

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
YONKERS CONTRACTING COMPANY, INC.,

Index # 61442/2014

Plaintiff,

CERTIFICATION
PURSUANT TO PART 130

-against-

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

Defendants.

-----X
SUPERIOR GUNITE,

Third-Party Plaintiff,

Third-Party Index #

-against-

J&E INDUSTRIES, LLC,

Third-Party Defendant.

-----X

The accompanying papers are served/filed/submitted pursuant to Section

130-1.1-a:

Answer

Answer with counter-claim

Answer with cross-claim

Answer with cross-claim and counter-claim

Answer to third-party complaint

Notice for discovery & inspection

Demand for experts

Demand for a bill of particulars

Notice re: medicals

Demand for insurance

Demand for collateral source

Declination of service via facsimile

Notice to take deposition upon oral examination

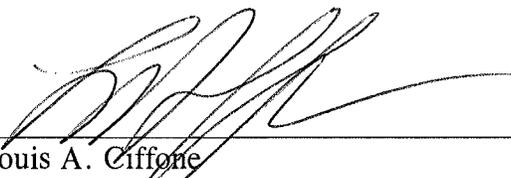
Demand for proof of filing and index number

Demand to change venue

Demand for attorney identification

Dated: Hopewell Junction, New York
January 6, 2016

BY:



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Attorneys for Third-Party Defendant
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Our File No.: SIC 123415 CJC

TO:

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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YONKERS CONTRACTING COMPANY, INC.,

Plaintiff,

-against-

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

Defendants.

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SUPERIOR GUNITE,

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-against-

J&E INDUSTRIES, LLC,

Third-Party Defendant.

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The third-party defendant, J&E INDUSTRIES, LLC, by their attorneys, AHMUTY, DEMERS & McMANUS, ESQS., as and for their answer to the defendant/third-party plaintiff's third-party complaint, alleges upon information and belief:

FIRST: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "1", "2", "4", "5", "6", "7", "8",

“9”, “10”, “11”, “12”, “13”, “14”, “15”, “16”, “17”, “18”, “19”, “20”, “21”, “22”, “23”, “25”, “26”, “27”, “29”, “30” and “31” of the complaint.

SECOND: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated “3” of the complaint except admits that J&E has a place of business located at 140 Beach 140th Street, Far Rockaway, NY 11694.

THIRD: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated “24” of the complaint except admits that J&E and YONKERS entered into a written subcontract agreement.

FOURTH: Denies upon information and belief each and every allegation contained in paragraph designated “28” of the complaint.

AS AND FOR AN ANSWER TO A FIRST CAUSE OF ACTION

FIFTH: Third-party defendant, J&E INDUSTRIES, LLC, repeats, reiterates and realleges each and every denial in answer to the paragraphs designated “1” through “31” as if more specifically set forth in answer to paragraph designated “32” of the complaint and each and every part thereof.

SIXTH: Denies upon information and belief each and every allegation contained in paragraphs designated “33” and “34” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SEVENTH: That the negligence, fault and culpable conduct of the plaintiff and/or third-party plaintiff, their agents, servants, and/or employees herein caused the incidents/damages in

which the plaintiff and/or third-party plaintiff were allegedly injured/damaged and/or alleged injuries/damages, if any, resulting there from.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

EIGHTH: Pursuant to CPLR 1603, this answering third-party defendant asserts the limitations contained in CPLR 1601 and 1602 and all rights contained therein.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

NINTH: That plaintiff and/or third-party plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries/damages alleged in their complaint.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

TENTH: That this answering third-party defendant did not owe the third-party plaintiff any of the duties alleged in this lawsuit.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

ELEVENTH: Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff and/or third-party plaintiff for repair or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

TWELFTH: If any damages are recoverable against said third-party defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff and/or third-party plaintiff has or shall receive from such collateral source.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

THIRTEENTH: That the injuries and/or damages alleged to have been sustained by the plaintiff and/or third-party plaintiff were caused entirely or in part through the culpable conduct of the plaintiff and/or third-party plaintiff, its agents, servants and/or employees without any negligence on the part of the answering third-party defendant and the answering third-party defendant seeks a dismissal or reduction in any recovery that may be had by the plaintiff and/or third-party plaintiff in the proportion which the culpable conduct, attributable to the plaintiff and/or third-party plaintiff, bears to the entire measure of responsibility for the occurrence.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

FOURTEENTH: That the plaintiff and/or third-party on the date and time of the incidents in question assumed the risk for the conduct in which they were engaged.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

FIFTEENTH: That those causes of action in the third-party complaint relating to breach of contract are void pursuant to the Statute of Frauds and General Obligations Law §5-701.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

SIXTEENTH: The third-party plaintiff's causes of action are barred by CPLR §15-108.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

SEVENTEENTH: That the third-party plaintiff's complaint is wholly without merit and its initiation is deemed frivolous conduct by this answering defendant.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

EIGHTEENTH: That this Court lacks jurisdiction over the person of the third-party defendant in that service of process was not made in accordance with the provisions of the CPLR.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

NINETEENTH: That the third-party plaintiff's causes of action relating to indemnification are void pursuant to General Obligations Law §5-322.1.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

TWENTIETH: That the third-party plaintiff's causes of action herein are barred by the applicable Statutes of Limitations.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

TWENTY-FIRST: That the third-party plaintiff's cause of action are barred by the Statutes of Fraud.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: That the third-party plaintiff's complaint fails to state a valid cause of action as against the answering third-party defendant for which relief can be granted.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: That if the plaintiff and/or third-party plaintiff has failed to name a party defendant, a person or entity who is material to this lawsuit and is

responsible/liable for any damages herein, then this answering third-party defendant reserves its right to argue for the apportionment of liability against such person or entity, even though same is not a party herein.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

TWENTY-FOURTH: That the third-party plaintiff's breach of contract causes of action are barred by third-party plaintiff's lack of privity with this answering third-party defendant.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

TWENTY-FIFTH: That the third-party plaintiff's causes of action are barred by estoppel.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

TWENTY-SIXTH: That the third-party plaintiff's causes of action are barred by its laches.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

TWENTY-SEVENTH: That pursuant to GOL §15-108 the answering third-party defendant is entitled to a set off against any judgment and/or award that may be recovered by the plaintiff and/or third-party plaintiff of any amount paid to the plaintiff and/or third-party plaintiff by or on behalf of any joint tortfeasor in settlement of an action/claim, or in the amount of said joint tortfeasor's equitable share of damages under CPLR Article 14 whichever is greater.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

TWENTY-EIGHTH: The third-party plaintiff cannot recover because there was no privity of contract between third-party plaintiff and answering third-party defendant.

**AS AND FOR A CROSS COMPLAINT OVER
AND AGAINST THE CO-DEFENDANTS,
KJC WATERPROOFING, INC., ZURICH AMERICAN INSURANCE COMPANY,
NICHOLSON CONSTRUCTION CO., NATIONAL WELDING AND FABRICATION,
KENSEAL CONSTRUCTION, BARKER STEEL LLC, STRUCTURE TECH NEW YORK
INC. AND CITI STRUCTURE LLC
THIS THIRD-PARTY DEFENDANT,
J&E INDUSTRIES, LLC,
ALLEGES UPON INFORMATION AND BELIEF:**

TWENTY-NINTH: That if the plaintiff and/or third-party plaintiff was caused to sustain personal injuries and resulting damages at the time and place set forth in the plaintiff's complaint and/or third-party plaintiff and in the manner alleged therein, through any carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or warranty and/or contract, other than of the plaintiff and/or third-party plaintiff, then the said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty and/or obligation and/or Statute and/or Warranty and/or contract in fact or implied in law, upon the part of the co-defendants, with indemnification and save harmless agreement and/or responsibility by them in fact and/or implied in law and without any breaches or any negligence of the answering third-party defendant contributing thereto; and if the answering third-party defendant is found liable as to the plaintiff and/or third-party plaintiff for the injuries and damages as set forth in the plaintiff's complaint and/or

the third-party complaint, then, and in that event, the relative responsibilities of all said defendants in fairness must be apportioned by a separate determination in view of the existing factual disparity, and the said co-defendants herein will be liable over jointly and severally to the answering third-party defendant and bound to fully indemnify and hold the answering third-party defendant harmless for the full amount of any verdict or judgment that the plaintiff herein may recover against the answering third-party defendant in this action, including all costs of investigation, disbursements, expenses and attorney's fees incurred in the defense of this action and in the conduct of this cross complaint.

**AS AND FOR A COUNTER CLAIM AGAINST THE THIRD-PARTY PLAINTIFF,
SUPERIOR GUNITE
THIS THIRD-PARTY DEFENDANT,
J&E INDUSTRIES, LLC,
ALLEGES UPON INFORMATION AND BELIEF:**

THIRTIETH: That if the plaintiff and/or third-party plaintiff sustained the injuries and damages in the manner and at the time and place set forth in the plaintiff's complaint and/or the third-party complaint and if it is found that the answering third-party defendant is liable to the third-party plaintiff herein, then said damages were sustained in whole or in part by reason of the sole, active, affirmative and primary negligence and/or breach of warranty, and/or strict liability, and/or breach of agreement/contract/lease by the above-named third-party plaintiff and that the answering third-party defendant is entitled to damages, common law and/or contractual indemnification, common law and/or contractual contribution and/or be held harmless by the above-named third-party plaintiff for any damages, costs and expenses that may be sustained by the answering third-party defendant based on the third-party plaintiff's

failure to obtain insurance for the answering third-party defendant, failure to hold the answering third-party defendant harmless, breach of contract/agreement/lease, breach of warranty and/or strict tort liability.

WHEREFORE, the answering third-party defendant demands judgment dismissing the plaintiff's and third-party plaintiff's complaints, together with costs and disbursements and further demands that the ultimate rights of all parties in this action be determined and that the answering third-party defendant have judgment over and against the above-named plaintiff, third-party plaintiff, defendant, and/or third-party defendant for the amount of any judgment obtained against the answering third-party defendant and/or contribution, indemnification and/or apportionment of responsibility in such amounts as a jury or Court may direct, together with the costs and disbursements of this action.

Dated: Hopewell Junction, New York
January 6, 2016

Yours, etc.
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