rucki:

Enclosed for filing please find the original and one copy of Defendant Superheat FGH Services' Answer and Affirmative Defenses to Axiall Corporation's Complaint in 18-C-203 with regard to the above-referenced matter. Please file the original Answer of record, time-stamp the copy of same, evidencing proof of filing, and return it to me in the enclosed, self-addressed, stamped envelope.

Thank you for your continuing assistance. Should you have any questions or comments, please feel free to contact me.

Very truly yours,


Ryan M. Krescanko

RMK/njf
Enclosures
cc w/enclosure:

Russell J. Ober, Jr., Esquire
William D. Wilmoth, Esquire
Brad Whalen, Esquire
Michelle L. Gorman, Esquire
Kevin M. Eddy, Esquire
Kathryn M. Kenyon, Esquire
Jeffrey V. Kessler, Esquire

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