

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SUPERIOR GUNITE

Index No. 54272/2013

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY, INC., and
ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

AMENDED VERIFIED ANSWER,
SEPARATE DEFENSES,
AND COUNTERCLAIM
OF DEFENDANTS
YONKERS CONTRACTING
COMPANY, INC., AND
ZURICH AMERICAN
INSURANCE COMPANY

-----X

Yonkers Contracting Company, Inc. ("Yonkers"), and Zurich American Insurance Company ("Zurich") (hereinafter sometimes collectively referred to as "Defendants"), by their attorneys, Veneruso, Curto, Schwartz & Curto, LLP, as and for their answer to the Verified Complaint dated March 25, 2013 of Superior Gunite (hereinafter referred to as "Plaintiff"), answer, allege and say as follows:

1. Upon information and belief, the Defendants admit the allegations set forth in Paragraph 1 of the Verified Complaint.
2. The Defendants admit the allegations set forth in Paragraph 2 of the Verified Complaint.
3. The Defendants admit the allegations set forth in Paragraph 3 of the Verified Complaint, except as to state that the correct name of Defendant is Zurich American Insurance Company.

IN ANSWER TO THE FIRST CAUSE OF ACTION AGAINST YONKERS

4. The Defendants repeat and reassert each and every answer to the allegations of Paragraphs 1 through 3 of the Verified Complaint as if fully set forth at length herein.
5. The Defendants admit that on or around March 3, 2011, Yonkers entered into a subcontract with the Plaintiff ("Subcontract") for certain work relating to Metropolitan Transit

Authority (“MTA”) project identified as the Excavation/Mining/Lining of the Vertical Shaft E1, E2, Inclined Tunnels, T1 Connector Tunnel, and the Construction Ventilation Building and Station Entrance Structure at Site J, Contract No.: C-266510, located in at the south side of the intersection of 34th Street and 11th Avenue, in New York, New York (hereinafter the "Project"). The Defendants state that the Subcontract speaks for itself and deny knowledge or information sufficient to form a belief as to all other allegations set forth in Paragraph 5 of the Verified Complaint.

6. The Defendants admit that the Subcontract required Plaintiff to provide labor, materials and equipment necessary for the furnishing, installation and placement of certain shotcrete work at the Project and deny all other allegations set forth in Paragraph 6 of the Verified Complaint.

7. The Defendants admit that the Subcontract price was \$7,500,000, subject to additions and deletions, and state that the Subcontract speaks for itself and deny all other allegations set forth in Paragraph 7 of the Verified Complaint.

8. The Defendants state that the Subcontract speaks for itself and deny knowledge or information sufficient to form a belief as to all other allegations set forth in Paragraph 8 of the Verified Complaint.

9. The Defendants deny the allegations set forth in Paragraph 9 of the Verified Complaint, except as to admit that certain change orders were agreed to by the parties.

10. The Defendants deny the allegations set forth in Paragraph 10 of the Verified Complaint.

11. The Defendants deny the allegations set forth in Paragraph 11 of the Verified Complaint.

12. The Defendants deny the allegations set forth in Paragraph 12 of the Verified Complaint.

13. The Defendants deny the allegations set forth in Paragraph 13 of the Verified Complaint.

IN ANSWER TO THE SECOND CAUSE OF ACTION AGAINST ZURICH

14. The Defendants repeat and reassert each and every answer to the allegations of Paragraphs 1 through 13 of the Verified Complaint as if fully set forth at length herein.

15. Defendants admit that on or about September 3, 2010, Zurich as surety and Yonkers, as principal, executed Payment Bond No. PRF09011946 (the "Bond") relating to the Project pursuant to the Contract between the MTA and Yonkers and Defendants state that the Bond speaks for itself. Defendants state that contrary to the allegations set forth in Paragraph 15 of the Verified Complaint, a copy of the Bond is not annexed to the Verified Complaint. Defendants deny all other allegations set forth in Paragraph 15 of the Verified Complaint.

16. The Defendants deny the allegations set forth in Paragraph 16 of the Verified Complaint except as to specifically admit that Plaintiff was a subcontractor, and did furnish labor and materials, on the Project.

17. Defendants deny the allegations set forth in Paragraph 17 of the Verified Complaint.

18. The Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 18 of the Verified Complaint and leave Plaintiff to its proof.

19. Defendants deny the allegations set forth in Paragraph 19 of the Verified Complaint.

20. Defendants deny the allegations set forth in Paragraph 20 of the Verified Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by failure of conditions precedent.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, to the extent that it seeks payment of sums for work for which the MTA has yet to remit to Yonkers.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the terms of the Contract and/or the Subcontract.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to name and/or properly identify a necessary party to this action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of set-off.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by material breach of contract on the part of Plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of accord and satisfaction.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of waiver.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of laches.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of release.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of estoppel.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has been paid and has accepted all sums due and owing.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's failure to mitigate its damages.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's breach of the implied covenant of good faith and fair dealing.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's asserted claim against the Bond is defective.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the terms and conditions of the Bond.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent the causes of action asserted in the Verified Complaint are in equity, they are barred on the grounds of unclean hands.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent that the Verified Complaint alleges that Superior Gunite is due payment of monies from Yonkers under the Subcontract, such monies have been withheld as necessary to satisfy any claims, liens, and/or judgments against Superior Gunite which have yet to be suitably discharged.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

Due to the complex nature and necessary closeout procedures of the project at issue, Yonkers is currently unable to determine how much, if any, monies are due and owing to Superior Gunite.

FACTS RELEVANT TO ALL COUNTERCLAIMS

1. On or about October 13, 2010, the Metropolitan Transportation Authority ("MTA"), as owner, entered into a contract, designated as Contract C-26510, with Yonkers Contracting Company, Inc. (hereinafter, the "Contract") under which Yonkers Contracting Company, Inc. (hereinafter, "Yonkers") undertook certain duties and responsibilities as general contractor for the construction of a project identified as the "Excavation/Mining/Lining of Vertical Shaft, E1, E2, Inclined Tunnels, T1 Connector Tunnel, and the Construction of a Ventilation Building and Station Entrance Structure at Site J", located in New York, New York (hereinafter, the "Project"). The purpose of the Project was to construct a phase of the work associated with the construction of new subway station that would connect with and tie into other underground structures.

2. Yonkers subsequently entered into agreements with various subcontractors related to the performed of certain aspects of work on the Project.

Subcontractors

3. On or about March 3, 2011, Yonkers entered into a subcontract, designated as S/C# 10-0212-18, with Superior Gunite (hereinafter, the "Superior Subcontract") under which Superior Gunite

(hereinafter, "Superior") undertook certain duties and responsibilities as a subcontractor to Yonkers on the Project.

4. The Superior Subcontract generally required Superior to perform work related to pneumatically applied concrete, or "shotcrete," for the Project, specifically designating Superior's scope of work as a "Complete Shotcrete Package." Hence, Superior was to provide all of the labor, materials, and equipment necessary for the installation of shotcrete on the Project and in accordance with the Superior Subcontract.

5. The installation of shotcrete is different from conventionally forming and pouring concrete in that concrete is pneumatically installed by being "shot" out of a large hose. Generally, the purpose of the shotcrete on the Project was to either provide a "smoothing layer" of concrete upon which to install the Project's waterproofing system, as well as to build the Project's load-bearing structure, including, without limitation, structural walls and arches.

6. In consideration for Superior's fulfillment of obligations under the Superior Subcontract, Yonkers was to pay Superior the sum of Seven Million Five Hundred Thousand Dollars and Zero Cents (\$7,500,000).

7. Two Amendments were subsequently executed to the Superior Subcontract, collectively increasing its value from \$7,500,000 to \$8,650,813.

8. The Superior Subcontract stressed that "time is of the essence" in completing the Project and required Superior to coordinate and adjust the intensity of its workforce in order to maintain its schedule commitments — even if this meant working overtime without additional compensation. These same obligations were imposed upon all of Yonkers' subcontractors on the Project, as well as on Yonkers, itself.

9. On or about February 15, 2011, Yonkers also entered into a subcontract, designated as S/C# 10-0212-15, with KJC Waterproofing, Inc. (hereinafter, the "KJC Subcontract") under which KJC Waterproofing, Inc. (hereinafter, "KJC") undertook certain duties and responsibilities as a subcontractor to Yonkers on the Project.

10. The KJC Subcontract generally required KJC to perform all work associated with the waterproofing system for the Project, specifically designating KJC's scope of work as a "Complete Waterproofing System Installation." Hence, KJC was to provide all of the labor, materials, and equipment necessary for the installation of the waterproofing system on the Project in accordance with the KJC Subcontract.

11. Generally, the purpose of the waterproofing system was to prevent the infiltration of water into the interior space of the underground tunnels, stations, shafts, and other Project areas.

Shotcrete and the Waterproofing System

12. A certain order of operations was required in order for Superior to install the shotcrete and for KJC to install the waterproofing system. For instance, rock must first be drilled, blasted, and excavated in order to create the necessary underground space that would accommodate the Project's various tunnels, stations, shafts, and other structures.

13. Superior would then place shotcrete directly upon the exposed rock surface in order to provide a "smoothing layer" for the waterproofing system. The smoothing layer of shotcrete was to be installed to specific profiling requirements in order facilitate the installation of the waterproofing system upon it.

14. KJC installed the waterproofing system directly upon the smoothing layer of shotcrete. The waterproofing system could not be installed upon the exposed rock surface due to the inevitable risk of puncturing or rupturing of the waterproofing system's components. The shotcrete smoothing

layer essentially eliminated the jagged profile of the rock surface and thereby the risk of puncturing or rupturing of the waterproofing system.

15. Once waterproofing system was installed upon Superior's shotcrete smoothing layer, and after the placement of reinforcing steel by another subcontractor. Superior installed another layer of shotcrete over the waterproofing system — essentially "sandwiching" the waterproofing system between two layers of Superior's shotcrete and permanently embedding the waterproofing system behind this second layer of shotcrete. Thus, to visually inspect the waterproofing system would be impossible without demolishing the shotcrete installed by Superior.

16. Given the MTA's contract demands and due to other MTA projects that followed the work in this contract, the MTA required the work in this contract to be performed in accord with a very aggressive schedule. The contract provided for Yonkers not only to complete the entire Project by a certain date, but to complete certain portions of work by certain milestone dates (hereinafter, the "Milestones") established in the contract. If these Milestones were not met, then substantial Liquidated Damages could be imposed upon Yonkers.

17. As construction proceeded, Superior failed to fulfill its obligations under its Subcontract.

Issues with Superior's Performance

18. In performing work on the Project, Superior breached its Subcontract in numerous ways. Superior's breaches led to Yonkers' assertion of numerous backcharges against Superior. For example, one significant backcharge pertains to clean up work that Superior failed to perform under the Superior Subcontract. As stated above, Superior would install shotcrete. The process of shotcreting is quite messy and involves a lot of rebound of material as it is shot out and then bounces off the walls when it is being applied. Yonkers informed Superior numerous times about Superior's obligation to clean up

left-over shotcrete created by its work and nearly situate it on the Project site for removal by Yonkers. As Superior continually failed to do so, Yonkers was forced to step in and clean up Superior's mess.

19. Other significant backcharges include, without limitation, Superior's failure to install certain "bulkheads" and "waterstops" as required by the Superior Subcontract. Superior undertook the work under the Superior Subcontract without informing Yonkers that it was not signatory to the requisite union in order to construct the bulkheads for the Project. As for the waterstops, they were installed so poorly and sloppy that the MTA rejected them. Again, Yonkers was forced to step in and perform these aspects of work for Superior.

20. Backcharges were also asserted against Superior for repairs to Yonkers' equipment and cleaning of Yonkers' scaffolding caused by Superior's shotcrete operations.

21. There were also certain disputed credits and deletions as to the scope of Superior's Work.

Issues with Superior's Installed Shotcrete

22. During the course of performing work on the Project, the MTA identified an area of Superior's installed shotcrete that was believed to have contained "voids" within its volume. Water leaks were also discovered through the installed shotcrete surfaces of the Project (recall that the waterproofing system was embedded behind these concrete surfaces). It is believed that deficiencies in Superior's shotcrete enabled water to infiltrate into the interior areas of the Project's underground structures. Furthermore, the water leaks were not simply isolated to specific Project locations, but were discovered throughout the Project site. Superior's defective shotcrete and the water leaks became major issues on the Project.

23. On or about July 17, 2013, the MTA issued a Stop Work Order in order to investigate the adequacy of the installed shotcrete and due to the severity of the water leaks. As a result of the

issuance of the Stop Work Order, the work of Skanska, a follow-on contractor on the Project who was to complete the Subway Station work, was halted in certain of its work areas.

24. Pursuant to the MTA's direction, Yonkers directed Superior to take core samples of the installed shotcrete for investigation. The testing results of the core samples revealed that Superior's installed shotcrete fell drastically short of the Project's imposed design criteria, as significant voids were discovered throughout the volume of the installed shotcrete — which in turn drastically reduced the shotcrete's capacity for strength. Thereafter, Superior performed remedial work to "fill in" the voids in the shotcrete with cementitious grout.

25. Yonkers also directed KJC to perform remedial work in order to rectify the water leak issues on the Project by injecting a polyurethane grout into the concrete walls. The intent was to achieve the "dryness" requirements imposed by the MTA. Thereafter, KJC performed remedial work in an effort to stop the leaks and achieve the "dryness" criteria mandated by the MTA.

26. In a Meeting on or about October 14, 2013, Dr. Horodniceanu, President of the MTA, and Parsons Brinckerhoff ("Parsons"), the MTA's engineers, explained that the voids within Superior's shotcrete caused the waterproofing membrane to rupture and contributed to the water leaks. More specifically, Dr. Horodniceanu and Parsons explained that water pressure at locations where the waterproofing system spanned over the voids in the shotcrete could cause the waterproofing system to collapse into the void areas and rupture. They believed that such circumstances had caused water leaks on the Project.

27. On or about December 10, 2013, after extensive investigations, engineering analyses, and remedial work were performed, the MTA lifted the Stop Work Order. During the period of time in which the Stop Work Order was imposed, Yonkers' work, allegedly Skanska's work, and the Project

Schedule were all adversely impacted. Furthermore, Yonkers incurred costs for providing support to the remedial work forces of both Superior and KJC.

28. Water leaks continue to occur on the Project and the MTA is currently threatening to assess Liquidated Damages against Yonkers. As such, the MTA continues to withhold retainage from Yonkers.

29. Superior failed to install shotcrete in accordance with the Superior Subcontract, as the shotcrete contained that caused water leaks throughout the Project. Furthermore, water leaks still continue at the Project, and the MTA has yet to acknowledge that the “dryness” requirements have been met and issue a certificate of Final Completion for the Project.

30. Superior failed to provide adequate manpower, supervision, and/or labor on the Project in order to efficiently perform its scope of work under the Superior Subcontract. Thus, Yonkers was forced to incur costs in order to perform the necessary leak repair work.

31. Despite Yonkers’ demands, Superior has refused to return to the Project site and complete the leak remediation work. Yonkers continues to periodically invoice Superior for remedial work performed by Yonkers that was supposed to be performed by Superior.

32. Until such time as the MTA deems the Project as achieving Final Completion, Yonkers’ backcharges against Superior relating to its defective shotcrete and the water leaks will continue to increase. Therefore, Yonkers cannot at this time definitively determine the totality of damages that it has incurred.

33. For the foregoing reasons, Superior breached the Superior Subcontract and caused substantial damages to Yonkers.

Yonkers' Damages

34. As a result of Superior's failures to fulfill its contractual obligations, Yonkers has incurred substantial damages.

35. Yonkers' damages include, without limitation, costs for performing the Superior's work that it failed to perform, costs for materials supplied by Yonkers and then used by Superior, costs for supporting the Superior's work on account of its failure to provide adequate manpower, potential liquidated damages that may be imposed upon Yonkers caused by Superior's failure to install shotcrete in accordance with the MTA's requirements, and other costs that have yet to be determined and as discovery may reveal.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST SUPERIOR

(Breach of Contract)

36. Yonkers repeats and reiterates the allegations set forth in Paragraphs 1 through 35 of its Counterclaims as if fully set forth at length herein.

37. Superior failed to abide by the terms of the Superior Subcontract. In effect, Yonkers was forced to incur significant costs in order to support Superior's remedial work, mitigate damages caused by Superior, mitigate the possibility of liquidated damages being imposed by the MTA due to Superior, and to recover time lost in the Project schedule by Superior actions and inactions.

38. Superior has materially breached the Superior Subcontract with Yonkers in the following ways:

- a. Failing to install shotcrete in accordance with the Superior Subcontract and Project requirements;
- b. Failing to perform remedial work caused by Superior's defective shotcrete;
- c. Failing to adhere to the schedule imposed by the Superior Subcontract;

- d. Failing to implement sufficient means and methods in which to perform Superior's work;
- e. Failing to provide the labor, equipment, and materials necessary to perform Superior's work in accordance with the Superior Subcontract;
- f. Failing to provide adequate manpower to keep up with the Project's Schedule;
- g. Impacting Yonkers' critical path Schedule;
- h. Failing to mitigate the time impacts caused by Superior on the Project;
- i. Failing to make decisions in a timely and efficient manner, resulting in further time impacts to the Project;
- j. Forcing Yonkers to incur costs in order to supplement or remedy Superior's work, accelerate work and recover time that was lost due to the fault of Superior;
- k. Failing to compensate Yonkers for the labor, material, and equipment support to Superior;
- l. Failing to act in good faith and deal with Yonkers in a fair and equitable manner; and
- m. Such other actions and inactions as discovery may reveal.

39. Due to Superior's numerous breaches of contract, including, but not limited to, those listed above, Superior has directly and proximately damaged Yonkers.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST SUPERIOR

(Negligence)

40. Yonkers repeats and reiterates the allegations set forth in Paragraphs 1 through 39 of its Verified Complaint as if fully set forth at length herein.

41. Superior was responsible for providing the requisite labor, materials, and equipment in order to perform and complete its scope of work in a timely manner.

42. Superior was responsible for its own means and methods in performing its work on the Project.

43. Superior held itself out as having the requisite skills to perform its scope of work on the Project.

44. Superior negligently performed its scope of work, causing damages to Yonkers.

45. As a direct and proximate result of Superior's negligence, Yonkers was forced to incur significant costs in order to provide support for Superior's work, mitigate damages caused by Superior, mitigate Liquidated Damages imposed by the MTA caused by Superior, and recover time lost in the Project schedule caused by Superior. Yonkers experienced additional costs in doing so for which it has not been compensated and is rightfully entitled to receive from Superior.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST SUPERIOR

(Unjust Enrichment)

46. Yonkers repeats and reiterates the allegations set forth in Paragraphs 1 through 45 of its Counterclaims as if fully set forth at length herein.

47. Yonkers has performed all its obligations pursuant to the Superior Subcontract.

48. Yonkers provided labor, equipment, and materials to support Superior's work that were necessary to mitigate the additional costs and time impacts caused by Superior, as well as to ensure that the Project was completed on time.

49. Yonkers performed necessary work that was supposed to be performed by Superior under the Superior Subcontract.

50. Superior has received, accepted, and enjoyed the benefits of the labor, equipment, materials, and support provided by Yonkers.

51. Yonkers has not been properly or fairly compensated by Superior for the reasonable and fair market value that it is entitled to for providing its labor, materials, equipment, and support.

52. Unless Superior tenders such payment to Yonkers, Superior will be unjustly enriched.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST SUPERIOR

(Quantum Meruit)

53. Yonkers repeats and reiterates the allegations set forth in Paragraphs 1 through 52 of its Counterclaims as if fully set forth at length herein.

54. Yonkers has performed all its obligations pursuant to the Superior Subcontract.

55. Yonkers provided labor, equipment, and materials to support Superior's work that were necessary to mitigate the additional costs and time impacts caused by Superior, as well as to ensure that the Project was completed on time.

56. Yonkers performed necessary work that was supposed to be performed by Superior under the Superior Subcontract.

57. Superior has received, accepted, and enjoyed the benefits of the labor, equipment, materials, and support provided by Yonkers.

58. By retaining the benefits conferred by Yonkers without paying for those benefits, Superior should pay Yonkers the reasonable value of its work.

59. It would be inequitable for Superior to retain the benefits of the work performed and costs incurred by Yonkers without payment of the reasonable value of same, entitling Yonkers to recover on a quantum meruit basis.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST SUPERIOR

(Breach of the Covenant of Good Faith and Fair Dealing)

60. Yonkers repeats and reiterates the allegations set forth in Paragraphs 1 through 59 of its Counterclaims as if fully set forth at length herein.

61. Every contract in the State of New York imposes a covenant of good faith and fair dealing on the contracting parties.

62. Superior had a covenant to act with Yonkers in good faith and fair dealing.

63. Superior engaged in the acts and omissions enumerated herein, including, but not limited to, the failure to adhere to the Project schedule, the failure to perform its scope of work, the failure to provide adequate manpower, and the imposition of additional costs and time impacts upon Yonkers.

64. Superior has acted and continues to act in bad faith towards Yonkers and has thereby breached and continues to breach the covenant of good faith and fair dealing.

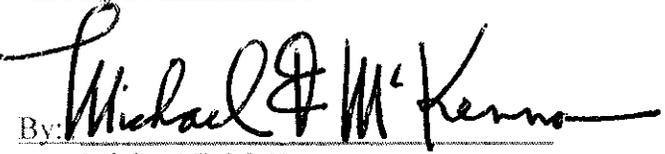
65. As a direct and proximate result thereof, Yonkers has suffered and continues to suffer financial injury.

WHEREFORE, Plaintiff Yonkers Contracting Company, Inc. demands judgment against Defendant Superior Gunite as follows:

- 1) On the First Cause of Action in the amount of at least Four Million Seven Hundred Fifty-One Thousand Nine Hundred Thirty-Four Dollars (\$4,751,934), together with interest thereon, costs, and reasonable attorneys' fees, along with such other and further relief as this Court may deem just and proper under the circumstances;
- 2) On the Second Cause of Action in the amount of at least Four Million Seven Hundred Fifty-One Thousand Nine Hundred Thirty-Four Dollars (\$4,751,934), together with interest thereon, costs, and reasonable attorneys' fees, along with such other and further relief as this Court may deem just and proper under the circumstances;
- 3) On the Third Cause of Action in the amount of at least Four Million Seven Hundred Fifty-One Thousand Nine Hundred Thirty-Four Dollars (\$4,751,934), together with interest thereon, costs, and reasonable attorneys' fees, along with such other and further relief as this Court may deem just and proper under the circumstances;
- 4) On the Fourth Cause of Action in the amount of at least Four Million Seven Hundred Fifty-One Thousand Nine Hundred Thirty-Four Dollars (\$4,751,934), together with interest thereon, costs, and reasonable attorneys' fees, along with such other and further relief as this Court may deem just and proper under the circumstances;
- 5) On the Fifth Cause of Action in the amount of at least Four Million Seven Hundred Fifty-One Thousand Nine Hundred Thirty-Four Dollars (\$4,751,934), together with interest thereon, costs, and reasonable attorneys' fees, along with such other and further relief as this Court may deem just and proper under the circumstances;
- 6) For such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

Dated: Saddle River, New Jersey
August 12, 2014

LEWIS & McKENNA

By: 

Michael F. McKenna

82 East Allendale Road, Suite 6

Saddle River, New Jersey 07458

Phone: (201) 934-9800

Facsimile: (201) 934-8681

Co-Counsel for Defendants

Yonkers Contracting Company, Inc.

and Zurich American Insurance

Company

AS AND FOR A COUNTERCLAIM AGAINST PLAINTIFF
(Breach of Contract)

— Defendant Yonkers Contracting Company, Inc., (“Yonkers”) as and for its counterclaim against Plaintiff Superior Gunite (“Superior”) states as follows:

1. — On or about March 3, 2011, Yonkers entered into a written Subcontract with Plaintiff Superior pursuant to which Superior undertook to perform certain work relating to furnishing labor, supplies, materials and equipment for certain shotcrete work on the Project for the initial agreed upon price of Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00).

2. — Superior failed to timely and sufficiently perform its obligations, services and work and supply all necessary materials under the Subcontract.

3. — In order to keep the Project on schedule and to timely finish the work on the Project, Yonkers had to provide material, men and perform and finish various aspects and work within Plaintiff’s scope of the Subcontract.

4. — Upon information and belief, Plaintiff failed to provide necessary material and equipment on the Project as required by the Subcontract.

5. — Upon information and belief, Plaintiff failed to provide sufficient labor and

~~materialmen and material on the Project at various times and thereby caused significant delay in the Project.~~

~~6. — Upon information and belief, Plaintiff failed to adequately staff and provide supervisory personnel on the Project as required by the Subcontract.~~

~~7. — Upon information and belief, Plaintiff failed to perform its work in a proper, timely and workmanlike manner, despite due demand.~~

~~8. — Yonkers fully complied with all aspects of the Subcontract.~~

~~9. — Plaintiff breached the Subcontract.~~

~~10. — As a result of Plaintiff's failures of performance and breaches of duty and contract, and pursuant to the terms of the Subcontract, Yonkers performed work and provided labor, material and equipment to the Project to perform the work and services that were within the scope of the Superior Subcontract.~~

~~11. — In addition to the foregoing and not in limitation thereof, as a result of the actions and inactions of Plaintiff, Defendant Yonkers incurred damages.~~

~~12. — As a result of the foregoing, upon information and belief, Defendant Yonkers has been damaged and Plaintiff is liable therefor, for a sum in excess of \$1,700,000.00, the exact amount shall be proven at trial.~~

~~WHEREFORE, defendants Yonkers Contracting Company, Inc. and Zurich American Insurance Company demand judgment as follows:~~

~~A. — Dismissing the Verified Complaint, together with costs, disbursements and attorneys' fees; and~~

~~B. — Dismissing and striking the Plaintiff's claim against the Bond;~~

~~C. — Granting judgment in favor of Defendant Yonkers and against Plaintiff Superior on~~

~~Defendant's Counterclaim, in connection with the breach of Plaintiff of the Subcontract, together with interest, costs and attorneys' fees;~~

~~E. Granting such other and further relief as this Court deems just and proper.~~

~~Dated: Yonkers, New York
May 20, 2013~~

~~VENERUSO, CURTO, SCHWARTZ
& CURTO, LLP~~

~~By: _____~~

~~Joseph R. Curto
Stephen J. Brown
Attorneys for Defendants
Yonkers Contracting Co., Inc., and Zurich
American Insurance Company
35 East Grassy Sprain Road, Suite 400
Yonkers, New York 10710
(914) 779-1100~~

To: Mark Canizio, Esq.
Duane Morris LLP
1540 Broadway
New York, New York 10036
Attorneys for Plaintiff

ATTORNEY VERIFICATION

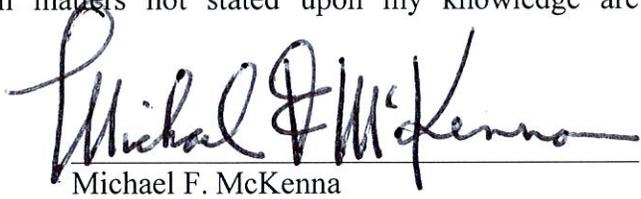
STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS.:

MICHAEL F. McKENNA, an attorney duly admitted to practice law before the Courts of the State of New York, being duly sworn, deposes and says:

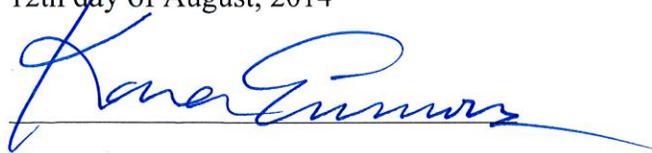
I am a member of the firm of Lewis & McKenna, co-counsel for Yonkers Contracting Company, Inc. and Zurich American Insurance Company, the Defendants in the within action; I have read the foregoing Amended Verified Answer, Separate Defenses, and Counterclaim and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

This Verification is submitted by me and not by Defendants, Yonkers Contracting Company, Inc. and Zurich American Insurance Company, and on behalf of co-counsel Veneruso, Curto, Schwartz & Curto, LLP, for the reason that the Defendants are not within the county where I have my office and I am familiar with the facts upon which the suit is based.

The grounds of my belief as to all matters not stated upon my knowledge are investigations and reports made to me.


Michael F. McKenna

Sworn to before me this
12th day of August, 2014



KARA E EMMONS
Commission # 2331752
Notary Public, State of New Jersey
My Commission Expires
July 21, 2015