

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

YONKERS CONTRACTING COMPANY, INC.,

PLAINTIFF,

-AGAINST-

KJC WATERPROOFING, INC., SUPERIOR
GUNITE, ZURICH AMERICAN INSURANCE
COMPANY, NICHOLSON CONSTRUCTION CO.,
NATIONAL WELDING AND FABRICATION,
STRUCTURE TECH NEW YORK INC., AND CITI
STRUCTURE LLC,

DEFENDANTS.

Index No.: 61442/14

**JOINT SUBMISSION OF FACTS
FOR PRELIMINARY CONFERENCE**

This action arises out of the construction of a project known and referred to as the "Excavation/Mining/Lining of Vertical Shaft, E1 and E2 Inclined Tunnels, and T1 Connector Tunnel; and Construction of a Ventilation Building and Station Entrance Structure at Site J" (the "Project"). Essentially, the Project entails the construction of a new subway station and ventilation building for the "7-Line Extension," located at 34th St. and 11th Ave. in Manhattan, New York.

Generally, on or about October 13, 2010, Plaintiff Yonkers Contracting Company, Inc. ("Yonkers") entered into contract with the Metropolitan Transportation Authority ("MTA"), under which Yonkers agreed to construct the Project as its general contractor. Yonkers subsequently entered into subcontracts with Defendants KJC Waterproofing, Inc. ("KJC") and Superior Gunite ("Superior") to perform certain waterproofing and concrete work, respectively, on the Project. The initial value of KJC's subcontract was \$2,870,000, and the initial value of Superior's subcontract was \$7,500,000.

Superior initially filed a lawsuit against Yonkers and Zurich America Insurance Company ("Zurich"), Yonkers' surety for the Project, on March 25, 2013 (Index No. 54272/2013), alleging that it was owed \$3,199,239 for work performed, change orders, and other additions relating to its concrete work on the Project. Yonkers and Zurich, as defendants, answered Superior's Complaint with counterclaims alleging that Superior breached its subcontract and that Yonkers had to perform work and provide labor, materials, and equipment to the Project to perform the work and services that were within Superior's scope of work. Yonkers' counterclaims against Superior allegedly amounted to at least \$1,700,000.

As discovery of Superior's initial action progressed, new issues on the Project were identified concerning shotcrete and water leaks on the Project. On the basis of these new issues, Yonkers then filed the present action on July 28, 2014 against both Superior and KJC alleging that it sustained damages of at least \$2,900,000 caused by the failures of Superior and KJC to complete the work under their respective subcontracts. Both Superior and KJC answered Yonkers' Complaint by denying Yonkers' allegations and asserting counterclaims. KJC asserted counterclaims against Yonkers for \$3,524,069 plus interest in alleged damages for work performed, and cross-claims against Superior for indemnification and contribution. Superior

asserted counterclaims against Yonkers alleging at least \$2,000,000 in damages for withholding payment from Superior on other projects, and a cross-claim against KJC for indemnification and contribution. The remaining parties to this action were brought in as counterclaim defendants, yet only Zurich, Nicholson Construction Co., and Citi Structure LLC have made appearances.

In light of the new allegations regarding the Project and that work on the Project was still in progress, the Court agreed to stay Superior's initial action and ultimately consolidate it with Yonkers' subsequent action once discovery had neared completion (see copy of Order attached). To date, some discovery documents have been exchanged, interrogatories served and responded to, but no depositions have taken place.

LEWIS & MCKENNA

By: 
Michael F. McKenna
Anthony J. Tavormina
Attorneys for Plaintiff
Yonkers Contracting Co., Inc. and
Counterclaim Defendant Zurich
American Insurance Company
82 East Allendale Road, Suite 6
Saddle River, New Jersey 07458
(201) 934-9800

Dated: October 15, 2015

DUANE MORRIS LLP

By: _____
Mark A. Canizio
Brian A. Shue
Attorneys for Defendant
Superior Gunite
1540 Broadway
New York, New York 10036
(212) 692-1083

Dated: October __, 2015

BAHN MULTER, LLP

By: _____
Martin I. Gold
Attorneys for Defendant
KJC Waterproofing, Inc.
555 Fifth Avenue, 14th Floor
New York, New York 10017
(212) 9019

Dated: October __, 2015

WILSON & CHAN, LLP

By: _____
Henry C. Chan
Attorneys for Counterclaim Defendant
Citi Structure LLC
1375 Broadway, 3rd Floor
New York, New York 10018
(646) 278-6730

Dated: October __, 2015

GOETZ FITZPATRICK LLP

By: _____

Neil M. Eiseman
Joshua G. Oberman
*Attorneys for Counterclaim Defendant
Nicholson Construction Co.*
One Penn Plaza, Suite 3100
New York, New York 10119
(212) 695-8100

Dated: October __, 2015