

PILLINGER MILLER TARALLO, LLP
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FEB 10 2017

February 8, 2017

R.C. SHEA & ASSOCIATES
COUNSELLORS AT LAW, P.C.

via Federal Express 778384110262

Ocean County Superior Court
Civil Filing Law Division
P.O. Box 2191
Toms River, New Jersey 08754

Re: Berkeley Township Sewerage Authority v. C.J. Hesse, Inc., et al.,

D/L : Our File : NJ-AGB-00110/PJC

Dear Sir/Madam:

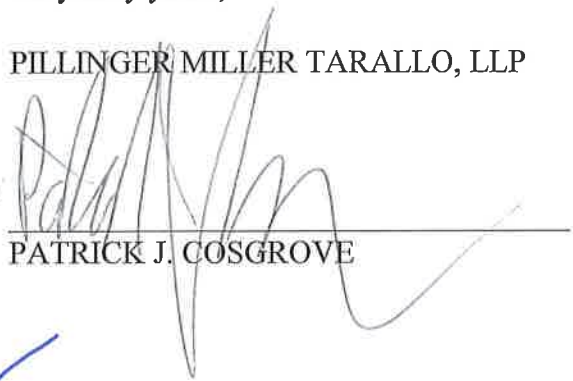
Please be advised that this office represents the Defendant, C.J. Hesse, Inc. regarding the above-referenced matter. Enclosed please find one (1) original and one (1) copy of the Defendant's Answer to Plaintiff's Complaint with Cross-Claim. Kindly file same with the Court and return the copy to me in the enclosed, self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

PILLINGER MILLER TARALLO, LLP

By:

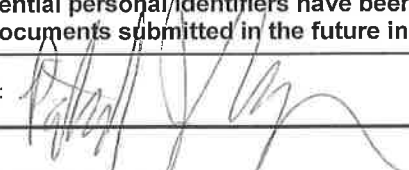

PATRICK J. COSGROVE

PJC/ai

Enclosures

cc: (w/encl.): Dina Vicari, Esquire ✓
Mark Hochman, Esquire
Michael McCarter, Esquire
Jill, Mucerino, Esquire
Sudha Raja, Esquire

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: ☐ CK ☐ CG ☐ CA CHG/CK NO. _____ AMOUNT: _____ OVERPAYMENT: _____ BATCH NUMBER: _____	
	ATTORNEY / PRO SE NAME Patrick J. Cosgrove, Esq.		TELEPHONE NUMBER (215) 789-6235	
	COUNTY OF VENUE Ocean			
FIRM NAME (if applicable) Pillinger Miller Tarallo, LLP			DOCKET NUMBER (when available) I-1728-16	
OFFICE ADDRESS 1880 John F. Kennedy Boulevard, Suite 1803 Philadelphia, PA 19103			DOCUMENT TYPE Answer to Plaintiffs' Complaint JURY DEMAND ☐ YES ☒ NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Defendant, C.J. Hesse, Inc.		CAPTION Berkeley Township Sewerage Authority v. New Jersey Department of Transportation, et al.,		
CASE TYPE NUMBER (See reverse side for listing) 599	HURRICANE SANDY RELATED? ☐ YES ☒ NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? ☐ YES ☒ NO		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☒ NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☐ UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? ☒ YES ☐ NO		IF YES, IS THAT RELATIONSHIP: ☐ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☒ BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ☒ NO				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ☒ NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? ☐ YES ☒ NO		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: 				

Pillinger Miller Tarallo, LLP
By: Patrick J. Cosgrove
Attorney ID No.: 025642003
1880 John F. Kennedy Boulevard
Suite 1803
Philadelphia, PA 19103
(215) 789-6235
(215) 789-6236 Fax
Attorney for Defendants, C.J. Hesse, Inc.

**BERKELEY TOWNSHIP
SEWERAGE AUTHORITY,**

Plaintiff,

v.

**NEW JERSEY DEPARTMENT OF
TRANSPORTATION, et al.,**

Defendant(s).

**: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION,
:
: OCEAN COUNTY
:
: DOCKET NO.: L-1728-16
:
: ANSWER TO PLAINTIFF'S COMPLAINT
: WITH AFFIRMATIVE DEFENSES,
: CROSSCLAIM FOR CONTRIBUTION,
: CROSSCLAIM FOR INDEMNIFICATION,
ANSWER TO ALL CROSSCLAIMS, NOTICE
OF ALLOCATION, ANSWERS TO ALL
CROSSCLAIMS, CERTIFICATION,
DESIGNATION OF TRIAL COUNSEL AND
JURY TRIAL DEMAND**

Defendant, C.J. Hesse, Inc. ("Answering "Defendant") by and through its attorney, Patrick J. Cosgrove of Pillinger Miller Tarallo, LLP, hereby responds to Plaintiff, Berkeley Township Sewerage Authority's ("Plaintiff") Complaint as follows:

PARTIES

1. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

2. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

3. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

4. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

5. Admitted in part; Denied in part. It is admitted that Answering Defendant's maintains its principal offices at that location. It is denied that the Plaintiff hired Answering Defendant. Answering Defendant was hired by Union Paving to complete the paving for the project.

INTRODUCTION

1. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

2. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in

this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

3. Denied. The Utility Agreement Modification Construction Authorization for Utility Owner is a document which speaks for itself.

4. Denied. The Agreement is a document which speaks for itself.

5. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

6. Denied. The Agreement is a document which speaks for itself.

7. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

8. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or

losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

9. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

10. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

11. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

12. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

13. Denied. After reasonable investigation Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in

this paragraph of Plaintiffs' Complaint. Therefore, said averments are denied and strict proof at time of trial is demanded.

14. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

15. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

COUNT I

BREACH OF CONTRACT

1. Denied as stated. This averment is denied because it is a document which speaks for itself. By way of further answer, Answering Defendant did not contract with the Plaintiff to relocate and/or adjust Plaintiff's sewer facilities.

2. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

3. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

4. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering

Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

5. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

COUNT II

Breach of Express Warranties

1. Answering Defendant incorporates by reference its previous answers as if set forth at length herein.

2. Denied. The agreement is a document which speaks for itself.

3. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or

losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

COUNT III

Breach of Implied Warranties

1. Answering Defendant incorporates by reference its previous answers as if set forth at length herein.

2. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required.

3. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required.

4. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required.

5. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

6. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant breached a contract, was negligent, breached express or implied warranties, or failed to remediate certain repairs. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

COUNT IV

Negligence

1. Answering Defendant incorporates by reference its previous answers as if set forth at length herein.

2. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

3. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant

was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

4. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

5. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

6. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

7. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

8. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

9. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

COUNT V

Res Ipsa Loquitor

1. Answering Defendant incorporates by reference its previous answers as if set forth at length herein.

2. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

3. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

COUNT VI

Remediation Costs

1. Answering Defendant incorporates by reference its previous answers as if set forth at length herein.

2. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

3. Denied. The averments contained in this paragraph contain conclusions of law to which no responsive pleading is required. It is specifically denied that the Answering Defendant was negligent. To the extent the averments constitute allegations of fact, Answering Defendant specifically denies that Plaintiff was caused to suffer any injuries, damages and/or losses as a result of any act or failure to act on behalf of Answering Defendant and, therefore, demands strict proof to the contrary at trial. Accordingly, those averments are deemed denied.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

AFFIRMATIVE DEFENSES

1. Answering Defendant is entitled to a deduction for duplicate benefits in accord with N.J.S.A. 2A:15-97.

2. Plaintiff's claim(s) are barred by the collateral source rule, common law or as codified in statute.

3. At all times relevant to Plaintiff's Second Amended Complaint, Answering Defendant acted in a reasonable manner and in accordance with the applicable laws.

4. Plaintiff's claims of agency, ostensible agency, servitude and/ or employment as they pertain to unidentified individuals alleged to be Answering Defendant's agents are specifically denied.

5. The Court lacks jurisdiction over the subject matter.

6. The Court lacks jurisdiction over the person.

7. There is insufficiency of process.

8. There is insufficiency of service of process.

9. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted as to the Answering Defendant.

10. Plaintiff's Complaint is barred by the applicable Statute of Limitations.

11. Plaintiff's Complaint is barred by the doctrine of *laches*.

12. Plaintiff's Complaint is barred by the doctrine of equitable estoppel.

13. Venue is improper in this matter.

14. Plaintiff's Complaint is barred by the Statute of Frauds.

15. The injuries and damages Plaintiff sustained, if any, were caused by the actions or inactions of third parties over whom Answering Defendant exercises no control.

16. Plaintiff's Complaint is barred by New Jersey comparative negligence statutes.

17. Plaintiff's Complaint is barred by the doctrine of assumption of the risk.

18. Answering Defendant performed each and every duty, if any, owed to Plaintiff.

19. Answering Defendant is not guilty of any negligence which was a proximate or producing cause of any injury and/or damage allegedly sustained by Plaintiff.

20. Plaintiff failed to mitigate the damages.

21. Answering Defendant believes and therefore avers that the injuries and damages, if any, which the Plaintiff sustained as alleged in the Second Amended Complaint were caused by the actions or inactions of the Plaintiff in whole or in part.

22. Plaintiff's Complaint is barred by intervening cause unrelated to Answering Defendant.

23. Plaintiff's Complaint is barred by supervening cause unrelated to Answering Defendant.

24. Plaintiff's damages are limited or barred by the provision of any contracts that exist between the Plaintiff and Defendant.

25. Answering Defendant believes and therefore avers that the injuries and damages, if any, which the Plaintiff sustained as alleged in the Complaint were not serious, permanent or causally related to the matter identified in the Complaint.

26. Answering Defendant believes and therefore avers that the injuries and damages, if any, which the Plaintiff sustained as alleged in the Complaint were not the result of any act or failure to act on the part of Answering Defendant, all such allegations being expressly denied by Answering Defendant, and Plaintiff's action is therefore barred.

27. Plaintiff's Complaint fails to join as a party in the action an individual who is subject to joinder pursuant to R.4:28.

28. Plaintiff's Complaint fails to join as a party in the action an individual who is subject to *joinder* pursuant to R.4:29-1(b).

29. Plaintiff's Complaint is barred by the doctrine of accord and satisfaction.

30. Plaintiff's Complaint fails to join a party without whom the action cannot proceed.

31. Plaintiff has waived its cause of action against Answering Defendant.

32. Answering Defendant intends to rely upon such other affirmative defenses as may become available or apparent during discovery proceedings in this action and further asserts and/or reserves the right to assert such affirmative defenses.

WHEREFORE, Answering Defendant requests judgment in its favor dismissing Plaintiffs' Complaint against Answering Defendant together with costs of suit, attorney fees and such other relief as the Court may deem just.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to Rule 4:5-2, the Answering Defendant requires that you furnish a Statement of Damages being claimed within five (5) days of receipt of the herein Answer.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, Patrick J. Cosgrove, Esquire, is hereby designated as Trial Counsel in this action.

ANSWER TO ALL CROSS CLAIMS

Answering Defendant by way of Answer to all Cross Claims for Contribution and/or Indemnification by co-defendant(s) hereby states that the allegations in these claims are conclusions of law to which no response is required and are therefore denied. To the extent that a response is required, Answering Defendant specifically denies that if Plaintiff sustained any compensable damages, that Answering Defendant caused these damages. By way of further answer, Answering Defendant denies all liability for these claims as co-defendants were the primary, active and/or sole culpable cause of the damage alleged.

CROSS CLAIM FOR INDEMNIFICATION

Answering Defendant by way of Cross Claim for Indemnification against all other co-defendant(s) state that: according to the allegations of the Complaint, co-defendants were the primary, active and sole culpable cause of the damage alleged. If Answering Defendant is found to have been negligent under the allegations of the Complaint, such negligence is passive, secondary and technical. Answering Defendant demands indemnification under the principles of common law applicable to the State of New Jersey for the full amount of any judgment, which may be rendered against them together with all costs incurred, and counsel fees.

CROSS CLAIM FOR CONTRIBUTION

Answering Defendant by way of Cross Claim for Contribution state that: Answering Defendant demand contribution from all other co-defendant(s) under the New Jersey Joint Tortfeasor Act, N.J.S.A. 2A: 53A-1 *et seq.* and the New Jersey Comparative Negligence Act, 2A: 15-5.1, together with all costs incurred and counsel fees.

JURY TRIAL DEMAND

A Trial by jury is hereby demanded as to all issues.

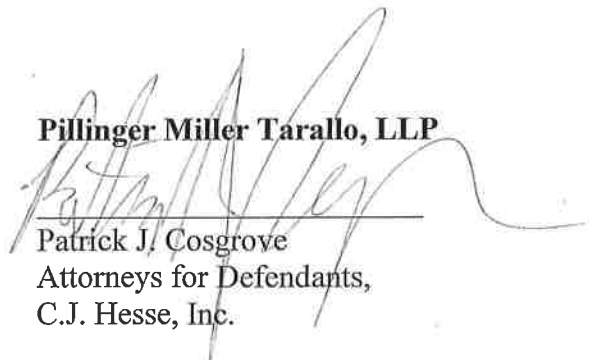
NOTICE OF ALLOCATION

Answering Defendant, pursuant to Rule 4:7-5(c) and Young v. Latta, 120 N.J. 584 (1991), hereby advises that they will seek an allocation of fault as to all other responsible persons and entities, whether or not named in this lawsuit and that, if any co-defendant settles the within matter with Plaintiff at any time prior to the conclusion of Trial, the liability of any settling co-defendant shall remain an issues and shall seek an allocation and/or percentage of negligence by the finder of fact against such setting co-defendant and/or a credit in favor of Answering Defendant.

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to Rule 4:5-1, I certify that to the best of my knowledge the above matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding at the present time.

Pillinger Miller Tarallo, LLP



Patrick J. Cosgrove
Attorneys for Defendants,
C.J. Hesse, Inc.

Dated: February 8, 2017