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NEW JERSEY SCHOOLS DEVELOPMENT
 AUTHORITY,

Plaintiff,

v.

GILBANE BUILDING COMPANY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: MONMOUTH COUNTY
 DOCKET NO. MON-L- _____ - _____

Civil Action *L2803-08*

**COMPLAINT, DESIGNATION OF TRIAL
 COUNSEL, JURY DEMAND, RULE 4:5-1
 CERTIFICATION AND DEMAND FOR
 DISCOVERY OF INSURANCE
 COVERAGE**

Plaintiff, New Jersey Schools Development Authority (hereinafter sometimes referred to as the "NJSDA" or "Plaintiff"), by way of Complaint against Defendant, Gilbane Building Company (hereinafter sometimes referred to as "Gilbane" or "Defendant"), hereby says and declares:

THE PARTIES

1. Plaintiff New Jersey Schools Development Authority is an independent public authority of the State of New Jersey in, but not of, the New Jersey Department of Treasury. The NJSDA develops and funds construction projects in New Jersey's thirty-one (31) special-needs districts and provides grants to help finance suburban school construction throughout New Jersey. The NJSDA has a principal office at 1 West State Street, Trenton, New Jersey 08625.

2. Defendant Gilbane Building Company is a wholly owned subsidiary of Gilbane, Inc. Gilbane's principal corporate offices are located in Providence, Rhode Island. Gilbane Building Company's Northeast Regional Headquarters is located at 3150 Brunswick Pike, Suite 300, Lawrenceville, New Jersey 08648.

JURISDICTION AND VENUE

3. This action arises under the common law and statutory law of the State of New Jersey, and involves transactions that occurred within the State of New Jersey and parties who at all relevant times resided in and/or conducted business in the State of New Jersey.

4. Pursuant to the contractual relationship between plaintiff and defendant, any and all litigation is required to be governed by the applicable laws, regulations and rules of the State of New Jersey.

5. Venue is properly laid in the Superior Court, Law Division of Monmouth County, pursuant to R. 4:3-2(a)(3), as the subject construction project and the corresponding causes of action arose in Monmouth County, New Jersey.

FACTS COMMON TO ALL COUNTS

A. GILBANE'S RESPONSIBILITIES

6. In accordance with New Jersey's stated goal to address the need for safe and healthy schools in New Jersey's special-needs districts, and to move projects expeditiously toward completion in an efficient, responsible and cost-effective manner, the NJSDA's predecessor, the New Jersey Schools Construction Corporation (hereinafter sometimes referred to as the "NJSCC") engaged Gilbane in 2002 to serve as one of the NJSCC's project management firms with construction management and other responsibilities for various School Facilities Projects throughout the State.

7. Gilbane was selected following a competitive process based, in part, upon its extensive experience in planning, design, construction and project management.

8. Gilbane was placed in a position of trust and confidence by the NJSCC and charged with, amongst other responsibilities, supervising the design phase of the project, supervising the construction phase of the project and generally managing the entire construction process for each of its designated School Facilities Projects.

9. The expectation of the NJSCC and its successor, the NJSDA, which was memorialized by the contractual agreement with Gilbane, obligated Gilbane to manage the project from pre-development activities, through the design phase, and the construction phase until the final occupancy of all School Facilities Projects assigned to it by the NJSCC or its successor.

10. Gilbane was to be responsible for all aspects of the School Facilities Projects assigned to it, and had the obligation to notify the NJSCC or its successor of any deficiencies or problems that Gilbane discovered. In sum, Gilbane was obligated to determine if the School Facilities Projects were designed correctly, if they could be built as designed, and if they were built correctly.

11. At each phase of design -- schematic, design development and construction documents -- Gilbane was required to review the design documents and advise the NJSCC as to their clarity, coordination and constructability, which included identifying errors and/or omission in the design documents, analyzing the feasibility and sustainability of constructing the project as designed, and taking all appropriate steps to remedy any problems or potential problems.

12. The contract documents for each School Facilities Project included, but were not limited to, architectural drawings, specifications, bid documents, construction agreement(s) and any addenda issued prior to the award of the construction contract.

13. Gilbane was also obligated to monitor and inspect all work-in-progress for compliance with the contract documents.

14. If, during construction, non-conforming materials were utilized or non-conforming work was performed, Gilbane was contractually obligated to discover such deficiency, take steps to have the contractor correct the work in accordance with the contract documents and to notify the NJSCC or its successor, the NJSDA, of these issues.

15. Gilbane was the NJSDA and its predecessor's eyes-and-ears on the project, responsible for each phase of the construction project, from beginning to final completion.

16. As detailed below, Gilbane breached its contract in multiple ways. Gilbane's performance exhibited an overarching failure to properly manage the entire process from the pre-design phase, the schematic and design development phase, the construction document phase, and the construction administration phase.

17. Gilbane failed to fulfill its contractual obligations by:

- (a) failing to identify adverse subsurface conditions that impacted construction;
- (b) failing to identify and remedy various errors and omissions in the design documents;
- (c) failing to recognize blatant issues with constructability, including the feasibility and sustainability of the project as designed;
- (d) failing to inspect the materials delivered to the project site and ensure they conformed to the requirements of the contract documents;
- (e) failing to notify the NJSDA or its predecessor, the NJSCC, that non-conforming materials were being utilized by the contractor;
- (f) failing to properly monitor the delivery and storage of construction materials;
- (g) failing to ensure that all construction activities were performed in conformance with the specifications, contract documents and corresponding industry standards;
- (h) failing to take steps to have the contractor correct the non-conforming work;
- (i) failing to notify and advise the NJSDA or its predecessor, the NJSCC, of the deficiencies in design and construction; and
- (j) failing to permit the NJSDA or its predecessor, the NJSCC, to properly mitigate the corresponding damages.

18. These failures resulted in widespread water infiltration and mold infestation throughout the construction of the pre-kindergarten through 5th grade Midtown Community School in Neptune Township, New Jersey (hereinafter referred to as the "Project").

19. Gilbane was aware of these issues for months, yet Gilbane failed to notify the NJSDA or its predecessor, the NJSCC, and failed to take steps to remedy the situation.

20. As a result of the mold infestation and the lack of safe, secure means to remediate the mold without jeopardizing the health and safety of the young students and professional staff who were to occupy the Neptune Midtown Community School, the NJSDA was left with no choice but to direct the demolition of portions of the school and commence massive reconstruction efforts.

21. Among other things, Gilbane breached its contract with the NJSDA and the implied covenants contained therein; breached its fiduciary duty to the NJSDA; and, has been unjustly enriched by accepting payments from the NJSDA without honoring its reciprocal obligation to provide its required services.

22. Gilbane's complete failure to comply with the terms of its contract with the NJSDA has caused NJSDA, and by extension the taxpayers of the State of New Jersey, substantial harm, and required the NJSDA to terminate Gilbane for cause from seventeen (17) projects throughout the State of New Jersey and to sever its relationship with Gilbane completely. Gilbane's actions trigger numerous causes of action, which obligate Gilbane to answer in damages to the NJSDA.

B. REGIONAL PROJECT MANAGEMENT SERVICES AGREEMENT WITH GILBANE

23. On or about December 5, 2002, the NJSCC and Gilbane entered into an Agreement For Regional Project Management Services bearing Contract No.: PM-0021-P01 (hereinafter referred to as the "Contract"), for Gilbane to serve as the NJSCC's authorized representative and Project Management Firm (hereinafter referred to as the "PMF") in connection with each School Facilities Project in "Region 7" in the State of New Jersey.

24. The School Facilities Projects for "Region 7" included the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction and/or maintenance of thirteen (13) schools in Asbury Park, New Jersey and Neptune Township, New Jersey, including the subject Project. Through amendments to the Contract, the NJSDA retained Gilbane to serve as PMF for an additional ten (10) School Facilities Projects in Barnegat, Pleasantville and Vineland, New Jersey.

25. In total, Gilbane was selected to serve as the NJSCC's advocate and disclosed agent for twenty-three (23) School Facilities Projects.

26. The NJSCC engaged Gilbane due to its extensive experience in planning, design, construction and project management.

27. Gilbane was placed in a position of trust and confidence by the NJSCC and was charged with supervising and controlling the entire process -- from pre-development activities, through design and construction to occupancy -- for its designated School Facilities Projects on behalf of the NJSCC and its successor, NJSDA.

28. In recognition of its comprehensive contractual obligations for each phase of construction, Gilbane was well-compensated by the NJSCC and its successor, the NJSDA. The original value of the Contract was \$14,840,000.00. Amendments to the Contract of \$12,637,240.77 increased the value to \$27,477,240.77.

29. As of the filing of this Complaint, Gilbane has been paid \$24,181,069.35 toward the adjusted Contract sum.

30. At each phase of design -- schematic, design development and construction documents -- Gilbane was required by the Contract to review the design documents and advise the NJSCC as to their clarity, coordination and constructability.

31. Gilbane was obligated by the Contract to, inter alia, coordinate any and all revisions to the contract documents.

32. The Contract also placed Gilbane at the center of managing and supervising all Requests for Information (RFIs). RFIs are utilized in the construction industry primarily to confirm the interpretation of a detail, specification or notation on construction drawings, or to secure a documented directive or clarification necessary to progress the work. The Contract obligated Gilbane to track, monitor and ensure the timely response to all Requests for Information (RFIs).

33. Gilbane was also required by the Contract to monitor, receive, catalogue and process all shop drawings, samples and other submittals.

34. If there was an issue or a breakdown in the RFI or submittal process, Gilbane was contractually obligated to monitor and correct that process and shepherd the RFI and submittal process to resolution.

35. The Contract also mandated that Gilbane monitor and inspect all work-in-progress for compliance with the contract documents. If, during construction, non-conforming materials were utilized or non-conforming work was performed, Gilbane was contractually obligated to discover such deficiency and take steps to have the contractor correct the work in accordance with the contract documents.

36. Gilbane had a comprehensive role in each phase of construction. The Contract set forth specific and detailed responsibilities that Gilbane was obligated to meet.

37. Pursuant to Article 2.1 of the Contract, Gilbane was charged with the obligation to become “fully familiar with all relevant project documentation as well as the contractual obligations of each entity doing work”

38. Gilbane, in accordance with Article 2.2 of the Contract, entered into a “relationship of trust and confidence established by [the Contract]” and was responsible to “make available to the

[NJSDA] its knowledge, skills, ideas, experience and abilities with respect to all matters within the Scope of Services.”

39. Article 2.4 of the Contract obligated Gilbane to:

[P]erform all services consistent with the level of skill and care ordinarily exercised by members of [Gilbane’s] profession, currently practicing under similar circumstances.

40. Pursuant to Article 2.5 of the Contract, Gilbane was responsible for, among other things, the “quality, technical accuracy, and timely completion and delivery of all Deliverables”, which included, but was not limited to, all technical data, plans, specifications, minutes, approvals, recommendations, drawings and reports, and to “cure any errors, omissions, or other deficiencies in the Deliverables.”

41. Article A.1, Appendix B - Scope of Services of the Contract stated that:

The role of the PMF [Gilbane] will be to manage Pre-Development Activities and other activities occurring prior to the Design Phase, as well as the Design and Construction Phases of all School Facilities Projects assigned to it by the [NJSDA]. Following the Effective Date, the PMF [Gilbane] will manage each project or Package from beginning to end, until Final Completion.

42. Article B.12, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[D]evelop and implement a QA/QC [Quality Assurance / Quality Control] program to ensure that the Services are accomplished with the highest degree of quality feasible under the Contractual Documents.

43. Article C.6, Appendix B - Scope of Services of the Contract obligated Gilbane to:

At all times during the term of [the Contract] . . . [to] advise the [NJSDA] about and facilitate resolution of any issues that will have an impact on the cost, schedule and successful delivery of a School Facilities Project, including but not limited to, site selection, site acquisition, safety, financing, performance, environmental issues, approvals, personnel, procedures, training, document management, labor issues and constructability.

44. Article E.2.1, Appendix B - Scope of Services of the Contract obligated Gilbane, together with SSP, to:

[V]isit the site and investigate the existing conditions that will be affected by any of the Construction Work required to complete each School Facilities Project.

45. Article E.2.2, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[E]xpeditiously review all of the Schematic Design Documents and advise the [NJSDA] as to their clarity, coordination, constructability, consistency, completeness, and compliance with applicable standards, non-proprietary language requirements, and design manual requirements.

46. Article E.3.1, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[E]xpeditiously review all of the Design Development Documents and advise the [NJSDA] as to their clarity, coordination, constructability, consistency, completeness, and compliance with applicable standards, non-proprietary language requirements, and design manual requirements.

47. Article E.4.1, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[E]xpeditiously review all of the Construction Documents and advise the [NJSDA] as to their clarity, coordination, constructability, consistency, completeness, and compliance with applicable standards, non-proprietary language requirements, and design manual requirements.

48. Article E.4.6, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[P]repare and review all project-specific Articles of the Construction Contract Documents and the specification documents including but not limited to the Supplementary Conditions and Specification Article 01010.

49. Article H.4, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[R]eview and approve the detailed construction schedules prepared by the contractor . . . and all schedule updates on a monthly basis for acceptable levels of progress and compliance with Construction Milestones.

50. Article H.5, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[M]onitor and verify that all Construction Work and activities are occurring in accordance with Construction Milestones . . . through various actions, including, but not limited to, site observations, phone calls to suppliers or vendors in order to confirm the placement of orders, and obtaining [sic] invoice documentation and shipping data.

51. Article H.6, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[P]repare a written monthly progress report . . . [that includes] information concerning the adequacy of the Construction Work . . . [and] current and potential problems deemed of sufficient importance to require [NJSDA] monitoring or action during the forthcoming month and a recommended course of action to achieve resolution of each of these problems.

52. Article H.8.1, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[R]eview, monitor, comment upon and provide recommendations to the [NJSDA] concerning any revisions or changes to the Construction Contract Documents to be made by the Design Consultant as required in response to unexpected site conditions or changes in the Scope of Work.

53. Article H.9.1.3, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[I]nspect all work-in-progress for compliance with the Construction Contract Documents, and . . . determine what corrective action should be taken to avoid or prevent installation of defective or non-conforming Construction Work.

54. Article H.9.2, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[M]onitor the Construction Work [and] [o]n the basis of on-site inspections . . . endeavor to guard each School Facilities Project against defects and deficiencies in the Construction Work . . . recommend to the [NJSDA] rejection of Construction Work that does not conform to the Construction Contract Documents and . . . assist the [NJSDA] in achieving satisfactory performance of the Construction Work by the Contractor in accordance with the Construction Contract Documents [and] . . . immediately recommend courses of action to the [NJSDA] when the provisions of the

Construction Contract Documents are not being fulfilled and the non-performing party does not take the corrective action.

55. Article H.9.3, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[M]onitor the Contractor's "quality assurance and quality control" program and all operations and inspections related thereto.

56. In addition to the foregoing, the Contract also obligated Gilbane to perform various other monitoring, review, inspection and oversight tasks regarding the pre-design phase, the schematic and design development phase, the construction document phase, and the construction administration phase of the Project.

C. BACKGROUND TO NEPTUNE MIDTOWN COMMUNITY SCHOOL PROJECT

57. Pursuant to its charge from the New Jersey Legislature, the NJSCC commenced efforts to construct an approximately 150,000 square foot school in Neptune Township, New Jersey known as the Neptune Midtown Community School (hereinafter referred to as the "Project") on land purchased and acquired by the NJSDA.

58. Upon completion, the Project will operate as a pre-kindergarten through 5th-grade elementary school and house various local community service offices for the greater Neptune community.

59. Consistent with the Executive Order #24 issued on July 29, 2002 by the New Jersey Office of the Governor, the Project was designed to meet Leadership in Energy and Environmental Designs (LEED) environmental guidelines. LEED is a third-party certification program and nationally accredited benchmark for the design, construction and operation that promotes a whole-building approach to sustainability by recognizing performance in areas of human and environmental health.

60. On or about October 2, 2002, the predecessor to the NJSDA, the NJSCC, engaged SSP Architectural Group (hereinafter referred to as "SSP") of Somerville, New Jersey to design the Project.

61. On or about December 5, 2002, the NJSCC engaged Gilbane to monitor, manage, supervise and oversee pre-design matters, design document development, construction document preparation, and construction administration on the Project, as well as Project close-out.

62. On or about February 4, 2004, the NJDCC engaged Turner Construction Company (hereinafter referred to as "Turner Construction") to construct the Project.

63. The Notice to Proceed for construction was issued on February 4, 2004 with a scheduled completion date of February 6, 2006.

64. Adverse subsurface conditions were discovered at the outset of construction and delayed the Project for approximately nine (9) months. This, combined with other issues, pushed the projected substantial completion date to the middle of 2007.

65. The subsequent discovery of mold caused by poor design, construction and oversight, and the corresponding deconstruction and reconstruction of large portions of the building, which is detailed at length in this Complaint, has pushed the projected substantial completion date to the Summer of 2008.

66. The original cost of construction of the Project was \$35,999,500.00. As a result of delays, design errors or omissions, unforeseen conditions and, most specifically, the discovery of mold and the corresponding deconstruction and reconstruction of large portions of the building, the expected cost of the Project will now exceed \$60,000,000.00.

67. The value of Gilbane's Contract devoted to the Neptune Project, including amendments thereto, was \$ 4,412,747.61. Gilbane has already been paid \$ 4,372,008.09.

D. BACKGROUND OF THE PROJECT DESIGN AND LAYOUT

68. The Project is a school building designed with a brick façade at the first and second floors with a metal panel system at the third floor in a majority of the areas of the school.

69. The building consists of five (5) areas, identified as Areas A through E.

70. The front of the building, composed of Areas A (A-1 and A-2), B (B-1 and B-2) and C, is three stories high. In Areas A, B and C, the first story contains ground face CMU block and brick façade; the second and third stories have the brick façade; with the upper part of the third floor having a metal panel façade installed over a metal stud wall backup.

71. Areas D and E are in back of Areas A, B and C and are connected by a corridor. Areas D and E contain the gymnasium and cafeteria.

72. Through the end of 2006, the Project was approximately 75% complete and the majority of the exterior work was completed.

E. THE DISCOVERY OF MOLD

73. On January 17, 2007, the NJSDA was formally notified by Turner Construction that significant mold growth was present on the exterior gypsum sheathing in Areas A, B and C of the Project.

74. Although the NJSDA was not notified of the existence of mold until January 17, 2007, Gilbane knew or should have known of the existence of mold at least as early as September 12, 2006, yet it failed to notify the NJSDA about the mold problem.

75. On September 12, 2006, SSP prepared a Field Observation Report that notes mold found on the sheathing.

76. Gilbane, which had daily inspection obligations, failed to identify the mold growth earlier, failed to notify the NJSDA of SSP's observation of mold, and/or failed to take steps to have the contractor correct the problem. Rather, Gilbane permitted construction activities to continue.

77. On September 21, 2006, SSP prepared another Field Observation Report that notes water intrusion into the cavity of the exterior wall.

78. Gilbane, who had daily inspection obligations, failed to identify the water intrusion earlier, failed to notify the NJSDA of SSP's observation, and/or failed to take steps to have the contractor correct the problem. Rather, Gilbane permitted construction activities to continue.

79. A November 7, 2006 photo taken by Gilbane's own employees reveals visible evidence of mold on the interior side of the sheathing.

80. Despite having taken the November 7, 2006 photo, which showed visible evidence of mold, Gilbane did not alert the NJSDA of the presence of mold on the Project, nor did Gilbane take any of the necessary steps to have the situation remedied.

81. On November 17, 2006, a moisture control plan commissioned by Turner Construction was prepared to address water infiltration issues on the Project.

82. As set forth above, Gilbane had the contractual responsibility to identify problems with the construction of the Project, to notify the NJSDA about those problems, and to take steps to ensure that the contractor was correcting those problems.

83. Although Gilbane knew or should have known of the presence of mold as early as September 12, 2006, Gilbane did not alert the NJSDA or take steps to have the situation remedied.

84. The NJSDA was not notified about the mold problem until more than four (4) months later on January 17, 2007, when Turner Construction brought it to the NJSDA's attention.

85. Upon learning of the discovery of mold, the NJSDA immediately engaged a team of experts to investigate the conditions and to advise the NJSDA about available options to correct the problem and determine its cause.

86. Through its comprehensive investigation, the NJSDA identified numerous failures throughout the Project, including, but not limited to, inadequate and poor design, the failure to

construct in accordance with the Project's plans and specifications, the failure to properly protect the work during construction, and an overarching failure by Gilbane to properly manage the entire process throughout every point from the pre-design phase, the schematic and design development phase, the construction document phase, and the construction administration phase of the Project.

87. As a result of the wide-spread mold infestation, the NJSDA and its team of consultants recognized that there was no safe, secure means to remediate the mold without jeopardizing the health of the future inhabitants of the school.

88. Although all possible options were reviewed, it was clear that the only way to adequately remedy the mold problem and properly protect the health and safety of the young students and professional staff who were to occupy the Neptune Midtown Community School was to demolish entire portions of the Project where mold infestation had taken hold and commence massive reconstruction efforts.

89. Due to Gilbane's failure to bring this significant problem to the attention of the NJSDA in a timely manner, a brick façade had already covered the exterior side of the sheathing.

90. As a result, a sizeable demolition operation and reconstruction, involving removal and replacement of ground face block and brick, metal panels, windows, rigid insulation and sheathing in the A, B and C areas of the building was required.

91. The costs associated with the necessary remediation and corrective work have already exceeded thirteen million dollars (\$13,000,000.00).

F. CAUSES OF MOLD INFESTATION

92. The primary incubator for the mold growth was the exterior sheathing that was between the exterior building façade -- either ground face block, brick or metal panels -- and the light gauge metal framing (metal studs) to which the sheathing was attached on the outside, with drywall attached on the inside of the metal studs.

93. The brand of sheathing that had been originally approved for the Project was not the sheathing actually installed in the majority of the Project.

94. Gilbane, as the Project's PMF, had the contractual responsibility to monitor the delivery, storage and installation of the sheathing for the Project.

95. Gilbane never advised the NJSDA that a non-conforming sheathing product was delivered and installed at the Project.

96. The sheathing was color-coded by its manufacturer, with a designated front-side that was to be installed facing the exterior of the building.

97. As is clearly visible in numerous of Gilbane's own project photos, much of the sheathing was installed backward, with the wrong side facing the exterior, evidencing a further lack of any quality control by Gilbane.

98. Furthermore, prior to installation, the sheathing was improperly stored on the Project site. Gilbane never took steps to have the contractor properly store and protect the sheathing prior to installation.

99. After the sheathing was installed, it was left exposed to the weather much longer than the thirty (30) day exposure requirement set by the sheathing manufacturers' specifications, recommendations and warnings, as well as the industry standard.

100. Consequently, the NJSDA was unable to exercise contractual remedies to obligate the contractor to protect the sheathing.

101. Quality of construction issues also affected the exterior's ability to keep moisture from penetrating to the sheathing. On the side of the sheathing that was visible from the interior of the Project, mold was easily visible as early as September 12, 2006.

102. In addition, a high number of RFIs were generated by Turner Construction regarding design issues and their impact on preventing moisture from penetrating the exterior.

103. In early December 2005, Turner Construction submitted RFI 433 regarding the need to protect the sheathing from weather until the building envelope -- block/brick, metal panels and windows -- was installed.

104. The sheathing was installed between June 2006 and October 2006.

105. After being notified of the mold infestation in January 2007, the NJSDA's investigation discovered that a non-conforming brand of sheathing (LaFarge) was the majority of the sheathing installed on the Project, rather than the approved brand (USG). USG sheathing was also installed in some places.

106. Gilbane had improperly approved the delivery of LaFarge sheathing.

107. The manufacturers of both USG and LaFarge sheathing products expressly specify that the sheathing should not be exposed to weather for longer than thirty (30) calendar days.

108. The masonry and metal panels that covered the sheathing were installed weeks and months beyond this thirty (30) day limit.

109. Windows were not installed until even later, which continued the weather exposure to the sheathing for additional weeks and months.

110. The sheathing installation and related construction activities were performed over a period of time when there were heavy amounts of precipitation, which, without the appropriate weather protections, exacerbated the situation.

111. As a result, all the necessary conditions ripe for the propagation of mold -- food, moisture and heat -- were all present.

112. Notwithstanding the sheathing manufacturers' specifications and the industry standard, the exterior sheathing was exposed to the elements for periods ranging up to ninety (90) days.

113. The multiple window openings left the interior side of the sheathing exposed for as much as an additional ninety (90) days.

114. Consequently, large portions of the sheathing were exposed for approximately one-hundred and eighty (180) days. Thus, the sheathing was exposed for nearly five (5) months beyond the recommended thirty (30) day exposure period stated in the manufacturers' specifications and industry standard.

115. Gilbane, as the Project's PMF, had the contractual obligation to ensure that all construction activities were performed in conformance with the specifications, contract documents and corresponding industry standards.

116. Gilbane, as the Project's PMF, had the contractual responsibility to take steps to have the contractor correct the non-conforming work and to notify the NJSDA that non-conforming work was being performed by the contractor.

117. Gilbane failed to take steps to have the contractor correct the work and failed to alert the NJSDA of these contractual deficiencies.

G. BLATANT FAILURES IN MANAGEMENT AND OVERSIGHT OF DESIGN & CONSTRUCTION

118. Water infiltration was widespread throughout the Project.

119. Water entered the building due to incomplete exterior openings, window (flashing) leaks, masonry (flashing) leaks, roof leaks, and metal wall panel leaks.

120. Water infiltration and the resulting damage to the exterior gypsum sheathing occurred on every floor of the Project.

121. At each phase of design Gilbane was required by the Contract to review the design documents and advise the NJSDA as to their clarity, coordination and constructability, which included identifying errors and/or omissions in the design documents, analyzing the feasibility and

sustainability of constructing the project as designed, and taking all appropriate steps to remedy any problems or potential problems.

122. Contrary to the requirement of New Jersey's Uniform Construction Code (NJUCC) and the International Building Code 2000 (IBC), the design documents did not provide for a weather restrictive barrier on the Project. Gilbane failed to identify this blatant omission, failed to notify the NJSDA or its predecessor about it, and failed to take steps to have the architect or contractor remedy the situation.

123. Gilbane failed to identify or correct the design documents' lack of a proper weather restrictive barrier and water management system, which allowed moisture to penetrate the wall system and enter the building envelope.

124. Gilbane did not identify or correct the design documents' failure to incorporate an adequate flashing system, which allowed moisture to penetrate the wall system and enter the building envelope.

125. Gilbane did not identify or correct the design documents' failure to incorporate perimeter foundation waterproofing and drainage, which allowed moisture to penetrate the wall system and enter the building envelope.

126. Gilbane failed to identify or correct the design documents' lack of a working moisture control system, which allowed moisture to penetrate the wall system and enter the building envelope.

127. Gilbane never advised the NJSDA that the design documents did not incorporate the required moisture control elements and did not conform with industry standards.

128. Pursuant to the Contract, Gilbane was obligated to discover deficiencies during construction and take steps to have the contractor correct the work in accordance with the contract documents. Gilbane was responsible for numerous failures in this regard.

129. Installation procedures contrary to the Project's specifications, including the lack of adequate temporary protection and the lack of weather resistive barriers, allowed moisture infiltration causing mold growth.

130. Further, the windows were installed incorrectly, in complete disregard of the installation instructions attached to each window, and without uniformity to each other.

131. The means and methods of construction that were employed on the Project systematically punctured the vapor barrier with three inch (3") holes to the insulation every few feet, which further contributed to moisture infiltration and mold growth.

132. Gilbane failed to discover the design errors and omissions in the design documents, failed to identify the numerous deficiencies during construction, failed to take steps to have the contractor correct those deficiencies, and utterly failed to notify the NJSDA or its predecessor, the NJSCC, about these problems.

133. Gilbane's failure to comply with the terms of its Contract with the NJSDA has caused NJSDA substantial harm. The harm suffered by NJSDA, and by extension the taxpayers of the State of New Jersey, includes, but is not limited to:

- (a) the cost to demolish and reconstruct the Project;
- (b) multiple delays related, as well as delays unrelated, to the mold;
- (c) corresponding delay damages of the NJSDA and others, including increased costs of completion;
- (d) attorneys' fees;
- (e) consultant fees; and,
- (f) other damages.

134. As a consequence of Gilbane's numerous breaches of the Contract, the NJSDA was forced to Terminate the Contract for Cause pursuant to Article 6.2 of the Contract.

135. A seven (7) day notice to cure letter was sent to Gilbane on February 21, 2008.

136. Gilbane failed to timely cure its deficiencies, and the Contract was terminated for cause on February 29, 2008.

137. As a consequence of Gilbane's numerous breaches of the Contract, and Gilbane's betrayal of the trust and confidence bestowed by the NJSDA for numerous School Facilities Projects throughout the State of New Jersey, Gilbane was terminated for cause by the NJSDA on seventeen (17) separate construction projects.

COUNT ONE

GILBANE'S FAILURE TO MEET ITS OBLIGATIONS

(Breach of Contract)

138. The NJSDA repeats and realleges the allegations contained in the Facts Common to All Counts of this Complaint as if the same were fully set forth at length herein.

139. Pursuant to the Contract, Gilbane was obligated to perform its duties with a high level of skill and care.

140. Gilbane, as the NJSDA's authorized representative on the Project, was responsible for, among other things, the oversight of the entire Project from pre-development activities, through design and construction to occupancy.

141. At each phase of design -- schematic, design development and construction documents -- Gilbane was required by the Contract to review the design documents and advise the NJSDA as to their clarity, coordination and constructability.

142. The numerous design deficiencies and resultant damage demonstrate that Gilbane breached this contractual obligation.

143. Pursuant to the Contract, Gilbane was obligated, due to its inspection responsibility, to discover deficiencies with construction and take steps to have the contractor correct the work in accordance with the contract documents.

144. If, during construction, non-conforming work was performed, Gilbane was obligated, due to its inspection responsibility, to discover such deficiency and take steps to have the contractor correct the work in accordance with the contract documents.

145. The numerous construction deficiencies on the Project and resultant damage demonstrate that Gilbane breached these contractual obligations.

146. Pursuant to Article 2.1 of the Contract, Gilbane was charged with the obligation to become “fully familiar with all relevant project documentation as well as the contractual obligations of each entity doing work” on the Project.

147. The numerous design deficiencies, construction deficiencies and resultant damage establish that Gilbane was blatantly unaware of many of the details of the project documentation, as well as unaware of the contractual obligations of each entity performing work on the Project. As a result, Gilbane breached its contractual obligations under Article 2.1 of the Contract.

148. Gilbane, in accordance with Article 2.2 of the Contract, entered into a “relationship of trust and confidence established by [the Contract]” and was responsible to “make available to the [NJSDA] its knowledge, skills, ideas, experience and abilities with respect to all matters within the Scope of Services.”

149. The numerous design deficiencies, construction deficiencies and resultant damage demonstrate that Gilbane breached its contractual obligations under Article 2.2 of the Contract.

150. Article 2.4 of the Contract obligated Gilbane to:

[P]erform all services consistent with the level of skill and care ordinarily exercised by members of [Gilbane's] profession, currently practicing under similar circumstances.

151. Pursuant to Article 2.5 of the Contract, Gilbane was responsible for, among other things, the “quality, technical accuracy, and timely completion and delivery of all Deliverables”, which includes, but is not limited to, all technical data, plans, specifications, minutes, approvals, recommendations, drawings and reports, and to “cure any errors, omissions, or other deficiencies in the Deliverables.”

152. The numerous design deficiencies and resultant damage establish that Gilbane breached its contractual obligations under Articles 2.4 and 2.5 of the Contract.

153. Article A.1, Appendix B - Scope of Services of the Contract stated that:

The role of the PMF [Gilbane] will be to manage Pre-Development Activities and other activities occurring prior to the Design Phase, as well as the Design and Construction Phases of all School Facilities Projects assigned to it by the [NJSDA]. Following the Effective Date, the PMF [Gilbane] will manage each project or Package from beginning to end, until Final Completion.

154. The numerous design deficiencies and resultant damage demonstrate that Gilbane breached its contractual obligations under Article A.1, Appendix B of the Contract.

155. Article B.12, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[D]evelop and implement a QA/QC [Quality Assurance/Quality Control] program to ensure that the Services are accomplished with the highest degree of quality feasible under the Contractual Documents.

156. The numerous design deficiencies, construction deficiencies and resultant damage demonstrate that Gilbane breached its contractual obligations under Article B.12, Appendix B of the Contract.

157. Article C.6, Appendix B - Scope of Services of the Contract obligated Gilbane to:

At all times during the term of [the Contract] . . . [to] advise the [NJSDA] about and facilitate resolution of any issues that will have an impact on the cost, schedule and successful delivery of a School Facilities Project, including but not limited to, site selection, site acquisition, safety, financing,

performance, environmental issues, approvals, personnel, procedures, training, document management, labor issues and constructability.

158. The numerous design deficiencies, construction deficiencies and resultant damage establish that Gilbane breached its contractual obligations under Article C.6, Appendix B of the Contract.

159. Article E.2.1, Appendix B - Scope of Services of the Contract obligated Gilbane, together with SSP, to:

[V]isit the site and investigate the existing conditions that will be affected by any of the Construction Work required to complete each School Facilities Project.

160. Gilbane failed to identify the obvious and adverse subsurface conditions of the Project site that, at the outset of construction, caused several months delay in the Project. As a result, Gilbane breached its contractual obligations under Article E.2.1, Appendix B of the Contract.

161. Article E.2.2, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[E]xpediently review all of the Schematic Design Documents and advise the [NJSDA] as to their clarity, coordination, constructability, consistency, completeness, and compliance with applicable standards, non-proprietary language requirements, and design manual requirements.

162. The numerous design deficiencies and resultant damage establish that Gilbane breached its contractual obligations under Article E.2.2, Appendix B of the Contract.

163. Article E.3.1, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[E]xpediently review all of the Design Development Documents and advise the [NJSDA] as to their clarity, coordination, constructability, consistency, completeness, and compliance with applicable standards, non-proprietary language requirements, and design manual requirements.

164. The numerous design deficiencies and resultant damage establish that Gilbane breached its contractual obligations under Article E.3.1, Appendix B of the Contract.

165. Article E.4.1, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[E]xpeditiously review all of the Construction Documents and advise the [NJSDA] as to their clarity, coordination, constructability, consistency, completeness, and compliance with applicable standards, non-proprietary language requirements, and design manual requirements.

166. The numerous design deficiencies and resultant damage establish that Gilbane breached its contractual obligations under Article E.4.1, Appendix B of the Contract.

167. Article E.4.6, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[P]repare and review all project-specific Articles of the Construction Contract Documents and the specification documents including but not limited to the Supplementary Conditions and Specification Article 01010.

168. The numerous design deficiencies and resultant damage establish that Gilbane breached its contractual obligations under Article E.4.6, Appendix B of the Contract.

169. Article H.4, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[R]eview and approve the detailed construction schedules prepared by the contractor . . . and all schedule updates on a monthly basis for acceptable levels of progress and compliance with Construction Milestones.

170. Turner Construction submitted schedule updates, which included the planned durations for the installation of the sheathing, the brick veneer, the windows and the metal panels. Contrary to the NJUCC and the IBC, those schedule updates revealed the sheathing would be exposed well beyond the thirty (30) day exposure requirement set by the sheathing manufacturers' specifications, recommendations and warnings, as well as the industry standard.

171. Contrary to its contractual obligations, Gilbane approved those schedule updates despite their blatant disregard for the sheathing manufacturers' specifications and industry standards. As a result, Gilbane breached its contractual obligations under Article H.4, Appendix B of the Contract.

172. Article H.5, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[M]onitor and verify that all Construction Work and activities are occurring in accordance with Construction Milestones . . . through various actions, including, but not limited to, site observations, phone calls to suppliers or vendors in order to confirm the placement of orders, and obtaining [sic] invoice documentation and shipping data.

173. Turner Construction submitted schedule updates, which included the planned durations for the installation of the sheathing, the brick veneer, the windows and the metal panels. Contrary to the NJUCC and the IBC, those schedule updates revealed the sheathing would be exposed well beyond the recommended exposure period stated in the manufacturers' specifications and industry standard.

174. Contrary to its contractual obligations, Gilbane approved those schedule updates. As a result, Gilbane breached its contractual obligations under Article H.5, Appendix B of the Contract.

175. Article H.6, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[P]repare a written monthly progress report . . . [that includes] information concerning the adequacy of the Construction Work . . . [and] current and potential problems deemed of sufficient importance to require [NJSDA] monitoring or action during the forthcoming month and a recommended course of action to achieve resolution of each of these problems.

176. Although the NJSDA was not notified of the existence of mold until January 17, 2007, Gilbane knew or should have known of the existence of mold at least as early as September 12, 2006.

177. Gilbane did not notify the NJSDA of the presence of mold, Turner Construction did.

178. On information and belief, Gilbane certainly knew of the existence of mold by November 7, 2006.

179. Gilbane's failure to identify and notify the NJSDA of this obvious current and potential health and safety problem exacerbated the situation, prevented the NJSDA from mitigating

the damage and caused significant harm. Consequently, Gilbane breached its contractual obligations under Article H.6, Appendix B of the Contract.

180. Article H.8.1, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[R]eview, monitor, comment upon and provide recommendations to the [NJSDA] concerning any revisions or changes to the Construction Contract Documents to be made by the Design Consultant as required in response to unexpected site conditions or changes in the Scope of Work.

181. Gilbane's failure to identify and notify the NJSDA of the obvious current and potential health and safety problem caused by the mold infestation exacerbated the situation, prevented the NJSDA from mitigating the damage and caused significant harm. Consequently, Gilbane breached its contractual obligations under Article H.8.1, Appendix B of the Contract.

182. Article H.9.1.3, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[I]nspect all work-in-progress for compliance with the Construction Contract Documents, and . . . determine what corrective action should be taken to avoid or prevent installation of defective or non-conforming Construction Work.

183. Contrary to its comprehensive contractual inspection obligations, Gilbane permitted installation procedures contrary to the Project's specifications -- including the lack of adequate temporary protection and the lack of weather resistive barriers -- to be performed and persist for several months during construction of the Project. These construction failures allowed moisture infiltration causing mold growth. Consequently, Gilbane breached its contractual obligations under Article H.9.1.3, Appendix B of the Contract.

184. Article H.9.2, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[M]onitor the Construction Work [and] [o]n the basis of on-site inspections . . . endeavor to guard each School Facilities Project against defects and deficiencies in the Construction Work . . . recommend to the [NJSDA] rejection of Construction Work that does not conform to the Construction Contract Documents and shall assist the [NJSDA] in achieving

satisfactory performance of the Construction Work by the Contractor in accordance with the Construction Contract Documents [and] . . . immediately recommend courses of action to the [NJSDA] when the provisions of the Construction Contract Documents are not being fulfilled and the non-performing party does not take the corrective action.

185. Contrary to its comprehensive contractual inspection obligations, Gilbane permitted installation procedures contrary to the Project's specifications -- including the lack of adequate temporary protection and the lack of weather resistive barriers -- to be performed and persist for several months during construction of the Project. These construction failures allowed moisture infiltration causing mold growth. As a result, Gilbane breached its contractual obligations under Article H.9.2, Appendix B of the Contract.

186. Article H.9.3, Appendix B - Scope of Services of the Contract obligated Gilbane to:

[M]onitor the Contractor's "quality assurance and quality control" program and all operations and inspections related thereto.

187. Contrary to its comprehensive contractual inspection obligations, Gilbane permitted installation procedures contrary to the Project's specifications -- including the lack of adequate temporary protection and the lack of weather resistive barriers -- to be performed and persist for several months during construction of the Project. These construction failures allowed moisture infiltration causing mold growth. As a result, Gilbane breached its contractual obligations under Article H.9.3, Appendix B of the Contract.

188. The Contract also obligated Gilbane to perform various other monitoring, review, inspection and oversight tasks regarding the pre-design phase, the schematic and design development phase, the construction document phase, and the construction administration phase of the Project.

189. The numerous delays encountered on the Project as a result of, and apart from, the widespread water infiltration, mold infestation and the corresponding need to deconstruct and

reconstruct large portions of the Project, reveal that Gilbane also breached these contractual obligations.

190. In sum, Gilbane breached numerous provisions of the Contract by failing to perform its contractual obligations during virtually every phase of the Project -- from pre-development activities, through design and construction.

191. Gilbane further breached the Contract by performing its contractual obligations in a deficient, improper and faulty manner.

192. Pursuant to Article 5.12 of the Contract, Gilbane is obligated to indemnify the NJSDA for any and all costs and/or expenses incurred by the NJSDA in connection with claims arising out of Gilbane's negligent performance.

193. As a result of Gilbane's negligence, the NJSDA has incurred, and will continue to incur, expenses, including, but not limited to, legal and expert costs associated with resolving the claims of SSP, Turner Construction and its subcontractors.

194. Gilbane's numerous breaches of the Contract were without excuse, as the NJSDA performed its contractual obligations and provided payment to Gilbane for its purported "services."

195. During the course of the Project, Gilbane never once alleged that the NJSDA had defaulted on any of their contractual obligations.

196. All invoices submitted by Gilbane were paid in a timely manner; nevertheless, it is now obvious that the NJSDA did not receive the value from Gilbane to which it was entitled.

197. As set forth above, Gilbane's repeated breaches of Contract and Gilbane's repeated failure to notify the NJSDA of the Project's on-going problems, represented nothing less than an arrogant and cavalier approach towards its contractual responsibilities.

198. The NJSDA has been damaged by Gilbane's breach of the Contract, insofar as the NJSDA has incurred and will incur additional costs to complete the portions of the Project, in addition to delays and associated damages, consultant fees, attorneys' fees and various other damages.

WHEREFORE, plaintiff New Jersey Schools Development Authority demands that judgment be entered in its favor and against defendant Gilbane Building Company for compensatory damages, damages, pre-judgment interest, post-judgment interest, attorneys' fees, court costs, costs of collection, and any and all other relief the Court deems appropriate.

COUNT TWO

(Unjust Enrichment)

199. The NJSDA repeats and realleges the allegations contained in the Facts Common to All Counts and Count One of this Complaint as if the same were fully set forth at length herein.

200. Gilbane has been paid amounts far in excess of the reasonable value of services Gilbane provided to the NJSDA.

201. As a result of receiving payment without honoring its reciprocal obligation to provide services and perform its duties with the level of skill and care required by the Contract and ordinarily exercised by Project Management Firms, Gilbane has been unjustly enriched.

WHEREFORE, plaintiff New Jersey Schools Development Authority demands that judgment be entered in its favor and against defendant Gilbane Building Company for compensatory damages, damages, pre-judgment interest, post-judgment interest, attorneys' fees, court costs, costs of collection, and any and all other relief the Court deems appropriate.

COUNT THREE

(Breach of Implied Duty of Good Faith and Fair Dealing)

202. The NJSDA repeats and realleges the allegations contained in the Facts Common to All Counts, Count One and Count Two of this Complaint as if the same were fully set forth at length herein.

203. In each contract, there is an implied covenant of good faith and fair dealing obligating the parties to act in good faith and deal fairly in fulfilling their contractual obligations.

204. Gilbane, as the NJSDA's authorized representative on the Project, was responsible for, among other things, the oversight of the entire Project from pre-development activities, through design and construction to occupancy.

205. Gilbane completely failed to discover the errors and omissions in the design documents, Gilbane failed to identify the numerous deficiencies during construction, Gilbane failed to take steps to have the contractor correct those deficiencies, and Gilbane failed to notify the NJSDA about these problems.

206. Gilbane is without excuse to avoid the clear understanding between the parties regarding Gilbane's supervision and oversight obligations.

207. Consequently, Gilbane has breached its implied duty of good faith and fair dealing in the aforementioned Contract between the NJSDA and Gilbane.

208. The NJSDA has been damaged by Gilbane's breach of the implied duty of good faith and fair dealing implicit in the Contract, insofar as the NJSDA has incurred and will incur additional costs to complete the portions of the Project, in addition to delays and associated damages, consultant fees, attorneys' fees and various other damages.

WHEREFORE, plaintiff New Jersey Schools Development Authority demands that judgment be entered in its favor and against defendant Gilbane Building Company for compensatory damages, damages, pre-judgment interest, post-judgment interest, attorneys' fees, court costs, costs of collection, and any and all other relief the Court deems appropriate.

COUNT FOUR

(Breach of Fiduciary Duty)

209. The NJSDA repeats and realleges the allegations contained in the Facts Common to All Counts and Count One through Count Three of this Complaint as if the same were fully set forth at length herein.

210. Gilbane owed the NJSDA a fiduciary duty in connection with the performance of its responsibilities as the NJSDA's Project Management Firm and as the NJSDA's authorized representative of the Project.

211. Pursuant to Article 2.2 of the Contract, Gilbane entered into a "relationship of trust and confidence" with the NJSDA, and Gilbane was responsible to "make available to the [NJSDA] its knowledge, skills, ideas, experience and abilities with respect to all matters" related to the Project.

212. Gilbane failed to fulfill its fiduciary duty to the NJSDA.

213. Although the NJSDA was not notified of the existence of mold until January 17, 2007, Gilbane knew or should have known of the existence of mold as early as September 12, 2006, and it certainly knew of the existence of mold by November 7, 2006.

214. On September 12, 2006, SSP prepared a Field Observation Report that notes mold found on the sheathing. On September 21, 2006, SSP prepared a Field Observation Report that notes water intrusion into the cavity of the exterior wall. A November 7, 2006 photo taken by Gilbane clearly reveals visible evidence of mold on the interior side of the sheathing. On November 17, 2006,

a moisture control plan commissioned by Turner Construction was prepared to address water infiltration.

215. Gilbane's failure to identify and notify the NJSDA of this obvious current and potential health and safety problem exacerbated the situation, prevented the NJSDA from mitigating the damage and caused significant harm and substantial damages.

216. Similarly, Gilbane failed to identify the adverse subsurface conditions of the Project site that, prior to construction, it was obligated to inspect. Those subsurface site conditions caused several months delay in the Project, and Gilbane is responsible for the associated damages related to the same.

217. As a result of the foregoing breaches of fiduciary duty by Gilbane, the NJSDA has incurred and will continue to incur substantial damages. Gilbane is liable to the NJSDA for those damages.

WHEREFORE, plaintiff New Jersey Schools Development Authority demands that judgment be entered in its favor and against defendant Gilbane Building Company for compensatory damages, damages, pre-judgment interest, post-judgment interest, attorneys' fees, court costs, costs of collection, and any and all other relief the Court deems appropriate.

COUNT FIVE

(Breach of Express Warranty)

218. The NJSDA repeats and realleges the allegations contained in the Facts Common to All Counts and Count One through Count Four of this Complaint as if the same were fully set forth at length herein.

219. Under the express terms of Article 2.4 of the Contract, Gilbane was obligated to:

[P]erform all services consistent with the level of skill and care ordinarily exercised by members of [Gilbane's] profession, currently practicing under similar circumstances.

220. The Contract terms also stated that:

The role of the PMF [Gilbane] will be to manage Pre-Development Activities and other activities occurring prior to the Design Phase, as well as the Design and Construction Phases of all School Facilities Projects assigned to it by the [NJSDA]. Following the Effective Date, the PMF [Gilbane] will manage each project or Package from beginning to end, until Final Completion.

[Article A.1, Appendix B - Scope of Services (emphasis added)]

221. Under the express terms of the Contract, Gilbane, as the NJSDA's authorized representative on the Project, was responsible for, among other things, the oversight of the entire Project from pre-development activities, through design and construction to occupancy.

222. At each phase of design -- schematic, design development and construction documents -- Gilbane was required by the express terms of the Contract, to review the design documents and advise the NJSDA as to their clarity, coordination and constructability.

223. Gilbane was obligated under the express terms of the Contract to coordinate any and all revisions to the contract documents; track, monitor and ensure the timely response to all Requests for Information (RFIs); monitor, receive, catalogue and process all shop drawings, samples and other submittals; inspect all work-in-progress for compliance with the contract documents; and monitor the construction work.

224. Under the express terms of the Contract, if there was an issue or a breakdown in the RFI or submittal process, Gilbane was obligated to monitor and correct that process and shepherd the RFI or submittal through the submittal process to resolution.

225. Under the express terms of the Contract, if, during construction, non-conforming work was performed, Gilbane was obligated, due to its inspection responsibility, to discover such deficiency and take steps to have the contractor correct the work in accordance with the contract documents.

226. Gilbane breached its express warranties under the Contract by:

- (a) failing to review the design documents and advise the NJSDA as to their lack of clarity, coordination and constructability;
- (b) failing to monitor and correct breakdowns in the RFI process and shepherd the RFI or submittal through the process to resolution;
- (c) failing to discover deficient and non-conforming work being performed on the Project and failing to take steps to have the contractor correct the work in accordance with the contract documents; and
- (d) failing to perform its duties with the level of skill and care ordinarily exercised by members of Gilbane's profession, currently practicing under similar circumstances.

227. As a result of Gilbane's breaches of its express warranties under the Contract, the NJSDA has incurred and will continue to incur substantial damages. Gilbane is liable to the NJSDA for those damages.

WHEREFORE, plaintiff New Jersey Schools Development Authority demands that judgment be entered in its favor and against defendant Gilbane Building Company for compensatory damages, damages, pre-judgment interest, post-judgment interest, attorneys' fees, court costs, costs of collection, and any and all other relief the Court deems appropriate.

COUNT SIX

(Breach of Implied Warranty)

228. The NJSDA repeats and realleges the allegations contained in the Facts Common to All Counts and Count One through Count Five of this Complaint as if the same were fully set forth at length herein.

229. Implicit in the Contract between the NJSDA and Gilbane is that Gilbane would perform its construction work in a reasonable and appropriate manner.

230. In undertaking to serve as the NJSDA's Project Management Firm, Gilbane impliedly warranted that it would monitor, manage, supervise and oversee pre-design matters, design document development, construction document preparation, construction administration, and Project close-out.

231. Through the Contract, Gilbane impliedly warranted that it would assist the NJSDA in mitigating damages caused by deficient and non-conforming work being performed on the Project by notifying the NJSDA and taking steps to have the contractor correct the work in accordance with the contract documents.

232. The numerous deficiencies in the pre-design, design documents, construction documents and construction administration reveal that Gilbane breached its implied warranties under the Contract.

WHEREFORE, plaintiff New Jersey Schools Development Authority demands that judgment be entered in its favor and against defendant Gilbane Building Company for compensatory damages, damages, pre-judgment interest, post-judgment interest, attorneys' fees, court costs, costs of collection, and any and all other relief the Court deems appropriate.

COUNT SEVEN

(Breach of Duty Negligently Causing Damage)

233. The NJSDA repeats and realleges the allegations contained in the Facts Common to All Counts and Count One through Count Six of this Complaint as if the same were fully set forth at length herein.

234. At each phase of design -- schematic, design development and construction documents -- Gilbane had a duty to review the design documents and advise the NJSDA as to their clarity, coordination and constructability.

235. During construction, Gilbane had a duty to take steps to prevent deficient and non-conforming work from being performed and to have the contractor correct the work in accordance with the contract documents.

236. Gilbane had a duty to assist the NJSDA in mitigating damages caused by deficient and non-conforming work being performed on the Project by notifying the NJSDA and taking steps to have the contractor correct the work in accordance with the contract documents.

237. Gilbane breached these duties by:

- (a) failing to review the design documents and advise the NJSDA as to their lack of clarity, coordination and constructability;
- (b) failing to discover deficient and non-conforming work being performed on the Project; and,
- (c) failing to take steps to have the contractor correct the work in accordance with the contract documents.

238. As a result of Gilbane's breaches of these duties, Gilbane has proximately caused the NJSDA to incur and continue to incur substantial damages. Gilbane is liable to the NJSDA for those damages.

WHEREFORE, plaintiff New Jersey Schools Development Authority demands that judgment be entered in its favor and against defendant Gilbane Building Company for compensatory damages, damages, pre-judgment interest, post-judgment interest, attorneys' fees, court costs, costs of collection, and any and all other relief the Court deems appropriate.

DESIGNATION OF TRIAL COUNSEL

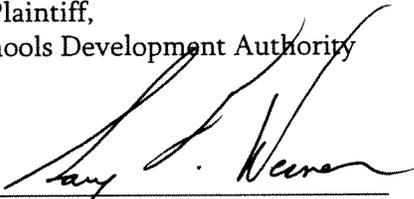
Plaintiff New Jersey Schools Development Authority hereby designates Gary F. Werner, Esq. and Jeffrey T. LaRosa, Esq. as trial counsel in this action.

JURY DEMAND

Plaintiff New Jersey Schools Development Authority hereby demands a trial by jury as to all issues raised by this litigation.

SCHENCK, PRICE, SMITH & KING, LLP
Attorneys for Plaintiff,
New Jersey Schools Development Authority

By: _____


Gary F. Werner

Dated: June 16, 2008.

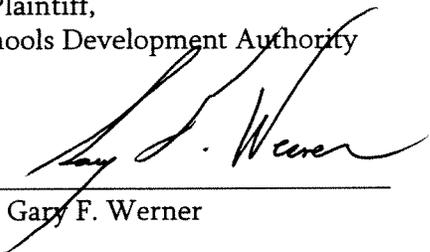
CERTIFICATION PURSUANT TO RULE 4:5-1

GARY F. WERNER, ESQ., of full age, hereby certifies:

1. I am an attorney-at-law in the State of New Jersey and a member of the law firm of Schenck, Price, Smith & King, LLP, attorneys for the plaintiff New Jersey Schools Development Authority in the within action.
2. I certify that the within Complaint was filed in the Monmouth County Clerk's Office in Freehold, New Jersey.
3. I certify that I have no knowledge of any other pending actions or proceedings concerning the subject matter of this action, and it is not anticipated at this time that any other party should be joined in this action.
4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SCHENCK, PRICE, SMITH & KING, LLP
Attorneys for Plaintiff,
New Jersey Schools Development Authority

By: _____


Gary F. Werner

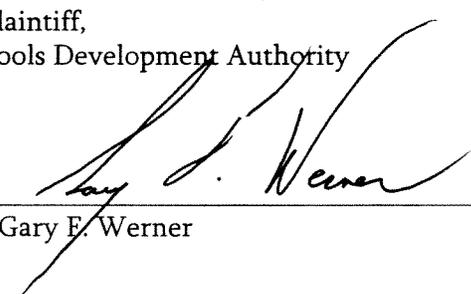
Dated: June 16, 2008.

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to R. 4:10-2(b), demand is made that Defendant Gilbane Building Company disclose to Plaintiff's attorney whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment, which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment and provide Plaintiff's attorney with true copies of those insurance agreements or policies, including, but not limited to, any and all declaration sheets. This demand shall include and cover not only primary coverage, but also any and all excess, catastrophe and umbrella policies.

SCHENCK, PRICE, SMITH & KING, LLP
Attorneys for Plaintiff,
New Jersey Schools Development Authority

By: _____


Gary E. Werner

Dated: June 16, 2008.

MGS/00969324;3