

STATE OF LOUISIANA, THROUGH
ITS DIVISION OF ADMINISTRATION,
OFFICE OF FACILITY PLANNING
AND CONTROL

CASE NO: SECTION:

VERSUS

19th JUDICIAL DISTRICT COURT

REMSON HALEY HERPIN ARCHITECTS, APAC;
XL SPECIALTY INSURANCE COMPANY;
MBD CONSTRUCTION COMPANY, L.L.C.;
FEDERAL INSURANCE COMPANY; AND
THE GRAY INSURANCE COMPANY

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PETITION FOR DAMAGES

Petitioner, the State of Louisiana, through its Division of Administration, Office of Facility Planning and Control (hereinafter, the “State”), respectfully represents:

1.

The State names the following defendants in this proceeding:

- (a) Remson Haley Herpin Architects, APAC (hereinafter, “Remson”), a professional architectural corporation domiciled in the State of Louisiana, Parish of East Baton Rouge;
- (b) XL Specialty Insurance Company (hereinafter, “XL”), a foreign corporation domiciled in the State of Delaware and licensed to do and doing business in the State of Louisiana;
- (c) MBD Construction Company, L.L.C. (hereinafter, “MBD”), a domestic limited liability company domiciled in the State of Louisiana, Parish of East Baton Rouge;
- (d) Federal Insurance Company (hereinafter, “Federal”), a foreign corporation domiciled in the State of Indiana and licensed to do and doing business in the State of Louisiana; and
- (e) The Gray Insurance Company (hereinafter, “Gray”), a domestic company domiciled in the State of Louisiana.

2.

On or around October 29, 2002, the State and Remson entered into a Selection Board Contract Between Owner and Designer (the “Design Contract”), for the project known as “New Office Building, Louisiana Real Estate Commission, Baton Rouge, Louisiana, State Project No. 01-100-02-LREC Part 01” (hereinafter, the “Project”).

3.

Pursuant to the provisions of the Design Contract and in consideration of compensation paid to Remson, Remson agreed to design and provide construction administration services for the Project.

4.

On or around April 10, 2007, the State and MBD entered into a public works contract (the "Construction Contract"), under which MBD agreed to furnish all labor and materials and perform all of the work required to build, construct, and complete the Project in a thorough and workmanlike manner, and in strict accordance with the contract documents prepared by Remson.

5.

Under La. R.S. 38:2181 and the Design and Construction Contracts, this Court has jurisdiction and venue over this dispute.

6.

On or around April 11, 2007, the State issued a Notice to Proceed notifying MBD to commence work on or before April 30, 2007 and to complete work by June 4, 2008.

7.

Subsequent change orders extended the completion date to August 4, 2008.

8.

The Project was accepted as substantially complete on August 4, 2008, and a Notice of Acceptance was recorded in the office of the Clerk of Court and Recorder of Mortgages for the Parish of East Baton Rouge.

9.

Remson and MBD were paid all sums due to them under the terms of the Design and Construction Contracts.

10.

Since the completion of the Project, the State has continuously occupied the Louisiana Real Estate Commission Building and has continually experienced problems with the building, including but not limited to: cracks in the sheetrock, doors not closing, ceilings falling down, back-splashes popping off, etc.

11.

The problems experienced with the facility have impaired the State's use of the building and have damaged the State.

12.

Remson owed a duty to the State to exercise the degree of care, skill, and judgment expected of a professional architect in the design and supervision of the Project.

13.

MBD was contractually required to construct the Project in a thorough and workmanlike manner, and in strict accordance with the contract documents prepared by Remson.

14.

Upon information and belief, the problems plaguing the building are the result of, but are not limited to:

- (a) Remson's breach of its standard of care in its design, inspection, and administration of the Project, which breach has caused or contributed to defects in the facility;
- (b) MBD or its subcontractor's breach of its obligations under the Construction Contract to construct the Project in strict accordance with the plans and specifications set forth in the Construction Contract; and
- (c) MBD or its subcontractor's breach of its obligations under the Construction Contract to faithfully perform its work in a thorough and workmanlike manner.

15.

As a result of the breaches of its respective obligations and/or duties of care, Remson is liable to the State for damages the State has sustained in connection with the defects in the Project.

16.

Upon information and belief, XL insured Remson against professional liability. XL is, therefore, liable to the State for the damages the State has sustained as a result of Remson's breach of its duties of care and/or the Design Contract.

17.

Under the Construction Contract and law, MBD is liable to the State for the damages sustained as a result of MBD's failure to perform the Construction Contract in accordance with its terms and conditions.

18.

In accordance with the Construction Contract and La. R.S. 38:2219, Federal executed a performance and payment bond in favor of the State, promising, among other things, to fulfill MBD's obligations under the Construction Contract, in the event MBD failed to perform the Construction Contract in accordance with its terms and conditions.

19.

MBD or its subcontractor's failure to comply with the plans and specifications, and/or complete the Project in a thorough and workmanlike manner constitutes a failure to perform, which

triggers Federal's duty under the Performance Bond to fulfill MBD's obligations under the Construction Contract.

20.

Federal is, therefore, liable to the State for all damages specified in paragraph seventeen of this Petition, that were incurred as a result of MBD's breach of its obligations under the provisions of the Construction Contract.

21.

In accordance with the Construction Contract, Gray issued various insurance policies which inure to the benefit of the State and which provide coverage for the circumstances of liability alleged herein, including a Commercial General Liability policy naming MBD as its insured. Gray is, therefore, liable to the State for any damages caused by MBD, which are contemplated under the applicable insurance policies.

WHEREFORE, the State prays that the Defendants be served with a copy of this Petition for Damages and that, after due proceedings, this Honorable Court render a Judgment in favor of the State and against the Defendants for all direct and consequential damages the State has sustained, along with all other damages which may be proven at trial together with legal interest from the date of judicial demand, all expert fees, all costs of these proceedings, and all equitable relief to which the Plaintiff may be entitled.

Respectfully Submitted by:

**STATE OF LOUISIANA, DIVISION OF
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