

08-104-CD

Roth Marz al vs West Branch S.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Roth Marz Partnership, PC,  
(Plaintiff)

CIVIL ACTION

3505 Chapin Street  
(Street Address)

No. 08-104-CD

Erie, PA 16508  
(City, State ZIP)

Type of Case: \_\_\_\_\_

Type of Pleading: COMPLAINT

VS.

Filed on Behalf of:

Plaintiff

West Branch Area School District, (Plaintiff/Defendant)  
(Defendant)

516 Allport Cutoff  
(Street Address)

Morrisdale, PA 16858  
(City, State ZIP)

Kevin L. Colosimo, Esquire  
Pa. I.D. #80191

Andrew G. Jenkins, Esquire - Pa. I.D. #91322

(Filed by)

THORP REED & ARMSTRONG, LLP  
301 Grant Street, 14th Floor  
Pittsburgh, PA 15219-1425

(Address)

412-394-7711

(Phone)

(Signature)

FILED

JAN 22 2008

William A. Shaw  
Prothonotary/Clerk of Courts

Atty. pd. 95.00

No CC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP,	)	CIVIL DIVISION
PC,	)	
	)	CASE NO.:
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WEST BRANCH AREA	)	
SCHOOL DISTRICT,	)	
	)	
Defendant.	)	

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY MONEY CLAIMED OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP,	)	CIVIL DIVISION
PC,	)	
	)	CASE NO.:
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WEST BRANCH AREA	)	
SCHOOL DISTRICT,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, Roth Marz Partnership, PC ("Roth Marz"), by and through its counsel, Thorp Reed & Armstrong, LLP, files the within Complaint against Defendant, West Branch Area School District ("WBASD") and in support thereof avers as follows:

1. Roth Marz is a Pennsylvania professional corporation with its principal place of business at 3505 Chapin Street, Erie, PA 16508.
2. WBASD is a school district organized and existing pursuant to the Public School Code of 1949, as amended, 24 P.S. Section 101 *et seq.*, with a principal place of business of 516 Allport Cutoff, Morrisdale, PA 16858.
3. Upon information and belief, WBASD is empowered to provide public education to the citizens of the municipalities within the greater Morrisdale area, including the construction, alteration and repairs of or to the physical facilities, structures and buildings which WBASD deems necessary and appropriate to provide public education for its constituents.
4. Jurisdiction and venue are proper in this court because the construction project out of which this matter arises is located in Clearfield County and WBASD is a resident of Clearfield County,

Pennsylvania. Furthermore, the contract on which Roth Marz brings suit, attached hereto as Exhibit A and hereinafter referred to as the "Contract," specifies in Article 7.1 that all claims shall be pursued in the Court of Common Pleas of Clearfield County.

5. WBASD entered into the Contract with Roth Marz for renovations and additions to the West Branch Area High School (the "Project").

6. Pursuant to the Contract, Roth Marz was responsible for a variety of tasks with respect to the Project. Roth Marz's contractual obligations are described in full in the Contract.

7. Roth Marz performed its obligations under the Contract fully and in compliance with all terms of the Contract.

8. Roth Marz made timely demand for payment for services provided, pursuant to the schedule contained in the Contract, on or about June of 2005. An invoice reflecting this request is attached hereto as Exhibit B.

9. Roth Marz made further demand for payment for additional services provided, again pursuant to the schedule contained in the Contract, on or about April 10, 2007. An invoice reflecting this request is attached hereto as Exhibit C.

10. Roth Marz made further demand for payment for additional services provided, again pursuant to the schedule contained in the Contract, on or about April 11, 2007. An invoice reflecting this request is attached hereto as Exhibit D.

11. Despite the timely demands for payment, WBASD did not, and has not, paid Roth Marz.

12. Roth Marz has also demanded that WBASD provide it with information regarding the total amount of a separate contract between Quandel and WBASD for construction management services. Roth Marz is entitled, pursuant to the Contract, to payment of a fixed percentage of the total cost of the Project, including amounts expended for construction management services.

13. Despite request, WBASD has refused to provide Roth Marz with information sufficient for it to generate an accurate invoice reflective of the total construction cost of the Project. As a result, Roth Marz has been precluded from issuing a final invoice to WBASD.

14. As a direct and proximate result of the conduct herein set forth, Roth Marz has incurred and sustained substantial losses and damages which aggregate to a sum greater than the jurisdictional limits of arbitration in Clearfield County:

15. At all times material hereto, Roth Marz performed its work on the Project in accordance and compliance with the terms of the Contract.

16. At no time material hereto, has Roth Marz received from WBASD any notice of any objection to the manner, timeliness, or quality of its work, which was not promptly cured.

17. Upon information and belief, WBASD has utilized the additions and improvements of the Project and has thereby had the beneficial use and enjoyment of the work performed by Roth Marz.

18. WBASD has accepted the work performed by Roth Marz.

19. In April, May, June, July, August, November of 2007, and in January of 2008, Roth Marz and/or its counsel issued correspondence to WBASD requesting payment.

20. WBASD has failed or refused to pay its outstanding invoices and to provide the information necessary for Roth Marz to generate a final invoice for the Project.

**COUNT I**  
**BREACH OF CONTRACT**  
**ROTH MARZ PARTNERSHIP, PC v. WEST BRANCH AREA SCHOOL DISTRICT**

21. Roth Marz incorporates by reference Paragraphs 1 through 20 above as if fully set forth herein.

22. The Contract between Roth Marz and the WBASD is valid and enforceable.

23. Roth Marz fully performed its obligations under the Contract.

24. Roth Marz is entitled to be paid for its work on the Project.

25. In not paying Roth Marz's outstanding invoices, and in withholding information necessary for Roth Marz to generate a final invoice, WBASD is in material breach of the Contract.

26. As a direct and proximate result of WBASD's conduct, Roth Marz has been damaged in an amount in excess of the compulsory arbitrational limits of Clearfield County.

27. Roth Marz is entitled to be paid reasonable interest on its outstanding and to-be-generated invoices.

WHEREFORE, Plaintiff, Roth Marz Partnership, PC respectfully requests that this Honorable Court enter a judgment in its favor together with interest, penalty interest, attorneys' fees and costs, in excess of the compulsory arbitration limits of Clearfield County.

**COUNT II**  
**UNJUST ENRICHMENT**  
**PLED IN THE ALTERNATIVE**  
**ROTH MARZ PARTNERSHIP, PC v. WEST BRANCH AREA SCHOOL DISTRICT**

28. Roth Marz incorporates by reference Paragraphs 1 through 27 above as if fully set forth herein.

29. Roth Marz provided services to WBASD pursuant to its Contract therewith.

30. WBASD accepted the services of Roth Marz, a direct and true benefit, without complaint.

31. Despite specific request, WBASD has not compensated Roth Marz for the services supplied.

32. Absent payment, WBASD has no legal right to retain the benefit of the services provided by Roth Marz.

33. In accepting the benefits conferred by Roth Marz without paying therefor, WBASD has been unjustly enriched at the expense of Roth Marz.

34. Roth Marz has been damaged and is continuing to incur damages as a result of WBASD's unlawful withholding of the amounts owed Roth Marz.

WHEREFORE, Plaintiff, Roth Marz Partnership, PC respectfully requests that this Honorable Court enter a judgment in its favor together with interest, penalty interest, attorneys' fees and costs, in excess of the compulsory arbitration limits of Clearfield County.

**COUNT III**  
**ROTH MARZ PARTNERSHIP, PC v. WEST BRANCH AREA SCHOOL DISTRICT**  
**VIOLATION OF THE COMMONWEALTH PROCUREMENT CODE**

35. Roth Marz incorporates by reference Paragraphs 1 through 34 above as if fully set forth herein.

36. WBASD is a "local government unit" as defined in 62 Pa. C.S.A. §3902 of Title II of the Commonwealth Procurement Code and is therefore subject to Sections 3931-3939 thereof, 62 Pa. C.S.A. §§3931-3939.

37. The Contract for work was in excess of \$50,000.

38. Roth Marz has performed its work on the Project in accordance with the Contract.

39. WBASD's unjustifiable failure to pay Roth Marz for the balance of the amount owed under the Contract violates the applicable provisions of the Pennsylvania Procurement Code.

40. WBASD's conduct in failing to issue payment was done in bad faith, and was arbitrary and vexatious.

41. As a result of the WBASD's failure to pay Roth Marz all payments when due, Roth Marz is entitled to recover legal interest, damages in the nature of a penalty in the amount of 1% per month on all such moneys improperly withheld, and reasonable attorneys' fees incurred as a result of WBASD's conduct.



WHEREFORE, Plaintiff, Roth Marz Partnership, PC respectfully requests that this Honorable Court enter a judgment in its favor, together with interest, penalty interest, attorneys' fees and costs, in excess of the compulsory arbitration limits of Clearfield County.

Respectfully submitted,

Dated: Jan. 21, 2008

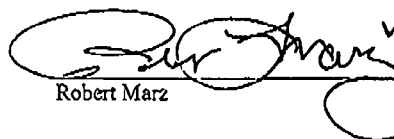


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VERIFICATION

I, Robert Marz, in my capacity a a Partner of Roth Marz Partnership, PC hereby verifies that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. These statements are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

 VP.  
1.21.08  
Robert Marz

1-27-03 DATE RECEIVED - NOT DATED (pm)

## PROFESSIONAL SERVICES CONTRACT BETWEEN OWNER AND ARCHITECT

**THIS AGREEMENT** made this 23 day of JANUARY in the year Two Thousand and 03 (2003), by and between the West Branch Area School District, a school district of the third class organized and existing under and pursuant to the Public School Code of 1949, as amended, 24 P.S. Section 101 et seq., with an address of R.R. #2, Box 194, Morrisdale, Pennsylvania 16858-9312, and Roth Marz Partnership, P.C., a professional corporation organized and existing pursuant to Pennsylvania law, with an address of 3505 Chapin Street, Erie, Pennsylvania 16508.

### General project description:

Renovations and additions to the High School as approved by the Board of School Directors.

In consideration of the promises set forth herein, and with intent to be legally bound, the parties agree as follows:

## ARTICLE 1

### ARCHITECT'S RESPONSIBILITIES

The ARCHITECT'S services consist of those services performed by the ARCHITECT, ARCHITECT'S employees, and ARCHITECT'S consultants as outlined below and included in Article 10.

The ARCHITECT'S services shall be expeditiously performed as mutually agreed to between the ARCHITECT and the OWNER, consistent with skill, care, and the orderly progress of the work.

The OWNER reserves the right to contract services of a Construction Manager and/or Third Party ARCHITECT to work with and review the work of the ARCHITECT in accord with Sections 2.3. 5 and 2.3.6 of this contract.

The ARCHITECT shall work in conjunction with the OWNER'S Construction Manager, Architect, Engineers, or Third Party Architect in the execution of this project.

By executing this contract, the ARCHITECT represents to the OWNER that the ARCHITECT is licensed to practice the disciplines required to complete this project. The ARCHITECT further represents to the OWNER that the ARCHITECT shall maintain all necessary licenses, permits, or other authorizations necessary to act as ARCHITECT for the Project until the ARCHITECT'S duties hereunder have been satisfied. The ARCHITECT



assumes full responsibility to the OWNER for the negligent acts and omissions of the ARCHITECT'S consultants or others employed or retained by the ARCHITECT in connection with the Project.

Execution of this contract by the ARCHITECT constitutes a representation that the ARCHITECT has become familiar with the Project site and the local conditions under which the Project is to be implemented.

BASIC SERVICES. The ARCHITECT'S Basic Services consist of those outlined in the following Paragraphs 1.1 through 1.5 and included in Article 10.

#### **1.1 SCHEMATIC PHASE**

The ARCHITECT, after its review of the Project program, both as developed by OWNER and ARCHITECT and after appropriate visits to the Project site, shall provide a preliminary evaluation of the program, schedule, and construction budget requirements as they relate to one another. The ARCHITECT shall review with the OWNER alternative approaches to project design and construction as may be required.

After the OWNER has approved the Project scope and schedule as submitted by the ARCHITECT, the ARCHITECT shall prepare and submit to the OWNER, for approval, Schematic drawings and any other documents required by the OWNER for said approval.

The ARCHITECT at this stage shall submit an estimate of Construction Cost projected to the anticipated bid date. The estimate shall be determined by the ARCHITECT using the most accurate means available to the ARCHITECT at the time. The OWNER reserves the right to contract services of a Construction Manager and/or Third Party ARCHITECT to review the cost estimate prepared by the ARCHITECT.

#### **1.2 PRELIMINARY PHASE**

After approval by the OWNER of the Schematic Phase documents, and any OWNER-Authorized changes in Project scope or construction budget, the ARCHITECT shall prepare and submit to the OWNER, for approval, Preliminary drawings and any other documents reasonably required by the OWNER for said approval. These drawings and other documents shall fix building size, delineate and describe the various construction materials to be used, and indicate the structural, mechanical, and electrical systems upon which the design is based.

The ARCHITECT shall advise the OWNER immediately of any adjustments to the Construction Cost estimate as previously determined.

### **1.3 CONSTRUCTION DOCUMENT PHASE**

After approval of the OWNER of the Preliminary Phase documents, and any further OWNER-authorized changes in Project scope or construction budget, the ARCHITECT shall prepare and submit to the OWNER, for approval, Construction Drawings and Specifications/Project Manual (hereinafter referred to as the "Construction Documents") required by the OWNER for said approval. The Construction Documents shall delineate, detail, and completely specify all materials and equipment required to fully complete construction of the Project in every respect consistent with current standards of the profession. The ARCHITECT, shall specify serviceable, low maintenance, high reliability equipment and materials. Materials and equipment shall be the best value for money, as determined by the OWNER and ARCHITECT.

The ARCHITECT assures that the Construction Documents will be adequate and sufficient to accomplish the project scope as submitted by the ARCHITECT and approved by the OWNER, and are reasonably free from errors, omissions, and deficiencies and, further, that any review and approval by the OWNER of the Construction Documents shall not be deemed to diminish the ARCHITECT'S assurance of adequacy.

The ARCHITECT shall advise the OWNER immediately of any adjustments, for whatever reasons, to the Construction Cost estimate as previously determined.

The ARCHITECT shall be responsible for completing all of the appropriate ~~Plan-Con documents~~, planning modules, soil and erosion control plans, zoning approvals, code approvals, municipal/utility permits. Any and other documents which may be required shall be completed as Additional Services. The ARCHITECT shall prepare Plan Con A, B, E, F, and G. Plan Con C (property) is not required, and Plan Con D is financial bond calculation.

The ARCHITECT shall be responsible for obtaining, on behalf of the OWNER, whatever permission is necessary to connect to non-OWNER-owned utility lines.

The ARCHITECT shall coordinate the Construction Documents for all of the separate prime contracts to assure against omissions, conflicts, overlaps, or duplications of any items of work or materials on the Project. Prime contracts include general construction, plumbing construction, HVAC construction, and electrical construction.

### **1.4 BIDDING PHASE**

After approval by the OWNER of the Construction Documents, the ARCHITECT shall assist the OWNER, or the OWNER'S Construction Manager, as mutually agreed, in the preparation and distribution of all necessary bidding correspondence and documents, receipt of bid proposals, and construction contract preparation.

## 1.5 CONSTRUCTION PHASE

The ARCHITECT'S responsibility under this Agreement for Construction Phase services commences with the execution of the Agreement between the Contractor and the OWNER and terminates after expiration of the Contractor's one-year guarantee period against defective materials, equipment, and/or workmanship, providing that all claims have been satisfied between owner and contractor. If there remain outstanding claims after the expiration of the one-year term, the ARCHITECT'S obligations hereunder shall continue until such claims have been resolved. The ARCHITECT'S services for claims against the OWNER are additional to the basic services, unless necessitated by the fault or failure of the ARCHITECT. [NOTE: Additional language has been added.]

The ARCHITECT, in cooperation with the OWNER'S Construction Manager, if appointed, shall administer the construction contract(s) as outlined below and in accordance with the General Conditions of the Construction Contract unless provided otherwise in this Agreement. The ARCHITECT agrees to perform all of its obligations under this Agreement consistent with General Conditions of the Construction Contract. The extent of the ARCHITECT'S duties and responsibilities and the limitations of its authority as specified thereunder shall not be modified without written agreement between the OWNER and the ARCHITECT.

The ARCHITECT shall not be responsible for the Contractor's construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work.

The ARCHITECT shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The ARCHITECT shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons performing portions of the Work. However, the ARCHITECT shall be responsible for notifying the OWNER and the Contractor of the Contractor's failure to carry out the Work in accordance with the Contract Documents upon observing such failure by the Contractor. The ARCHITECT shall endeavor to guard the OWNER against failure by the Contractor.

**1.5.1 Schedule of Values.** Upon receipt, the ARCHITECT shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which the OWNER or the ARCHITECT may require from the Contractor. The purpose of such review and examination will be to protect the OWNER from an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or that is reasonable under the circumstances. If the Schedule of Values is found to be inappropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the OWNER directs the ARCHITECT to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as

submitted or, if necessary, as revised, the ARCHITECT shall sign the Schedule of Values thereby indicating the ARCHITECT'S informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The ARCHITECT shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by the OWNER. The ARCHITECT shall provide the OWNER with a signed copy of the Schedule of Values after approval.

**1.5.2 Access to Work.** The ARCHITECT and its authorized representatives shall have full and safe access to the work at all times.

**1.5.3 Visits to the Site.** The ARCHITECT and its authorized representatives shall visit the Project periodically to review the progress of the work, and take such actions as in its judgement are necessary or appropriate to achieve the requirements of the Construction Documents in the work of the responsible Contractors, including advising the OWNER'S agents, if appointed, as to particular matters to watch for and guard against. It shall also be the duty of the ARCHITECT to have its Consultants visit the site periodically as required during their respective Phases of the work, at such intervals as may reasonably be deemed necessary by the OWNER and the ARCHITECT, to review their respective Phases of the work in order to achieve the requirements of the Construction Documents.

The purpose of such reviews will be to determine the quality, quantity, and progress of the Work in comparison with the requirements of the Construction Contract. In making such reviews, the ARCHITECT shall exercise care to protect the OWNER from defects or deficiencies in the Work, from unexcused delays in the schedule, and from overpayment to the Contractor. Following each such review, the ARCHITECT shall submit a written report of such review, together with any appropriate comments or recommendations, to the OWNER.

In addition to the above, the ARCHITECT shall be hold required to attend, at the determination of the OWNER, any and all reasonable Project site conferences dealing with interpretation of the Contract Documents and progress meetings at intervals appropriate to the level of construction (biweekly). These conferences and meetings shall be part of the ARCHITECT'S basic services.

**1.5.4 Approval of Payment to Contractor.** Based on the ARCHITECT'S review of the Project, and the recommendations of the Construction Manager, if appointed, the ARCHITECT will recommend, within seven (7) calendar days after receipt, approval or rejection of payment on the Application-Certificate of Payment. Approval of the Certificate of Payment shall constitute a representation by the ARCHITECT to the OWNER that the work has progressed to the point indicated on the Application, and that to the best of the ARCHITECT'S knowledge, information, and belief, the quality of the work is in accordance with the Contract Documents.

The ARCHITECT shall make recommendations to the OWNER for the withholding of any payment, or portion thereof, due to inadequate progress and/or performance of the Contract.

The ARCHITECT agrees that promptness is required for this provision.

**1.5.5 Interpreter.** The ARCHITECT will be, in the first instance, the interpreter of the requirements of the Contract Documents. The ARCHITECT will, within a reasonable time, render such interpretation as it may deem necessary for the proper execution or Progress of the Work. All interpretations by the ARCHITECT shall be defined in writing and/or by drawing and shall be consistent with the intent of the Contract Documents. In its capacity as interpreter, the ARCHITECT will exercise efforts consistent with current standards of the profession to ensure faithful performance by the Contractor.

The ARCHITECT'S decisions, with OWNER'S prior approval, shall in matters relating to aesthetic effect be final if consistent with the intent of the Construction Contract.

**1.5.6 Review of Contractor's Shop Drawings and Materials.** The ARCHITECT shall review, approve and process, subject to the right of review by the OWNER, Shop Drawings as to compliance with the Contract Documents and all product data, samples, materials, and other submissions of the Contractor required by the Contract Documents for conformity to and in harmony with the design concept of the Project and for compliance with the requirements of the Contract Documents. The ARCHITECT shall not approve any substitution of specified materials and/or equipment without first obtaining the OWNER'S consent, unless the ARCHITECT determines the substitution is equal to the specified level of quality. Approval by the ARCHITECT of the Contractor's submittal shall constitute the ARCHITECT'S representation to the OWNER that such submittal is in conformance with the Construction Contract.

When the Contractor is required by the Contract Documents to provide ARCHITECT certification of performance characteristics of materials, systems, or equipment, the ARCHITECT shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet performance criteria required by the Contract Documents.

~~Based on the priorities of the construction schedule, the Prime Contractor(s) shall submit a shop drawing submittal schedule on or before the Second Regular Job Conference.~~ The ARCHITECT shall review and check the shop drawing submittal ~~schedule~~ within fifteen (15) calendar days of receipt from the detailed notation for resubmission if required, within twenty-one (21) days after receipt from the Contractor. The ARCHITECT shall act on any resubmissions within fifteen (15) calendar days of his receipt thereof. A detailed log shall be maintained by the ARCHITECT as to time of receipt of the shop drawings and time of return, with adequate notes as to their disposition.

The ARCHITECT agrees that promptness is required for this provision.

**1.5.7 Job Conference and Progress Report.** The ARCHITECT shall hold ~~take and retain a verbatim record of~~ the biweekly Job Conference meetings and shall prepare and distribute summary minutes of each meeting within four (4) working days to the OWNER, the Contractors, and all other interested parties.



The ARCHITECT shall make written reports to the OWNER relative to the progress of the work. The Consultants retained by the ARCHITECT shall also report their respective findings on their respective visits to the site to the ARCHITECT, who, in turn, shall include such information in its reports to the OWNER.

**1.5.8 Change Orders.** The ARCHITECT shall make recommendations with respect to Change Order requests as submitted by the Construction Manager, if appointed, along with supporting documentation and data as deemed necessary by the OWNER for the OWNER'S approval and execution. The ARCHITECT may, after consultation with the OWNER, authorize minor changes in the work which do not involve an adjustment in the Contract sum or an extension of the Contract time and which are not inconsistent with the intent of the Contract Documents.

**1.5.9 Rejection of Work.** The ARCHITECT is authorized and expected to reject work which does not conform to the Contract Documents and shall immediately notify the OWNER in writing to stop a Contractor's work whenever, in the ARCHITECT'S reasonable opinion, such action is necessary for the proper performance of the Construction Contract Work. The ARCHITECT shall not be liable to the OWNER for the consequences of any recommendation made by the ARCHITECT in good faith, and in the exercise of due care, in recommending to stop or not to stop the Work.

Whenever, in the ARCHITECT'S opinion, it is necessary or advisable, the ARCHITECT shall require special inspection or testing of the Work in accordance with the provisions of the Construction Contract whether or not such Work is fabricated, installed, or completed. The ARCHITECT shall advise the OWNER of all such occurrences requiring special inspection or testing of the Work.

**1.5.10 Substantial Completion, Final, and One-Year Guarantee Inspections.** The ARCHITECT and its consultants shall participate in Substantial Completion and Final Inspections to affix the dates of Substantial and Final Completion and shall concur in the report of Final Completion to the OWNER prior to approving the Contractor's application for Final Payment. The ARCHITECT shall acquire for OWNER the Certificate of Completion.

The ARCHITECT and its consultants shall participate in an inspection prior to the expiration of the one (1) year guarantee period against defective materials, equipment, and/or workmanship to determine any defects in materials, equipment, and/or workmanship since the date of Substantial Completion.

**1.5.11 Construction and Maintenance Data.** At the time of Substantial Completion of the Project, the ARCHITECT shall collect from the Prime Contractor(s) all ~~shop drawings~~, catalog data, manufacturer's operating instructions, maintenance instructions, certificates, warranties, guaranties, and other pertinent operating and maintenance data. The ARCHITECT shall assemble and correlate such material and submit two copies thereof to the OWNER. The

ARCHITECT shall transmit to OWNER copies of shop drawings as they are approved during construction.

**1.5.12 Record Drawing.** At the time of Substantial Completion of the Project, the ARCHITECT shall collect from the Prime Contractor(s) their complete sets of as-built drawings and will, within 90 days after receipt from the Contractors, transpose all the changes recorded by the Contractors, onto a full set of reproducible drawings which shall become the record drawings of the Project. Record drawings shall also be submitted on a diskette compatible with the OWNER'S CADD system. [NOTE: ~~OWNER will not agree that~~ these services are additional services not included in the basic services.]

**1.5.13 Corrections.** The ARCHITECT shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in its work product.

**1.5.14 Errors and Omissions.** If it becomes necessary during the course of construction to issue change orders which increase the cost of the Project because of the ARCHITECT'S failure to produce proper and coordinated specifications and drawings, or any portions thereof relating to the Project, in accordance with accepted standards and practice, the ARCHITECT shall be assessed the difference between the amount of the change order and what the OWNER would have paid had the error or omission not occurred, ~~plus administration costs incurred by the OWNER. The OWNER'S administration costs will not exceed the ARCHITECT fee percentage rate established for the Project applied to the change order amount.~~ The assessment for added cost will be based on the following:

**1.5.14.1** If the change order is an omission change order, the assessment for the difference between the amount of the change order and what the OWNER would have paid had the omission not occurred will be based on the construction cost index change between bid opening and the change order cost proposal, but in no case less than zero. For purposes of this section, a change order is an omission change order if additional work is required due to the failure of the ARCHITECT to produce proper and coordinated Construction Documents, but no work must be removed or replaced to carry out the change order.

**1.5.14.2** If the change order is an error change order, the assessment for the difference between the amount of the change order and what the OWNER would have paid had the error not occurred will be the same as for an omission change order plus the cost of removing and replacing work in order to remedy the error. For purposes of this section, a change order is an error change order if work must be removed and/or replaced because of the failure of the ARCHITECT to produce proper and coordinated Construction Documents.

No fees will be paid for change orders preliminarily designated as resulting from an error or omission until completion of the Project, at which time compensation and assessment will be resolved.

**1.15.15 Indemnifications.** The ARCHITECT, intending to be legally bound hereby, agrees to indemnify, defend, and hold harmless the OWNER and the OWNER'S respective officers, agents, servants, and employees from and against any and all liability, claims, losses, costs, expenses, damages, or injuries of any kind or nature, including legal fees and disbursements, that the OWNER may directly or indirectly sustain, suffer, or incur as a result of *and to the extent caused by* the ARCHITECT'S negligent performance of design and/or engineering services in connection with the contract or the Work. [NOTE: The OWNER will not agree to delete this section.]

**1.6 ARCHITECT'S RESPONSIBILITY FOR CONSULTANTS,  
OBSERVANCE OF LAWS AND COOPERATION WITH LOCAL  
BODIES, AND INSTRUCTIONS REGARDING PROPRIETARY  
ITEMS**

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**1.6.1 Responsibility.** The ARCHITECT is responsible for the compliance of the Construction Documents with all applicable permits, laws, regulations, and ordinance of all commissions, agencies and governments, federal, state, and local, insofar as they are applicable to, and have jurisdiction over, the Project. The ARCHITECT shall make all required submittals with the advance knowledge of the OWNER to, and shall obtain all required approvals from, the applicable agency in a timely manner so as not to cause delays to the Project. The ARCHITECT shall also attend all hearings/meetings required for securing necessary approvals and permits.

**1.6.2 Cooperation with Local Bodies.** During the design of the Project, the ARCHITECT shall keep informed and comply with the requirements of all local zoning, planning, and supervisory bodies. Should these requirements substantially increase the cost of the Project, or should any required approvals be withheld by the local bodies, the ARCHITECT shall immediately notify the OWNER.

**1.6.3 Proprietary Items, Copyrights, Patents.** The ARCHITECT shall not include in the design of the Project unless directed by the OWNER any equipment, material, or mode of construction which is proprietary or which contains a copyright or patent right relating to designs, plans, drawings, or specifications, unless the equipment, material, or mode of construction is different and fairly considered superior in quality and performance. If the ARCHITECT includes in the design of the Project any equipment, material, or mode of construction which is proprietary, it shall have prior approval by the OWNER and it shall only be because the item is different and fairly considered superior in quality and performance, and not for the purpose of preventing or restricting competitive bidding. ARCHITECT may not knowingly list as acceptable any item which cannot comply with the Steel Products procurement Act.

## **ARTICLE 2**

### **ADDITIONAL SERVICES**

Unless required by the Project Scope or included in Article 10, the services performed by the ARCHITECT, ARCHITECT'S employees, and ARCHITECT'S Consultants as outlined below are not included in Basic Services and shall be paid for by the OWNER as provided in this Agreement in addition to the compensation for Basic Services.

None of these services shall be provided by the ARCHITECT, whether they are requested by the OWNER or required due to circumstances unknown at the time of the execution of the Agreement, until approval in writing has been received from the OWNER.

#### **2.1 PROJECT REPRESENTATION**

If more extensive representation at the site by the ARCHITECT is required by the OWNER than is provided for under Basic Services, Paragraph 1.5, Construction Phase, the ARCHITECT shall provide one or more Project representatives to assist in carrying out such additional on-site representation.

Additional Project representative(s) shall be selected, employed, and directed by the ARCHITECT with the approval of the OWNER, and the ARCHITECT shall be compensated therefore as mutually agreed, in advance, between the OWNER and the ARCHITECT. Such supplemental agreement letter shall also delineate the duties and responsibilities of the additional Project representative(s).

#### **2.2 CONTINGENT ADDITIONAL SERVICES**

##### **2.2.1 Revisions to Approved Drawings and Specifications Prior to Construction Phase**

2.2.1.1 Making revisions to the drawings and specifications requested by the OWNER subsequent to the OWNER'S approval of the Construction Documents as outlined in Paragraph 1.3, Construction Document Phase, unless required to keep the estimated Construction Costs within the amount budgeted for same.

2.2.1.2 Making revisions to the drawings and specifications required by the enactment or revisions of codes, laws, or regulations subsequent to the completion of the Construction Documents as approved by the OWNER.

#### **2.3 OPTIONAL ADDITIONAL SERVICES**

2.3.1 **Preplanning.** Providing special analysis of the OWNER'S needs such as selection, planning, and development of the site; economic, demographic, and/or financial

feasibility; preliminary design criteria and budget estimates; or other special studies except as herein provided as part of Basic Services.

**2.3.2 Specialized Consultants.** Providing unusual or specialized Consultant services other than those consistent with the inherent requirements of the Project scope and required to meet the functional needs of the Project.

**2.3.3 Surveys.** Providing a complete topographic survey and/or related aerial photography, ground control, photogrammetric plotting; property boundary survey; and the reparation of a metes and bounds legal description and a related plot.

**2.3.4 Special Studies.** Providing services related to the preparation of Environmental Assessments and/or Environmental Impact Statements, Energy Impact Statements, Analysis, or Feasibility Studies as may be required by local, state, or federal government agencies, provided such services are in addition to the Project scope requirements.

**2.3.5 Third Party Architect.** The OWNER may retain services of a Third Party Architect to review the work of the ARCHITECT. Services may include review of products and materials, review of project budget and schedule, completion of "Value Engineering" studies, and other related reviews and studies as deemed necessary by the OWNER.

**2.3.6 Construction Manager.** The OWNER may retain a Construction Manager to manage the Project. The ARCHITECT shall not be responsible for the actions taken by the Construction Manager for the OWNER.

**2.3.7 Other Services.** Providing services mutually agreed to that are not otherwise included in this Agreement.

## **ARTICLE 3**

### **OWNER'S RESPONSIBILITIES**

#### **3.1 BASIC INFORMATION**

The OWNER shall provide the ARCHITECT all information available at the time regarding requirements for the Project. Such information shall include:

**3.1.1** A Project Program setting forth the OWNER'S objectives, space requirements and relationships, special equipment, and systems and site requirements.

**3.1.2** A Project Budget including the amount allocated for the Construction Cost and all other anticipated costs and expenses.

3.1.3 A Project Schedule setting forth the times allotted for the Design and Construction Phases of the Project.

If the information furnished is not sufficient for the initiation of design solutions, the ARCHITECT shall notify the OWNER immediately.

### 3.2. SURVEYS

The OWNER shall furnish to the ARCHITECT, surveys describing (as applicable) grades and lines of streets, alleys, and pavements; the location of all rights-of-way restrictions, easements, encroachments, zoning classification, boundaries and contours of the site; location, dimension and other necessary data pertaining to any existing buildings, other improvements and trees; information concerning existing utilities throughout the site, including inverts and depth; and shall establish a Project benchmark.

### 3.3 GEOTECHNICAL ENGINEERING SERVICES

The OWNER shall pay the costs of all geotechnical engineering services required for the Project and requested by the ARCHITECT and OWNER. Selection of geotechnical engineer shall be approved by the OWNER. Such services shall include, but are not limited to, test borings, samples, field and laboratory reports, final soil reports and logs, and foundation engineering evaluations and recommendations.

### 3.4 MISCELLANEOUS TESTS, INSPECTIONS, AND REPORTS

The OWNER shall furnish, at the OWNER'S expense, air and water pollution, hazardous material, environmental, and any other miscellaneous laboratory tests, inspections, and reports as may be required.

### 3.5 APPROVAL OR DISAPPROVAL OF DESIGN WORK

Any approval or failure of the OWNER to disapprove or reject design work submitted by the ARCHITECT shall not constitute an acceptance of the work such as to relieve the ARCHITECT of his full responsibility to the OWNER for the proper and ARCHITECT performance of all design work on the Project.

### 3.6 OWNER RESPONSE

The OWNER shall act with reasonable promptness on all submissions from the ARCHITECT, which require action by the OWNER, in order to avoid unreasonable delay in the progression of the Project through the various Phases outlined in Article 1.

### **3.7 NOTICE OF NONCONFORMANCE**

The OWNER shall notify the ARCHITECT immediately if the OWNER becomes or is made aware of any fault or defect in the Project or nonconformance by any party with the Contract Documents.

### **3.8 COPIES OF OWNER'S DOCUMENTS**

The OWNER shall supply the ARCHITECT with copies of the OWNER'S Form of Agreement between OWNER and Contractor and General Conditions of the Contract for Construction for inclusion, by the ARCHITECT, in the Bidding Documents.

## **ARTICLE 4**

### **CONSTRUCTION COST**

The Construction Cost based upon all work described in the Construction Documents as approved by the OWNER shall be determined as outlined below, with precedence in the order listed:

**4.1** For completed construction, the total cost to the OWNER for such construction work less the amount of any change order work necessary because of errors or omissions on the part of the ARCHITECT or as defined in Subparagraph 1.5.14 Errors and Omissions.

**4.2** If the Project is not constructed, the sum of the lowest bona fide bid(s) received for all of the work, providing said bids do not exceed the fixed limitation of Construction as defined in Paragraph 9.1.3 or as amended by written agreement by the OWNER and ARCHITECT as the basis for design. If such bids exceed the limitation previously agreed upon, said limitation shall become the basis of cost. Alternate bids - The value of alternate bids is part of the construction cost whether or not they are accepted by the OWNER and whether or not they exceed the budget limitation.

**4.3** If bids are not received, the latest Construction Cost estimate prepared by the ARCHITECT, provided such estimate does not exceed the fixed limitation of construction as defined in Paragraph 9.1.3 or as amended by written agreement by the OWNER and ARCHITECT as the basis for design.

It shall be the ARCHITECT'S responsibility to promptly notify the OWNER if, in the ARCHITECT'S opinion, the Project cannot be designed and constructed within the fixed limitation on the cost of construction as authorized by the OWNER. It is the ARCHITECT'S responsibility to so notify the OWNER as soon as such a situation becomes, or should have become, apparent to the ARCHITECT. If without written acknowledgment by the OWNER, the ARCHITECT permits the Construction Contracts to be bid, and if the fixed limitation on the cost

of Construction is exceeded by the lowest bona fide bids or negotiated proposal, the OWNER may: (1) give written approval of an increase in such fixed limit; (2) authorize rebidding of the Project; (3) terminate the Project and this Agreement in accordance herewith; or (4) cooperate in revising the Project scope or quality, or both, as required to reduce the construction cost. In the case of (4), the ARCHITECT, without additional charge to the OWNER, shall consult with the OWNER and shall revise and modify the Construction Documents as necessary to achieve compliance with the fixed limitation on construction cost. Absent negligence on the part of the ARCHITECT in making its estimates of probable construction cost, such modifications and revisions shall be the limit of the ARCHITECT'S responsibility arising from the establishment of such fixed limitation of construction costs, and having done so, the ARCHITECT shall be entitled to compensation for all other services performed, in accordance with this contract.

The OWNER reserves the right to retain a Third Party ARCHITECT and/or a Construction Manager to review the project documents and drawings to obtain a recommendation for revising the Project Scope or quality, or both, as required to reduce the construction costs.

If, after notification to the OWNER by the ARCHITECT that the Project cannot be designed and constructed within the fixed limitation on the cost of construction, the ARCHITECT is by written authorization by the OWNER instructed to proceed without a change in the Project program, design, or in the fixed limitation on the cost of construction, the ARCHITECT shall not be responsible for the cost of any subsequent redesign.

## **ARTICLE 5**

### **OWNERSHIP AND USE OF DOCUMENTS**

All preliminary studies, Construction Documents, special requirements, cost estimates, and all other data compiled by the ARCHITECT under this Agreement shall become the property of the OWNER and may be used for any purpose desired by the OWNER. The ARCHITECT shall not be liable for any reuse of these documents by the OWNER.

## **ARTICLE 6**

### **TERMINATION, ABANDONMENT, SUSPENSION, REACTIVATION**

#### **6.1 TERMINATION BY OWNER [OR ARCHITECT]**

The OWNER or ARCHITECT shall have the right at any time, for any reason, to terminate this Agreement upon not less than seven (7) calendar days' written notice to the ARCHITECT or OWNER.



The ARCHITECT shall comply with all reasonable instructions of the OWNER then or subsequently given relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the OWNER; discontinuance of the work on outstanding contracts; and furnishing to the OWNER information concerning all action to be taken respecting outstanding agreements with consultants, contracts, awards, orders, or other matters.

Copies of Construction Documents and any other materials in existence as of the date of termination will be furnished to the OWNER as requested.

## **6.2 COMPENSATION IN THE EVENT OF TERMINATION**

In the event of termination by OWNER, the ARCHITECT shall be compensated for its services to the termination date based upon services performed on any Phase to the termination date in accordance with the Compensation and Payment schedule contained herein.

Such compensation shall be the ARCHITECT'S sole and exclusive remedy for termination.

## **6.3 SUSPENSION OF WORK**

The OWNER may, at any time, direct the ARCHITECT to suspend all work on the Project, or on any part thereof, pending receipt of further notice from the OWNER. In all such cases the OWNER and the ARCHITECT shall agree upon an appropriate phasing-out of the work in such a manner that the work may be resumed with a minimum of added cost to the OWNER, but in no event shall the work be continued beyond the completion of the Phase in which it then is. The ARCHITECT shall be compensated as if the Agreement had been terminated at the completion of the agreed Phase. If work is suspended during the Construction Phase, compensation shall be paid for all ARCHITECT services provided to the date of suspension, but no additional compensation shall be paid during the period of suspension.

## **6.4 REACTIVATION COMPENSATION**

When a Project has been suspended or terminated for a longer time than three (3) ~~six (6)~~ months and is subsequently reactivated using the same ARCHITECT, the OWNER and the ARCHITECT shall agree, prior to the beginning of the reactivation work, upon a lump sum, or other basis, of reimbursement to the ARCHITECT for its extra start-up costs occasioned as a result of the work having been suspended or terminated.

## **6.5 TERMINATION BY ARCHITECT FOR CONVENIENCE**

If the ARCHITECT chooses to terminate this Agreement without cause, i.e. solely for its convenience, then OWNER may reduce compensation that may be otherwise owed to the ARCHITECT in an amount equal to the OWNER'S increased costs, if any, in securing substitute architectural services. If the OWNER'S increased costs exceed monies otherwise owed to the

ARCHITECT, the OWNER may recover those excess amounts from the ARCHITECT. [NOTE: This subparagraph is new.]

## **ARTICLE 7**

### **MISCELLANEOUS PROVISIONS**

#### **7.1 APPLICABLE LAW**

The interpretation and construction of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. In the event litigation arises out of this Agreement, the parties agree to submit any claim to the Court of Common Pleas of Clearfield County, Pennsylvania.

#### **7.2 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on the successors and assigns of the parties hereto.

#### **7.3 ASSIGNMENT**

Neither the OWNER nor the ARCHITECT shall assign, sublet, or in any manner transfer any right, duty, or obligation under this Agreement without prior written consent of the other party.

#### **7.4 EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the OWNER and the ARCHITECT and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ARCHITECT.

#### **7.5 THIRD PARTY**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the ARCHITECT.

#### **7.6 HAZARDOUS MATERIAL**

Unless otherwise provided in this Agreement, the ARCHITECT and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic material. Notwithstanding the foregoing, asbestos is known to be located throughout the building, the

ARCHITECT shall address it in an appropriate manner, and it shall be part of the basic services. The OWNER may elect to not abate floor tile containing asbestos.

If the ARCHITECT encounters or suspects hazardous or toxic material, the ARCHITECT shall advise the OWNER immediately.

#### **7.7 PROMOTIONAL MATERIAL**

With prior consent of the OWNER, the ARCHITECT shall have the right to include design representation of the Project, including interior and exterior photographs, among the ARCHITECT'S promotional and ARCHITECT materials.

~~The ARCHITECT shall not issue or disclose any information relating to the Project without prior consent of the OWNER.~~

#### **7.8 TERMS/GENERAL CONDITIONS**

Terms contained in this Agreement have the same meaning as those in the OWNER'S Form of Agreement between OWNER and Contractor and the OWNER'S General Conditions of the Contract for Construction, current as of the date of this Agreement.

#### **7.9 INSURANCE**

**7.9.1 Architect Liability Insurance.** The ARCHITECT shall secure and maintain, at its sole cost and expense, Architect Liability Insurance to protect against loss resulting from design errors and omissions, failure to coordinate the Construction Documents of the Project, and failure to execute the construction administration duties for the Project.

**7.9.1.1** Unless otherwise specifically provided in this Agreement, the ARCHITECT shall secure and maintain ARCHITECT Liability Insurance with a minimum coverage of \$1,000,000.

**7.9.1.2** The ARCHITECT shall secure and maintain ARCHITECT Liability Insurance, as required above, up to and including one year after the date of the last final inspection of the contracts under the Project.

**7.9.2 General Liability Insurance.** The ARCHITECT shall secure and maintain, at its sole cost and expense, adequate General Liability Insurance to protect the OWNER and the OWNER'S respective officers, agents, servants, and employees against claims arising out of the ARCHITECT'S services during the design and construction of the Project for damages in law or equity for property damage and bodily injury, including wrongful death. The OWNER shall be named as an additional insured in the policy, and the ARCHITECT shall submit a Certificate of Insurance to the OWNER prior to execution of the Agreement. The limits of coverage shall be \$1,000,000. The ARCHITECT is required to secure and maintain General Liability Insurance up to an including the submission of Record Drawings and a Certificate of Completion.

**7.9.3 Certificate of Insurance.** The ARCHITECT shall furnish to the OWNER annually, unless otherwise requested, during the active terms of this Agreement, a Certificate from an Insurance Carrier authorized to do business in Pennsylvania indicating: (1) the existence of the insurance required under this Article; (2) the amount of the deductible; and (3) the amount of coverage of such insurance. The ARCHITECT shall submit a Certificate of Insurance covering the ARCHITECT Liability Insurance requirement for one year beyond the last final inspection.

**7.9.4 Failure to Comply with Insurance Requirements.** During any period in which the ARCHITECT is not in compliance with the terms of this Article, no compensation shall be paid by the OWNER to the ARCHITECT.

## **ARTICLE 8**

### **ARCHITECT'S EXPENSES**

#### **8.1 DIRECT PERSONNEL EXPENSE**

**8.1.1** The ARCHITECT'S Personnel Expense shall be based on a fixed hourly rate for any principal's time and on a multiple of two and one-half (2.5) times the direct personnel expense per hour for the ARCHITECT'S employees.

**8.1.2** Direct personnel expense is defined as the direct salaries and mandatory and customary benefits of the principals, associates, and employees of the firm who are assigned to and are productively engaged on the Project, including clerical employees. Direct personnel expense shall include mandatory and customary benefits such as employment taxes, statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

#### **8.2 REIMBURSABLE EXPENSES**

Reimbursable expenses are in addition to compensation for Basic and Additional Services and include those expenses as follows for which the ARCHITECT shall be reimbursed a not-to-exceed amount for his direct "out-of-pocket" costs.

**8.2.1** Out-of-town and out-of-state travel expenses, and long distance communications, but only to the extent that such expenses are not attendant to the ARCHITECT'S basic services. Any necessary fee or permit payment required and paid to any governing body or authority having jurisdiction over the Project.

**8.2.2** Expense of reproductions including reproductions of record drawings, postage and handling of Drawings, Specifications, and other documents including, as mutually agreed to, the

preparation and distribution of all necessary bidding correspondence and documents, receipt of bid proposals, and construction contract preparation.

**8.2.3** Expense of renderings, models, mock-ups requested by the OWNER, and/or CADD diskettes of record drawings.

**8.2.4** Expenses of specialized consultants identified as additional services in Subparagraph 2.3.2 and Article 10 of this Agreement.

### **8.3     EXPENSE FOR CONSULTANTS**

The ARCHITECT shall be reimbursed on a multiple of one and one-tenth (1.1) times the amounts billed to the ARCHITECT for such services.

## **ARTICLE 9**

### **COMPENSATION AND PAYMENT**

#### **9.1     BASIC SERVICES COMPENSATION AND PAYMENT**

**9.1.1** The OWNER agrees to pay the ARCHITECT as compensation for those Basic Services described in Article 1 and any other services described in Article 10 compensation of 6% of construction cost plus 6% of alternate bids that were authorized by the OWNER but not accepted ~~a fixed fee not to exceed 6% of the OWNER'S approved budget at submission of Plancon Part D.~~ Compensation shall be broken down as follows: (1) Schematic Design - ~~15%~~10% of Total Fee; (2) Design Development - 25% of Total Fee; (3) Construction Documents - ~~45%~~50% of Total Fee; (4) Bidding - 5% of Total Fee; and (5) Construction - 10% of Total Fee.

**9.1.2** Payment for Basic Services will be made monthly by the OWNER in proportion to the service actually performed, but not to exceed the above set forth percentages at the completion of each Phase.

**9.1.3** The fixed limitation on the cost of construction as defined by this Agreement shall be as determined by the ARCHITECT and adopted by the OWNER.

#### **9.2     REIMBURSABLE EXPENSES**

The OWNER agrees to pay the ARCHITECT as compensation for the ARCHITECT'S Reimbursable Expenses, as defined in Paragraph 8.2., an amount not to exceed \$1,000 for any single expenses and \$15,000 for aggregate expenses without prior written approval by the OWNER.

### **9.3 ADDITIONAL SERVICES COMPENSATION**

**9.3.1 Project Representation.** The OWNER agrees to compensate the ARCHITECT for Project Representation beyond Basic Services, as defined in Paragraph 2.2, in accordance with the following hourly ARCHITECT'S Personnel Expense rates:

Principals	\$125 per hour
Project Architect	\$110 per hour
Project Manager	\$ 95 per hour
Engineer	\$ 95 per hour
Construction Manager	\$ 75 per hour
Field Personnel	\$ 75 per hour
Cost Estimator	\$ 75 per hour
Clerk of the Works	\$ 60 per hour
Drafting	\$ 50 per hour
Clerical	\$ 40 per hour

The employees' hourly rates set forth for Additional Services shall also be used to determine the ARCHITECT'S personnel Expenses as described in Paragraph 8.1. and shall be adjusted annually, subject to the OWNER'S approval, in accordance with generally accepted salary review practices of the profession. Payroll certification shall be provided by the ARCHITECT to the OWNER upon demand.

### **9.4 ADDITIONAL PROVISIONS**

**9.4.1** Payments are due and payable thirty (30) days from the date of the ARCHITECT'S invoice as approved by the OWNER.

**9.4.2** Submission of the ARCHITECT'S invoice for final payment and reimbursement shall further constitute the ARCHITECT'S representation to the OWNER that, upon receipt from the OWNER of the amount invoiced, all obligations of the ARCHITECT to others, including its consultants, incurred in connection with the Project will be paid in full.

### **9.5 OWNER'S RIGHT TO WITHHOLD PAYMENT**

**9.5.1** In the event that the OWNER becomes credibly informed that any representation of the ARCHITECT provided pursuant to Article 9 is wholly or partially inaccurate, the OWNER may withhold payment of sums then or in the future otherwise due to the ARCHITECT until the inaccuracy, and the cause thereof, is corrected to the OWNER'S reasonable satisfaction.

9.6 ARCHITECT'S RECORDS

9.6.1 Documentation accurately reflecting the time expended by the ARCHITECT and its personnel and records of Reimbursable Expenses shall be maintained by the ARCHITECT and shall be available to the OWNER for review and copying upon request.

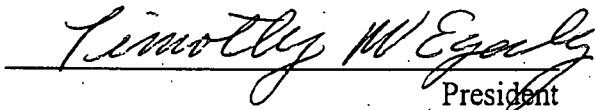
ARTICLE 10

OTHER CONDITIONS OR SERVICES

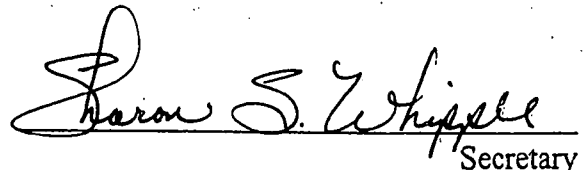
10.1 OWNER may, but is not required to, retain ARCHITECT to provide construction management services. If OWNER so elects, ARCHITECT's compensation shall be two percent (2%) of the cost of the work as defined herein, provided a scope of services can be agreed to by the OWNER and the ARCHITECT.

*THIS AGREEMENT* entered into as of the day and year written above.

OWNER

  
President

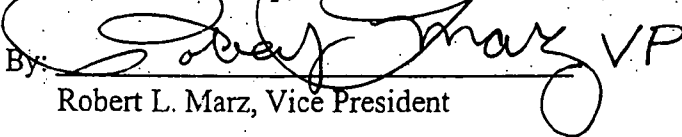
Board of Directors of the West Branch Area  
School District

  
Secretary

Board of Directors of the West Branch Area  
School District

ARCHITECT

Roth Marz Partnership, P.C.

By:  VP  
Robert L. Marz, Vice President

1-13-03



ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET  
ERIE, PA 16508  
PH: 814-860-8366  
FAX: 814-860-8606

# INVOICE

DATE	INVOICE #
6/9/2005	82533

BILL TO
WEST BRANCH AREA SCHOOL DISTRICT ATTN: PAUL CARR 356 ALLPORT CUTOFF MORRISDALE, PA 16858-9752

JOB NUMBER	TERMS	PROJECT
	NET 30 DAYS	

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
ARCHITECTURAL/ENGINEERING SERVICES RENOVATIONS & ADDITIONS TO THE MIDDLE/HIGH SCHOOL				
ACTUAL TOTAL BIDS + ADD ALTERNATES INSURANCE COSTS	\$13,226,586.00 + 333,497.00 \$13,560,083.00			
ARCHITECT FEE = 6%	X 6% \$ 813,604.98			
CONSTRUCTION PHASE = 20% OF FEE	X 20% \$ 162,271.00			
CONSTRUCTION COMPLETE TO DATE = 96%		0.96	162,721.00	156,212.16
LESS PREVIOUSLY INVOICED			-146,448.90	-146,448.90
			<b>Total</b>	<b>\$9,763.26</b>

EXHIBIT

B





ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET  
ERIE, PA 16508  
PH: 814-860-8366  
FAX: 814-860-8606

# INVOICE

DATE	INVOICE #
4/10/2007	83000

**BILL TO**

WEST BRANCH AREA SCHOOL DISTRICT  
ATTN: PAUL CARR  
356 ALLPORT CUTOFF  
MORRISDALE, PA 16858-9752

JOB NUMBER	TERMS	PROJECT
	NET 30 DAYS	

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
ARCHITECTURAL/ENGINEERING SERVICES				
RENOVATIONS & ADDITIONS TO THE MIDDLE/HIGH SCHOOL				
ACTUAL TOTAL BIDS + ADD ALTERNATES	13,226,586.00			
INSURANCE COSTS	+ 333,497.00			
TOTAL	13,560,083.00			
ARCHITECT FEE OF 6%	X 6% 813,604.98			
CONSTRUCTION PHASE = 20% OF FEE	X 20% 162,271.00			
CONSTRUCTION 100% COMPLETE		1	162,721.00	162,721.00
LESS PREVIOUS INVOICED			-156,212.16	-156,212.16
<b>Total</b>				\$6,508.84

EXHIBIT



ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET  
ERIE, PA 16508  
PH: 814-860-8366  
FAX: 814-860-8606

# INVOICE

DATE	INVOICE #
4/11/2007	83001

**BILL TO**

WEST BRANCH AREA SCHOOL DISTRICT  
ATTN: PAUL CARR  
356 ALLPORT CUTOFF  
MORRISDALE, PA 16858-9752

JOB NUMBER	TERMS	PROJECT
	NET 30 DAYS	

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
INVOICE FOR CHANGE ORDERS ADDED TO THE CONTRACT  TOTAL "ADD" CHANGE ORDERS TO DATE SEE ATTACHED CHANGE ORDER LOG  RMP MARK-UP		0.06	311,897.00	18,713.82
			<b>Total</b>	\$18,713.82

EXHIBIT

D

**FILED**

**JAN 22 2008**

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

ROTH MARZ PARTNERSHIP PC: CIVIL ACTION -- LAW

Plaintiff

:

No. 08-104 CD

v.

:

WEST BRANCH AREA SCHOOL:  
DISTRICT,

:

Defendant


:

PRECIPE FOR ENTRY OF APPEARANCE

To the Prothonotary:

Please enter my appearance is attorney for Defendant in the above-  
captioned action.

Date: 23 Feb '08



Kenneth A. Wise, Esq.

Levin and Wise

27 West Third Street

P.O. Box 234

Lewistown, PA

Tel: 717-247-3577

FILED

2cc  
m/12/31/08  
FEB 27 2008

Atty Wise

William A. Shaw  
Prothonotary/Clerk of Courts

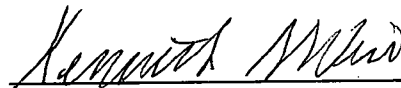
(GR)

**CERTIFICATION OF SERVICE**

I hereby certify that I am this day serving a true and correct copy of the attached Precipe for Entry of Appearance on the following individual by First Class U.S. Mail addressed as follows:

Kevin L. Colosimo, Esq.  
Thorpe, Reed, and Armstrong, LLP  
301 Grant St., 14th floor  
Pittsburgh, PA 15219 -- 1425

Date: 23 Feb '08



Kenneth A. Wise, Esquire  
Levin and Wise  
Id. No. 16142  
27 West Third Street  
Lewistown PA 17044  
(717) 247-3577

Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

ROTH MARZ PARTNERSHIP PC: CIVIL ACTION -- LAW

Plaintiff

No. 08-104 CD

v.

WEST BRANCH AREA SCHOOL:  
DISTRICT,

Defendant

**DEFENDANT'S PRELIMINARY OBJECTIONS**

AND NOW comes Defendant, by its undersigned counsel, and respectfully makes these Preliminary Objections to Plaintiff's Complaint as follows

**COUNT 1 – MOTION TO STRIKE**

1. This is a suit over a disputed billing for architect's fees claimed.
2. Plaintiff is claiming moneys owed for architect's services pursuant to a written contract, attached as Exhibit "A" to the complaint.
3. Plaintiff is claiming special damages; however, special damages are not pleaded at all in the prayers for relief.
4. The complaint does not comply with Pa.R.C.P 1019(f) requiring items of special damage be specifically stated.

WHEREFORE Defendant respectfully requests that the Complaint be stricken pursuant to Pa.R.C.P. 1028(a)(2).

**COUNT 2 – MOTION TO STRIKE**

5. Paragraphs 1 through 4, above, are incorporated by reference herein.
6. Exhibit "D" to the Complaint purports to be an invoice setting forth a claim for monies owed in change orders.

**FILED**  
FEB 27 2008

William A. Shaw  
Prothonotary/Clerk of Courts

2cc  
m/12/3/08  
Anywise  
(6K)

7. Exhibit "D" makes reference to an attached change order log, and the Complaint does not mention its unavailability.
8. The change order log is not attached to Exhibit "D".
9. Pa. R.C.P. 1019(i) specifies that when any claim is based on a writing, the pleader shall attach a copy of that writing to that pleading or state why a copy of that writing is unavailable.
10. The Complaint does not comply with Pa.R.C.P. 1019(i)

WHEREFORE Defendant respectfully requests that the Complaint be stricken pursuant to Pa.R.C.P. 1028(a)(2).

### **COUNT 3 – DEMURRER**

11. Paragraphs 1 through 10, above, are incorporated by reference herein.
12. Count II of the Complaint asks this Court for quantum meruit damages in the alternative.
13. Paragraph 29 in Count II of the Complaint reads, "Ron Martz provided services to WBASD pursuant to its Contract therewith."
14. As a matter of law, quantum meruit damages are not recoverable on a claim based on a contract.

WHEREFORE Defendant respectfully requests that Count II be dismissed for failure to state a claim on which relief may be granted.

Date: 23 Feb. '08



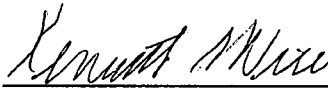
Kenneth A. Wise, Esq.  
Levin and Wise  
27 West Third Street  
P.O. Box 234  
Lewistown, PA  
Tel: 717-247-3577

**CERTIFICATION OF SERVICE**

I hereby certify that I am this day serving a true and correct copy of the attached Preliminary Objections on the following individual by First Class U.S. Mail addressed as follows:

Kevin L. Colosimo, Esq.  
Thorpe, Reed, and Armstrong, LLP  
301 Grant St., 14th floor  
Pittsburgh, PA 15219 -- 1425

Date: 23 Feb. '08

  
\_\_\_\_\_  
Kenneth A. Wise, Esquire  
Levin and Wise  
Id. No. 16142  
27 West Third Street  
Lewistown PA 17044  
(717) 247-3577

Attorney for Defendants



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,	)	CIVIL DIVISION - LAW
	)	
Plaintiff,	)	
	)	CASE NO. 08-104-CD
	)	
v.	)	
	)	PRAECIPE FOR ORAL ARGUMENT
	)	ON WEST BRANCH AREA SCHOOL
WEST BRANCH AREA SCHOOL	)	DISTRICT'S PRELIMINARY
DISTRICT,	)	OBJECTIONS TO PLAINTIFF'S
	)	COMPLAINT
	)	
	)	Filed on behalf of Plaintiff, Roth Marz
Defendant.	)	Partnership, PC
	)	
	)	Counsel of Record for This Party:
	)	
	)	Kevin L. Colosimo, Esquire
	)	Pa. I.D. No. 80191
	)	Andrew G. Jenkins, Esquire
	)	Pa. I.D. No. 91322
	)	
	)	
	)	THORP REED & ARMSTRONG, LLP
	)	Firm I.D. No. 282
	)	One Oxford Centre
	)	301 Grant Street, 14 <sup>th</sup> Floor
	)	Pittsburgh, PA 15219-1425
	)	(412) 394-2332
	)	
	)	

FILED *no cc*  
3/11/05/24  
FEB 29 2008  
William A. Shaw  
Prothonotary/Clerk of Courts  
*(62)*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,	)	CIVIL DIVISION - LAW
	)	
Plaintiff,	)	
	)	CASE NO. 08-104-CD
v.	)	
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

**PRAECIPE FOR ORAL ARGUMENT  
ON WEST BRANCH AREA SCHOOL DISTRICT'S  
PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

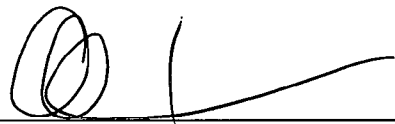
AND NOW, comes Plaintiff, Roth Marz Partnership, PC ("Roth Marz"), by and through its undersigned counsel, and files this Praecipe for Oral Argument on West Branch Area School District's Preliminary Objections to Plaintiff's Complaint Pursuant to Pa R.C.P, 1028(a)(2) Raising Issues of Fact as follows:

1. Plaintiff, Roth Marz, requests oral argument/hearing on its West Branch Area School District's Preliminary Objections to Plaintiff's Complaint Pursuant to Pa R.C.P, 1028(a)(2).
2. Counsel for Roth Marz believes that such oral argument will take approximately twenty (20) minutes.

Dated: February 28<sup>th</sup>, 2008

Respectfully submitted,

THORP REED & ARMSTRONG, LLP

By: \_\_\_\_\_

Kevin L. Colosimo, Esquire

Pa. I.D. No. 80191

Andrew G. Jenkins, Esquire

Pa. I.D. No. 91322

THORP REED & ARMSTRONG, LLP

Firm I.D. No. 282

One Oxford Centre

301 Grant Street, 14<sup>th</sup> Floor

Pittsburgh, PA 15219-1425

(412) 394-2332

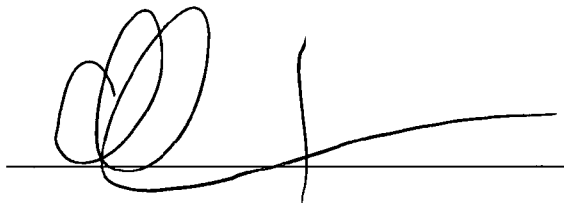
Attorneys for Plaintiff, Roth Marz

Partnership, PC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon counsel of record this 28<sup>th</sup> day of February, 2008, by U.S. Mail, first class, postage prepaid, as follows:

Kenneth A. Wise, Esquire  
Levin and Wise  
27 West Third Street  
Lewistown, PA 17044

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a vertical line and a horizontal stroke, positioned above a horizontal line.

## 00868878.DOC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,	)	CIVIL DIVISION - LAW
	)	
Plaintiff,	)	
	)	CASE NO. 08-104-CD
v.	)	
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

**ANSWER TO PRELIMINARY OBJECTIONS**

Plaintiff, Roth Marz Partnership, PC ("Roth Marz"), by and through its counsel, Thorp Reed & Armstrong, LLP, files the instant Answer to the Preliminary Objections filed by West Branch Area School District ("WBASD") as follows:

**COUNT 1 – MOTION TO STRIKE**

1. Denied. This is a lawsuit filed in order to collect fees due and owing to Roth Marz. In fact, contrary to WBASD's averment, despite Roth Marz' persistent request, WBASD has never articulated any disagreement with any of the amounts billed.

2. Admitted. By way of further answer, Roth Marz further seeks interest, penalty interest, attorneys' fees, and costs in the instant action.

3. Denied. By way of further answer, Roth Marz is unclear as to what WBASD references when it refers to "special damages" claimed allegedly without sufficient specificity or not pled "in the prayers for relief." Special damages are those damages "which are not the usual and ordinary consequences of the wrong done, but which depend upon special circumstances."

*Parsons Trading Co. v. Dohan*, 167 A. 310, 312 (Pa. 1933). The damages claimed by Roth Marz are not special in any sense – they are those consistently faced by any person or entity adjudged liable to a plaintiff under the theories of liability (breach of contract and violation of the Commonwealth Procurement Code) asserted in Roth Marz’ Complaint. Furthermore, Roth Marz satisfies any requirement of specificity to which it is subject; Roth Marz, in its Complaint, either provides specific amounts claimed, with supportive invoices, or provides a specific reason – WBASD’s refusal to cooperate – for its failure to do so. Challenges to the specificity of “special damages” fail when the amount thereof can be determined in discovery. *Foster v. Health Mkt. Inc.*, 604 A.2d 1198, 1201 (Pa.Comm.w. 1992). Here, the *ordinary* damages claimed are either fully disclosed or will be able to be specifically determined in discovery.

Roth Marz is completely unaware of what, exactly, WBASD challenges regarding the sufficiency of its Complaint when it avers that Roth Marz has not pled special damages “in the prayers for relief.” The same is therefore denied.

4. Denied that the damages claimed are “special damages,” denied that Roth Marz has not laid out the damages claimed with the requisite sufficiency even if the damages claimed are adjudged to be “special damages,” and denied that the Complaint is violative of Pa.R.C.P. 1019(f).

WHEREFORE, Roth Marz Partnership, PC respectfully requests that this Honorable Court enter an Order overruling WBASD’s Preliminary Objections and compelling it to file an Answer to the Complaint forthwith. In the alternative, in the event that this Honorable Court finds any merit whatsoever to WBASD’s Preliminary Objections, Roth Marz hereby requests, and must be granted, an opportunity to amend their Complaint. *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa.Super. 1982).

## **COUNT 2 – MOTION TO STRIKE**

5. Paragraph 5 is an incorporation paragraph to which no response is required. To the extent that a response is deemed required, Roth Marz hereby incorporates its answers to Paragraphs 1-4 of WBASD's Preliminary Objections.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied. The writing on which Roth Marz' claims are founded is its contract with the WBASD, attached as Exhibit A to the Complaint. The invoice attached as Exhibit D to the Complaint is merely evidence of the fact that amounts remain due and owing to Roth Marz. Certainly, Roth Marz' decision to exhibit it, along with the other unpaid invoices, does not compel it to produce every writing referenced therein. WBASD, to the extent it so desires, may seek the referenced change order log in discovery.

10. Denied. To the contrary, the Complaint fully complies with Pa.R.C.P. 1019(i).

WHEREFORE, Roth Marz Partnership, PC respectfully requests that this Honorable Court enter an Order overruling WBASD's Preliminary Objections and compelling it to file an Answer to the Complaint forthwith. In the alternative, in the event that this Honorable Court finds any merit whatsoever to WBASD's Preliminary Objections, Roth Marz hereby requests, and must be granted, an opportunity to amend their Complaint. *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa.Super. 1982).

## **COUNT 3 - DEMURRER**



11. Paragraph 11 is an incorporation paragraph to which no response is required. To the extent that a response is deemed required, Roth Marz hereby incorporates its answers to Paragraphs 1-10 of WBASD's Preliminary Objections.

12. Admitted that Count II of the Complaint, **pled explicitly in the alternative**, asserts a claim for damages based on an unjust enrichment cause of action.

13. Denied that Paragraph 29 of the Complaint reads "Ron Martz provided services to WBASD pursuant to its Contract therewith." To the contrary, Paragraph 29 reads "Roth Marz provided services to WBASD pursuant to its Contract therewith."

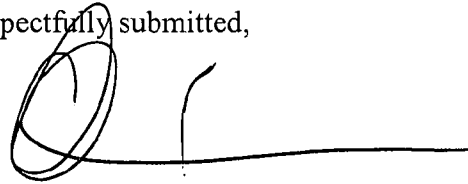
14. Admitted that a plaintiff cannot recover for both breach of contract and unjust enrichment. However, Rule 1020(c) of the Pennsylvania Rules of Civil Procedure provides that causes of action and defenses may be pled in the alternative. Pa.R.C.P. 1020(c). Even where the causes of action are inconsistent or conflicting, the complaint will not be deemed defective. *Baron v. Bernstein*, 175 Pa.Super. 608, 611, 106 A.2d 668, 669 (1954)(citing Pa.R.C.P. 1020(c)).

Plaintiffs may plead causes of action for breach of an express contract and quantum meruit in the same complaint. *J.A. & W.A. Hess, Inc. v. Hazle Twp.*, 465 Pa. 465, 468, 350 A.2d 858, 860 (1976)(holding that trial court erred in refusing to consider unjust enrichment claim along with breach of contract claim); *Lampl v. Latkanich*, 210 Pa.Super. 83, 88, 231 A.2d 890, 892 (1967)(plaintiff's complaint, which contained averments sounding in quantum meruit but also contained written agreements as attachments, signified that plaintiff was proceeding in the alternative under both contract and quantum meruit theories, as permitted by Rule 1020(c)). See also, *Honeywell Int'l., Inc. v. Archdiocese of Phila.*, Nos. 2219, 081210, 2001 WL 1807938, \*2 (Pa.Com.Pl. Oct. 24, 2001) ("Plaintiffs may properly plead causes of action for breach of

contract and unjust enrichment in the same complaint.”). WBASD’s challenge to the presence of both a breach of contract and an unjust enrichment claim in the Complaint is wildly premature.

WHEREFORE, Roth Marz Partnership, PC respectfully requests that this Honorable Court enter an Order overruling WBASD’s Preliminary Objections and compelling it to file an Answer to the Complaint forthwith. In the alternative, in the event that this Honorable Court finds any merit whatsoever to WBASD’s Preliminary Objections, Roth Marz hereby requests, and must be granted, an opportunity to amend their Complaint. *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa.Super. 1982).

Respectfully submitted,



Dated: \_\_\_\_\_, 2008


Kevin L. Colosimo, Esquire  
PA I.D. #80191  
Andrew G. Jenkins, Esquire  
PA I.D. #91322

THORP REED & ARMSTRONG, LLP  
Firm I.D. No: 282  
One Oxford Centre  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425  
(412) 394-2332

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon counsel of record this 28<sup>th</sup> day of February, 2008, by U.S. Mail, first class, postage prepaid, as follows:

Kenneth A. Wise, Esquire  
Levin and Wise  
27 West Third Street  
Lewistown, PA 17044

  
\_\_\_\_\_

LA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

ROTH MARZ PARTNERSHIP, PC,  
Plaintiff

vs.

WEST BRANCH AREA SCHOOL DISTRICT,  
Defendant


\*  
\*  
\*  
\*  
\*

NO. 08-104-CD

ORDER

NOW, this 29<sup>th</sup> day of February, 2008, upon receipt of the Plaintiff's Praecipe for Oral Argument on Defendant's Preliminary Objections to Plaintiff's Complaint, it is the ORDER of this Court that argument on the Defendant's Preliminary Objections is scheduled for the 7th day of April, 2008 at 9:15 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED

0/10:32m

MAR 04 2008

1 cc ATty's:

K. Colosimo

K. Wise

GP

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3-4-2008

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

**FILED**

**MAR 04 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

ROTH MARZ PARTNERSHIP, P.C.,  
Plaintiff

vs

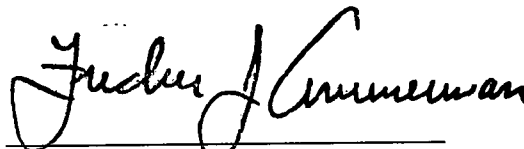
WEST BRANCH AREA SCHOOL DISTRICT,  
Defendant

NO. 08-104-CD

**ORDER**

NOW, this 28<sup>th</sup> day of April, 2008, following argument on the Defendant's Preliminary Objections to Plaintiff's Complaint, it is the ORDER of this Court that said Preliminary Objections be and are hereby DENIED.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED

APR 29 2008

William A. Shaw  
Prothonotary/Clerk of Courts

CC  
Atty's  
Colosimo  
Wise  
GR

FILED

APR 29 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4/29/08

\_\_\_ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

\_\_\_ Plaintiff(s) X Plaintiff(s) Attorney \_\_\_ Other

\_\_\_ Defendant(s) X Defendant(s) Attorney

\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

ROTH MARZ PARTNERSHIP, P.C.: CIVIL ACTION -- LAW

Plaintiff :  
: No. 08-104 CD

v. :

WEST BRANCH AREA SCHOOL :  
DISTRICT, :  
Defendant :

**CERTIFICATE OF SERVICE**

I certify that I am this day serving a true and correct copy of this Court's April 28, 2008 order (entered April 29, 2008), together with a copy of this Certificate of Service on the following individual by First Class U.S. Mail addressed as follows:

Andrew G. Jenkins, Esq.  
Thorp Reed and Armstrong, LLP  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425

LEVIN & WISE

By



Kenneth A. Wise, Esq.  
Attorney I.D. #16142  
27 West Third Street  
P.O. Box 231  
Lewistown, PA 17044-0231  
Tel. (717) 247-3577  
Fax (717) 247-3581

Dated: 20 May '08

**FILED** NO CC  
MAY 05 2008  
19:24:04

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103691  
NO: 08-104-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: ROTH MARZ PARTNERSHIP, PC  
VS.  
DEFENDANT: WEST BRANCH AREA SCHOL DISTRICT

SHERIFF RETURN

NOW, February 06, 2008 AT 1:25 PM SERVED THE WITHIN COMPLAINT ON WET BRANCH AREA SCHOOL DISTRICT DEFENDANT AT 516 ALLPORT CUTOFF, MORRISDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO PAUL CARR, BUSINESS MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

FILED

012:54/31  
MAY 21 2008

William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	THORP	159889	10.00
SHERIFF HAWKINS	THORP	159889	31.13

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2008

\_\_\_\_\_

So Answers,

*Chester A. Hawkins*  
*by Mauley Harris*

Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

ROTH MARZ PARTNERSHIP, P.C.: CIVIL ACTION -- LAW

Plaintiff :  
: No. 08-104 CD

v. :

WEST BRANCH AREA SCHOOL :  
DISTRICT, :

Defendant :

**FILED** *no cc*  
*m/10:54/20*  
**MAY 27 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

ANSWER WITH NEW MATTER AND COUNTERCLAIM

And now comes West Branch Area School District, by its undersigned counsel, and respectfully responds to the Complaint, and asserts new matter and counterclaims as follows:

ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Denied. To the contrary, there are several instances of performance not in compliance with the Contract.
8. Admitted only that Plaintiffs have submitted an invoice appearing as Exhibit B. Denied that it is due to be paid in full.
9. Admitted only that Plaintiff submitted an invoice appearing as Exhibit C. Denied that it is due to be paid in full.
10. Admitted that a demand was made. Denied that Plaintiff is entitled to any further

compensation by Defendant, West Branch.

11. Denied. To the contrary, West Branch had been paying Plaintiff regular payments toward services as the construction work progressed. In addition, West Branch has sent to counsel for Plaintiff under cover of a letter of April 14, 2008 a check payable to Roth Marz in the amount of \$15,012.90.

12. Denied that the Plaintiff is entitled to payment based on the Contract between West Branch and Quandel. Further denied that Plaintiff has not been furnished with a copy of this Contract. To the contrary, Roth Marz, through counsel, was supplied such a document.

13. Denied for reasons set forth in paragraph 12, above.

14. Denied. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averment. Proof is demanded.

15. Denied. To the contrary, Roth Marz's services were deficient in several particulars, most resulting in the necessity of change orders to correct.

16. Denied. To the contrary, West Branch, through counsel, has invited Plaintiff to meet with it for the purpose of settling differences concerning the deficient performance of Roth Marz, but Roth Marz has refused to do so.

17. Admitted.

18. Denied. To the contrary, West Branch has not accepted all of the work as being done in accordance with applicable professional standards.

19. Admitted.

20. Admitted and denies for reasons set forth elsewhere herein. In particular, it is denied that any further monies are due Plaintiff.

ANSWER OF COUNT I

BREACH OF CONTRACT

21. Paragraphs 1-20 above are incorporated by reference herein.
22. Admitted.
23. Denied for reasons set forth elsewhere herein.
24. Denied. To the contrary, Roth Marz has received more than it is due.
25. Denied that West Branch is in material breach of the Contract. To the contrary, Roth Marz's deficiency in several particulars and refusal to correct them at its expense constitutes a material breach of the Contract.
26. Denied. After reasonable investigation, Defendant, West Branch is without information sufficient to form a belief as to the truth of the averment. Proof is demanded.
27. Denied. To the contrary, Plaintiff is not entitled to "reasonable interest" or interest under the Commonwealth Procurement Code.

WHEREFORE, Defendant, West Branch, respectfully requests judgment in its favor together with interest, cost of suit and reasonable attorney fees.

ANSWER TO COUNT II

UNJUST ENRICHMENT

28. Paragraphs 1-27 above are incorporated by reference herein.
29. Admitted.
30. Denied. To the contrary, West Branch complained of several deficiencies causing the extra expense of worker order stop plus construction costs, for which Roth Marz, not West Branch, is responsible.
31. Denied. To the contrary, for reasons set forth elsewhere herein, Plaintiff has been more than

fully compensated for its allowable services.

32. Denied. To the contrary, West Branch assumed more than all of the benefit of what it paid for.

33. Denied. To the contrary, West Branch was not justly enriched. To the contrary West Branch has not received all of what it is due under the Contract.

34. Denied. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averment. Proof is demanded.

### COUNT III

#### CLAIM UNDER COMMONWEALTH PROCUREMENT CODE

35. Paragraphs 1-34 above are incorporated by reference herein.

36. Admitted.

37. Admitted.

38. Denied. To the contrary, it has more than fully paid for its work. Furthermore, it has attempted to claim moneys for which it is not entitled.

39. Denied for reasons set forth elsewhere herein.

40. Denied. To the contrary, it is Plaintiff that has acted in bad faith by attempting to charge for items for which it is not entitled.

41. Denied for reasons set forth elsewhere herein.

WHEREFORE, Defendant, West Branch, respectfully requests judgment in its favor together with interest, cost of suit and reasonable attorney fees.

NEW MATTER AND COUNTERCLAIM

COUNT I

42. Paragraphs 1-41 above are incorporated by reference herein.
43. Under the terms of the subject Contract, Roth Marz, as architect, was responsible for obtaining liability and casualty insurance at its expense (Article 7.9).
44. West Branch, and not Roth Marz, paid insurance costs totaling \$333,497.00.
45. This amount, is being improperly assessed by Roth Marz against West Branch, and West Branch is entitled to set off against any amounts owing in the amount of \$333,497.00.

WHEREFORE, West Branch respectfully requests set off in its favor in the amount of \$333,497.00 together with interest and cost of suit.

NEW MATTER AND COUNTERCLAIM

COUNT II

46. Paragraphs 1-45 above are incorporated by reference herein.
47. Under the terms of the Contract, Roth Marz is entitled to a fee based on a percentage of 6% of construction costs.
48. The Agreement does not define cost of construction. However, Article 4 deals with "construction costs". The Agreement is silent as to the exact definition of cost of construction or construction costs, and does not specify any items which are included or excluded from construction costs. Agreement, Article 4.
49. Article 4 of the Agreement does indicate that construction cost is that based on work described in construction documents as approved by West Branch. Agreement, Article 4.
50. The Agreement refers to "construction documents" as. "Construction Drawings and Specifications/Project Manual ... required by the Owner for set approval." Agreement, Article

1.3. The Article 1.3 goes on to state that, "Construction Documents shall delineate, detail, and completely specify all materials and equipment required to fully complete construction of the project in every phase consistent with the current standards of the profession." Id. The Construction Drawings and Specifications/Projects Manual do not mention insurance costs.

51. Roth Marz did not make specifications for or bid out insurance costs, and such costs do not appear in the construction documents.

52. For the reasons set forth above, cost of insurance is not considered a part of the cost of construction as set forth in the subject Agreement.

53. Accordingly, Roth Marz is seeking to overbill West Branch on this item in the amount of \$333,497.00, plus 6% of \$333,497.00 (\$20,009.82) for a total of \$353,506.82.

WHEREFORE, West Branch respectfully requests set off in its favor in the amount of \$353,506.82 together with interest, costs of suit and reasonable attorneys fees.

#### NEW MATTER AND COUNTERCLAIM

#### COUNT III

54. Paragraphs 1-53 above are incorporated by reference herein.

55. Part of the claim of Roth Marz is that it is entitled to 6% of the costs incurred by West Branch in hiring its own construction manager to oversee, among other things, the work of Roth Marz. That cost was \$418,000.00.

56. Roth Marz is claiming 6% of the \$418,000.00 figure or, \$25,080.00, not including interest.

57. Roth Marz had nothing to do with West Branch's hiring of the construction manager, Quandel.

58. Under the terms of the Agreement, West Branch is free to hire its own construction manager, or it may utilize construction manager services of Roth Marz.

59. West Branch chose to get an independent construction manager, and selected Quandel.

60. Under the terms of the Contract, construction manager services is not part of the basic services. Article 2.3.6. The Contract specifies the cost of employing professionals other than Roth Marz for basic services. Included in the cost of extras is that of a construction manager at \$75.00 per hour. Agreement, Article 9.3.1.

61. The Agreement specifies that, for any construction management services obtained through Roth Marz, the architect's compensation shall be 2% of the cost of work. Agreement, Article 10.1.

62. The Agreement does not claim any costs in the instance where West Branch hires its own construction manager.

WHEREFORE, West Branch respectfully requests that the claim of Roth Marz for fee is based on the cost of the construction manager hired by West Branch. Defendant West Branch further requests interest and cost of suit in its favor.

#### NEW MATTER AND COUNTERCLAIM

#### COUNT IV

63. Paragraphs 1-62 above are incorporated by reference herein.

64. Plaintiff is pursuing its claims for basic services based on construction costs including insurance, which is not within any reasonable reading of the contract and is on bad faith within the meaning of the Commonwealth Procurement Code.


65. Plaintiff's claim for additional basic fees based on inclusion of the cost of the contract manager and the cost of construction is brought in bad faith within the Procurement Code.

66. Defendant will have to expend sums for legal fees and costs in order to defend against Roth Marz's claims brought in bad faith.



WHEREFORE, Defendant respectfully request judgment in its favor for interest and all amounts it has overpaid in the contract together with reasonable attorney fees.

Respectfully submitted,

BY LEVIN & WISE  
  
Kenneth A. Wise, Esq  
Attorney I.D. #16142  
27 West Third Street  
P. O. Box 231  
Lewistown, PA 17044-0231  
Tel (717) 247-3577  
Fax (717) 247-3581

Dated: 23 May '08

## VERIFICATION

I verify that the statements made in the above Answer are true and correct. I understand that false statements made herein are made subject to the penalties of 18 PA C.S. §4904 relating to unsworn falsification to authorities.

WEST BRANCH AREA SCHOOL DISTRICT

BY

Timothy W. Eynaly

Dated: 5-19-08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

ROTH MARZ PARTNERSHIP, P.C.: CIVIL ACTION -- LAW

Plaintiff :  
: No. 08-104 CD

v. :

WEST BRANCH AREA SCHOOL :  
DISTRICT, :

Defendant :

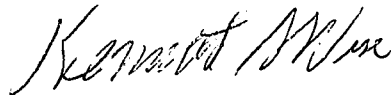
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I served a true and correct copy of the above document upon all counsel of record by depositing the same in the United States Mail, first class, postage prepaid, at Lewis<sup>town</sup>, Pennsylvania, on the 23rd day of May, 2008, addressed as follows:

Andrew G. Jenkins, Esq.  
Thorp Reed and Armstrong, LLP  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425

LEVIN & WISE

By



Kenneth A. Wise, Esq.  
Attorney I.D. #16142  
27 West Third Street  
P.O. Box 231  
Lewistown, PA 17044-0231  
Tel. (717) 247-3577  
Fax (717) 247-3581

FILED

JUN 18 2008  
ml 10:45/cw  
William A. Shaw  
Prothonotary/Clerk of Courts

NO 4/c 60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,

Plaintiff,

v.

WEST BRANCH AREA SCHOOL  
DISTRICT,

Defendant.

) CIVIL DIVISION  
)  
)

) No. 08-104 CD  
)  
)

) **REPLY TO NEW MATTER AND**  
) **ANSWER TO COUNTERCLAIM**  
)  
)

) Filed on behalf of Plaintiff:  
) Roth Marz Partnership, PC  
)  
)

) Counsel of Record for Roth Marz:  
)  
)

) Kevin L. Colosimo  
) Pa. I.D. No. 80191  
) Andrew G. Jenkins  
) Pa. I.D. No. 91322  
)  
)

) THORP REED & ARMSTRONG, LLP  
) Firm I.D. No. 282  
) One Oxford Centre  
) 301 Grant Street, 14<sup>th</sup> Floor  
) Pittsburgh, PA 15219-1425  
) 412/394-7710

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. 08-104 CD
	)	
v.	)	
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

**REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM**

Plaintiff, Roth Marz Partnership, PC ("Roth Marz"), by and through its counsel, Thorp Reed & Armstrong, LLP, files the within Reply to New Matter and Answer to Counterclaim filed by Defendant, West Branch Area School District ("WBASD"):

**COUNT I**

42. Paragraph 42 is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Roth Marz incorporates by reference Paragraphs 1 – 41 of its Complaint as if fully set forth herein.

43. Denied that Roth Marz was responsible for obtaining liability and casualty insurance for the Project. Rather, Roth Marz was required to, and did, obtain insurance to protect against any claims arising out of Roth Marz's services.

44. Denied that West Branch paid any amounts for insurance over and above what it was obligated to pay; denied further that Roth Marz failed to pay any amounts for insurance that it was obligated to pay.

45. Paragraph 45 contains a legal conclusion to which no response is required. To the extent a response is deemed required, the averments in paragraph 45 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial.

WHEREFORE, Plaintiff, Roth Marz Partnership, PC, respectfully requests that this Honorable Court enter a judgment in its favor together with interest, penalty interest, attorneys' fees and costs, in excess of the compulsory arbitration limits of Clearfield County.

## **COUNT II**

46. Paragraph 46 is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Roth Marz incorporates by reference Paragraphs 1 – 41 of its Complaint, and paragraphs 42-45 of its Reply to New Matter and Answer to Counterclaim, as if fully set forth herein.

47. Admitted.

48. Paragraph 48 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 48 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

49. Paragraph 49 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 49 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which

speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

50. Paragraph 50 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 50 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

51. Denied that insurance costs were not a part of the total cost of the Project. To the contrary, as represented by WBASD, insurance was a component of the project for which WBASD incurred a charge of \$333,497.00. Said sum is incontestably a cost to WBASD of the Project. By way of further answer, Roth Marz hereby incorporates its Complaint as if fully set forth herein.

52. Paragraph 52 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 52 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

53. Paragraph 53 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 53 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, Roth Marz denies that it is attempting to "overbill West Branch on this item in

the amount of \$333,497.00, plus 6% of \$333,947.00 (\$20,009.82) for a total of \$353,5065.82” and strict proof thereof is demanded at time of trial.

WHEREFORE, Plaintiff, Roth Marz Partnership, PC, respectfully requests that this Honorable Court enter a judgment in its favor together with interest, penalty interest, attorneys' fees and costs, in excess of the compulsory arbitration limits of Clearfield County.

### **COUNT III**

54. Paragraph 54 is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Roth Marz incorporates by reference Paragraphs 1 – 41 of its Complaint, and paragraphs 42-53 of its Reply to New Matter and Answer to Counterclaim, as if fully set forth herein.

55. Admitted that Roth Marz is entitled to be paid a percentage of all costs incurred in connection with the Project, including those sums expended for construction management services.

56. Admitted that Roth Marz claims the sum of \$25,080.00, plus interest which continues to accrue, as due and owing.

57. Paragraph 57 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 57 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the averments of paragraph 57 are denied as impertinent.

58. Paragraph 58 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 58 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the averments of paragraph 58 are denied as impertinent. Furthermore, the



contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

59. Paragraph 59 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 59 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the averments of paragraph 59 are denied as impertinent.

60. Paragraph 60 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 60 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the averments of paragraph 60 are denied as impertinent. Furthermore, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

61. Paragraph 61 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 61 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

62. Paragraph 62 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 62 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of

further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms.

WHEREFORE, Plaintiff, Roth Marz Partnership, PC, respectfully requests that this Honorable Court enter a judgment in its favor together with interest, penalty interest, attorneys' fees and costs, in excess of the compulsory arbitration limits of Clearfield County.

#### COUNT IV

63. Paragraph 63 is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Roth Marz incorporates by reference Paragraphs 1 – 41 of its Complaint, and paragraphs 42-62 of its Reply to New Matter and Answer to Counterclaim, as if fully set forth herein.

64. Paragraph 64 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 64 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms. Furthermore, it is denied that the Commonwealth Procurement Code has any relevancy to the New Matter and/or Counterclaim raised by WBASD.

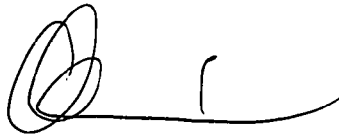
65. Paragraph 65 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 65 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner

inconsistent with its express terms. Furthermore, it is denied that the Commonwealth Procurement Code has any relevancy to the New Matter and/or Counterclaim raised by WBASD.

66. Paragraph 66 contains legal conclusions to which no response is required. To the extent a response is deemed required, the averments in paragraph 66 of WBASD's New Matter and Counterclaim are denied and strict proof thereof is demanded at time of trial. By way of further answer, the contract between Roth Marz and WBASD is a written document which speaks for itself. Roth Marz denies any attempt to characterize said document in a manner inconsistent with its express terms. Furthermore, it is denied that the Commonwealth Procurement Code has any relevancy to the New Matter and/or Counterclaim raised by WBASD.

WHEREFORE, Plaintiff, Roth Marz Partnership, PC, respectfully requests that this Honorable Court enter a judgment in its favor together with interest, penalty interest, attorneys' fees and costs, in excess of the compulsory arbitration limits of Clearfield County.

Respectfully submitted,



Kevin L. Colosimo, Esquire  
PA I.D. #80191  
Andrew G. Jenkins, Esquire  
PA I.D. #91322

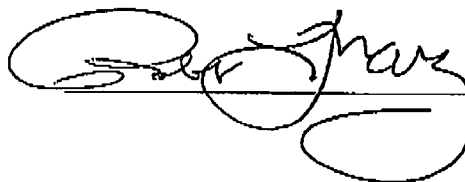
Dated: June 17, 2008

THORP REED & ARMSTRONG, LLP  
Firm I.D. No: 282  
One Oxford Centre  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425  
(412) 394-2332

VERIFICATION

I, ROBERT L. MARZ under penalty of perjury and subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, verify that the foregoing is true and correct to the best of my knowledge, information and belief.

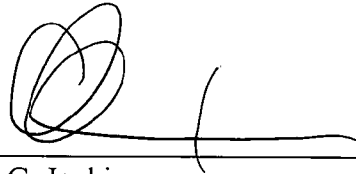
6.13.08  
Date

A handwritten signature in black ink, appearing to read "Robert L. Marz", is written over a horizontal line.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Reply to New Matter and Answer to Counterclaim has been served upon counsel of record this 17 day of June, 2008 by U.S. Mail, first class, postage prepaid, as follows:

Kenneth A. Wise, Esq.  
Law Offices of Allen J. Levin & Kenneth A. Wise  
27 West Third Street  
PO Box 231  
Lewistown, PA 17044-0231

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line and a vertical stroke.

---

Andrew G. Jenkins

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

ROTH MARZ PARTNERSHIP, P.C.: CIVIL ACTION -- LAW

Plaintiff

: No. 08-104 CD

v.

WEST BRANCH AREA SCHOOL:  
DISTRICT,

Defendant

**FILED**

AUG 01 2008

M/A. Shaw

Prothonotary/Clerk of Courts

no C/C

**CERTIFICATE OF MERIT**

I, Kenneth A. Wise, attorney for Defendant, certify that:

- ☒ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Plaintiff in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

AND/OR

- ☒ the claim that this Plaintiff, deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant(s) is responsible deviated from an acceptable standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant(s):

Date: 7/24/08

Kenneth A. Wise

Kenneth A. Wise, Esq.  
Levin and Wise  
27 West Third Street  
P.O. Box 231  
Lewistown, PA  
Tel: 717-247-3577

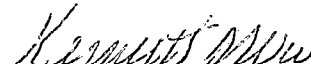
**CERTIFICATION OF SERVICE**

I hereby certify that I am this day serving a true and correct copy of the attached Praecipe Certificate of Merit on the following individual by First Class U.S.

Mail addressed as follows:

Kevin L. Colosimo, Esq.  
THORP REED & ARMSTRONG  
301 Grant St., 14<sup>th</sup> Floor  
Pittsburgh PA 15219-1425

Date: 7/25/08

  
\_\_\_\_\_  
Kenneth A. Wise, Esquire  
Id. No. 16142  
27 West Third Street  
Lewistown PA 17044  
(717) 247-3577

Attorney for Defendant



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

ROTH MARZ PARTNERSHIP, P.C.: CIVIL ACTION -- LAW

Plaintiff :

: No. 08-104 CD

v. :

WEST BRANCH AREA SCHOOL:  
DISTRICT, :

Defendant :

**FILED** *cc*  
*m/10:28/01 Aug Wise*  
AUG 07 2008 *(GIC)*

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF MERIT**

I, Kenneth A. Wise, attorney for Defendant, certify that:

☒ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Plaintiff in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

AND/OR

☒ the claim that this Plaintiff, deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant(s) is responsible deviated from an acceptable standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant(s).

Date: 4 Aug '08

Kenneth A. Wise

Kenneth A. Wise, Esq.  
Levin and Wise  
27 West Third Street  
P.O. Box 231  
Lewistown, PA  
Tel: 717-247-3577

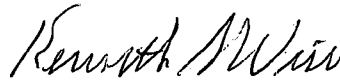
**CERTIFICATION OF SERVICE**

I hereby certify that I am this day serving a true and correct copy of the attached Praeipue Certificate of Merit on the following individual by First Class U.S.

Mail addressed as follows:

Andrew G. Jenkins, Esq.  
THORP REED & ARMSTRONG  
301 Grant St., 14<sup>th</sup> Floor  
Pittsburgh PA 15219-1425

Date: 4 Aug '08



---

Kenneth A. Wise, Esquire  
Id. No. 16142  
27 West Third Street  
Lewistown PA 17044  
(717) 247-3577

Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,

Plaintiff,

v.

WEST BRANCH AREA SCHOOL  
DISTRICT,

Defendant.

) CIVIL ACTION - LAW  
)

) CASE NO. 08-104-CD  
)

) **MOTION TO COMPEL COMPLETE**  
) **RESPONSES TO PLAINTIFF'S FIRST**  
) **AND SECOND SETS OF DISCOVERY**  
) **REQUESTS AND MOTION FOR**  
) **SANCTIONS**  
)  
)

) Served on behalf of Plaintiff, Roth Marz  
) Partnership, PC  
)

) Counsel of Record for This Party:  
)

) Kevin L. Colosimo  
) PA ID No. 80191  
) Andrew G. Jenkins  
) PA ID No. 91322  
)

) THORP REED & ARMSTRONG, LLP  
) Firm ID No. 282  
) One Oxford Centre  
) 301 Grant Street, 14<sup>th</sup> Floor  
) Pittsburgh, PA 15219-1425  
) Phone: (412) 394-2332  
) Fax: (412) 394-2555  
)

FILED  
MAR 10 2009

William A. Shaw  
Prothonotary/Clerk of Courts

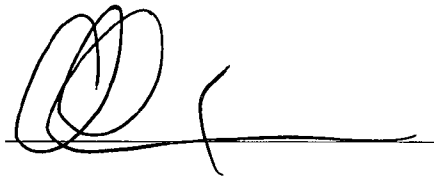
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC,	)	CIVIL DIVISION - LAW
	)	
Plaintiff,	)	CASE NO. 08-104-CD
	)	
v.	)	
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

**NOTICE OF PRESENTATION**

KINDLY TAKE NOTICE that the within Motion to Compel will be presented before  
The Honorable Judge Cherry on Tuesday, March 24, 2009 at 1:30 p.m., or as soon thereafter as  
suits the convenience of the Court.

Dated: March 9, 2009

A handwritten signature in black ink, consisting of a large, stylized 'C' or 'K' shape followed by a horizontal line.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC,	)	CIVIL DIVISION - LAW
	)	
Plaintiff,	)	CASE NO. 08-104-CD
	)	
v.	)	
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

**MOTION TO COMPEL COMPLETE RESPONSES TO PLAINTIFF'S FIRST AND SECOND SETS OF DISCOVERY REQUESTS AND MOTION FOR SANCTIONS**

NOW COMES Plaintiff, Roth Marz Partnership, PC ("Roth Marz") and files the within Motion to Compel Responses to Plaintiff's First and Second Sets of Discovery Requests and Motion for Sanctions, and, in support thereof, avers as follows:

1. Roth Marz initiated this action in 2008 to recover monies owed by Defendant West Branch Area School District ("Defendant") for the non-payment of certain outstanding invoices from the construction of the new West Branch Junior/Senior High School Building.
2. On July 25, 2008, Roth Marz served on Defendant Plaintiff's Interrogatories, Requests for Production of Documents and Requests for Admissions (the "First Set of Discovery Requests").
3. Defendant served its responses to the First Set of Discovery Requests on August 25, 2008. On October 20, 2008, Defendant served a Supplemental Response to the First Set of Discovery Requests. Copies of Defendant's Response and Supplemental Response to Roth Marz's First Set of Discovery Requests are attached hereto as Exhibits A and B, respectfully.

4. Defendant's responses were incomplete, inadequate and insufficient to inform Roth Marz of the basis upon which the Defendant has denied payment of Roth Marz's outstanding invoices.

5. Specifically, Defendant (1) failed to answer interrogatories 2 and 3, regarding the amounts paid out for construction management services, (2) refused to identify any specific deficiencies with the work done by Roth Marz, (3) refused to specifically identify how, when and by whom rejections of the work done by Roth Marz were made, and (4) failed to make a legitimate production of responsive documents.

6. On September 5, 2008, Roth Marz served Defendant with Plaintiff's Second Set of Interrogatories and Requests for Production of Documents (the "Second Set of Discovery Requests").

7. Defendant served its response on October 6, 2008. A copy of Defendant's Response to Roth Marz's Second Set of Discovery Requests is attached hereto as Exhibit C.

8. Defendant's Response to the Second Set of Discovery Requests is essentially worthless. In response to a series of questions regarding verified allegations of professional negligence, Defendant refers, in global objection to the requests, to Pa. R.C.P. 1042.7(a). To be sure, that Rule does not insulate a party from answering questions regarding professional negligence; to hold otherwise would radically change the landscape of professional negligence actions and would essentially preclude professionals from effectively defending lawsuits.

9. Without success, Roth Marz's counsel has made inquiries to Defendant's counsel regarding the First and Second Sets of Discovery Requests.

10. Pennsylvania Rule of Civil Procedure 4006 requires that a party answer Interrogatories fully and completely within thirty (30) days after service of such Interrogatories.

11. Pennsylvania Rule of Civil Procedure 4009.12 requires that a party produce or make available those documents and things described in a Request for Production within thirty (30) days after service of the request.

12. Defendant's responses are incomplete and improper inasmuch as Defendant failed to provide any meaningful response to Roth Marz's First and Second Sets of Discovery Requests.

13. Pursuant to Pennsylvania Rules of Civil Procedure 4019(a)(1)(i) and (vii), the Court may enter an order compelling Defendant to provide full and complete responses to Roth Marz's First and Second Sets of Discovery Requests.

14. The Court may also make any other order with regard to the failure to make discovery as is just, including the imposition of sanctions. *See* Pa. R. Civ. P. 4019(c)(5). The imposition of sanctions is appropriate in this instance, where Defendant failed to make any good faith effort to comply with its discovery obligations, and failed to provide any cognizable legal justification for his obdurate refusal.



WHEREFORE, Plaintiff, Roth Marz Partnership, PC, respectfully requests that this Honorable Court enter an order compelling West Branch Area School District to provide full, complete, and substantive responses, without objection, to Roth Marz's First and Second Sets of Discovery Requests within ten (10) days of the date thereof. Furthermore, Roth Marz requests that the Court impose sanctions in the amount of \$1,000 to redress Defendant's misconduct, and compensate Plaintiff for the otherwise unnecessary and avoidable presentation of this Motion.

Respectfully submitted,

By: 

Kevin L. Colosimo

PA ID No. 80191

Andrew G. Jenkins

PA ID No. 91322

THORP REED & ARMSTRONG, LLP

Firm ID No. 282

One Oxford Centre

301 Grant Street, 14<sup>th</sup> Floor

Pittsburgh, PA 15219-1425

Phone: (412) 394-2332

Fax: (412) 394-2555

Attorneys for Plaintiff, Roth Marz  
Partnership, PC

Kenneth A Wise, Esquire  
Attorney I.D. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown PA 17104-0231  
(717) 247-3577  
Attorneys for Defendant

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC  
Plaintiff

v.

WEST BRANCH AREA SCHOOL DISTRICT  
Defendant

CIVIL ACTION – LAW

No. 08-104 CD

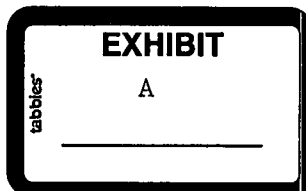
**DEFENDANT'S RESPONSE TO PLAINTIFF'S INTERROGATORIES,  
REQUEST FOR PRODUCTION OF DOCUMENTS and REQUESTS FOR  
ADMISSION ADDRESSED TO DEFENDANT  
(FIRST SET).**

Defendant, (hereinafter also "Responding Party"), hereby responds to Plaintiff's Interrogatories, Request For Production Of Documents And Requests For Admission (hereinafter "discovery requests") of Defendants, (hereinafter also "Propounding Party") with the following answers and objections.

**GENERAL ANSWERS AND OBJECTIONS**

The following general answers and objections are applicable to the Discovery requests served by Propounding Party.

1. Pursuant to the Pennsylvania Rules of Civil Procedure, the Discovery requests are objected to generally because the Discovery requests seek



information in bad faith and will cause unreasonable annoyance, oppression, burden and expense to Responding Party in answering the Discovery requests.

2. The Discovery requests are objected to generally because some of the unintelligible Discovery requests are not capable of reasonable comprehension.

3. The Discovery requests are objected to generally as answering these Discovery requests would require Responding Party to make an unreasonable investigation.

4. The Discovery requests are objected to generally because the Discovery requests seek information beyond the scope of permissible discovery and in many cases are duplicative.

5. The set of Discovery requests is objected to generally as the number of Discovery requests, because of the vague, duplicative, and non-relevant nature thereof, will cause Responding Party to suffer unreasonable annoyance, oppression, burden and expense in answering them.

6. Responding Party objects to the Discovery requests to the extent that the Discovery requests seek to impose duty upon them of supplementation broader than that imposed by the Pennsylvania Rules of Civil Procedure.

7. Responding Party reserves the right to proceed by way of the Pennsylvania Rules of Civil Procedure where appropriate and if objections made herein are overruled by the Court in whole or in part.

8. Responding Party reserves the right to seek attorney's fees in responding to these Discovery requests in accordance with the Pennsylvania Rules of Civil Procedure and other applicable law.

9. Responding Party's case investigation is continuing and they reserve the right to supplement their answers and objections to these Discovery requests upon completion of discovery and their investigation.

10. By answering these Discovery requests, Responding Party does not intend to waive their right to move for a protective order pursuant to the Pennsylvania Rules of Civil Procedure and for appropriate sanctions pursuant to the Pennsylvania Rules of Civil Procedure.

### **SPECIFIC ANSWERS AND OBJECTIONS**

Subject to the foregoing general answers and objections, Responding Party hereby responds specifically to the Discovery requests as follows on the following attached pages:

### **RESPONSES TO PLAINTIFF'S INTERROGATORIES**

1. Please identify all individuals preparing or consultant in the course of preparing your answers to these interrogatories, Requests for Production of Documents, and Requests for Admissions:

#### **ANSWER**

Undersigned counsel, Jason McMillan, business manager, Dave Blank, Buildings and Grounds, architect/engineer expert.

2. Please identify all amounts paid to Quandel in connection with the Project.

#### **ANSWER:**

Objection. What amount West Branch paid to Quandel is irrelevant. Quandel was hired by West Branch to perform construction management services. Roth Marz had no part in the selection of Quandel and took no responsibility for the conduct of Quandel under the express terms of the Agreement. Under these circumstances, the express terms of the Agreement do not permit Roth Marz to recover for charges for which Roth Marz did no work, and is not part of basic services as set forth in Articles 4 and 1 of the Agreement. As such, the interrogatory requests information that is irrelevant even for purposes of discovery. West Branch reserves the right to move for a protective order

3. Please identify any other person or entity who is paid any amount for construction management services for the Project.

ANSWER:

Objection. What amount West Branch paid to anybody for construction management services is irrelevant. Roth Marz had no part in the services performed by any third person and took no responsibility for the conduct of any such person under the express terms of the Agreement. Under these circumstances, the express terms of the Agreement do not permit Roth Marz to recover for charges for which Roth Marz did no work, and is not part of basic services as set forth in Articles 4 and 1 of the Agreement. As such, the interrogatory requests information that is irrelevant even for purposes of discovery. West Branch reserves the right to move for a protective order.

4. Please identify you all amounts paid to any person or entity identified in paragraph 7 of your Answer with New Matter and Counterclaim.

ANSWER:

[Paragraph 7 does not call for the identity of any person. West Branch does not understand the question and requests clarification. Objection is made based on burdensomeness.]

5. Identify specifically the "instances of performance not in compliance with the contract" identified in paragraph 7 of your answer with New Matter and Counterclaim.

ANSWER:

Said instances will be identified further in a preliminary report from West Branch's expert. Three likely examples include inadequate design of electrical power to the auditorium, improper design of auditorium diffusers, and improper design of a turnaround for buses discharging student athletes at the athletic fields.

6. Identify all facts supportive of your contention that the invoices attached to Roth Marz's complaint, as Exhibits B and C, are not due and payable.

ANSWER:

Roth Marz overcharged West Branch \$20,009.82, representing 6% of West Branch's costs of project insurance. Roth Marz also overcharged for change orders necessary due to its professional negligence. A preliminary report is

being obtained. On April 14, 2008 Roth Marz was issued a check to its order in the amount of \$15,012.90. A total of these overcharges and payments exceeds Roth Marz is claim in exhibits B and C.

7. Identify all work rejected or not accepted by West Branch. as not done "in accordance with applicable professional standards" as stated in paragraph 18 of WBASD's Answer with New Matter and Counterclaim."

ANSWER: A preliminary report from West Branch's expert will be supplied

8. Identify with specificity how WBASD communicated the rejection or nonacceptance of any work identified in response to interrogatory number 7 to Roth Marz.

ANSWER: West Branch communicated its concerns to Roth Marz, including those three examples cited in the interrogatory answers, above, when West Branch asked for a meeting to express its concerns and get answers to them. West Branch withheld payment when it became clear that these concerns were not being addressed.

9. Identify with specificity all facts supportive of your claim that "Roth Marz received more than it is due ," as stated in paragraph 24 of your Answer with New Matter and Counterclaim.

ANSWER:

See response to interrogatory 6, above

10. Identify with specificity all deficiencies referenced in paragraph 25 of West Branch's Answer with New Matter and Counterclaim.

ANSWER:

A preliminary report from West Branch's expert will be supplied.

11. Identify with specificity all efforts made to obtain remediation of these "deficiencies."

ANSWER:

See response to interrogatory 8, above.

12. Identify when and how Roth Marz articulated its "refusal" to remediate the "deficiencies" listed in your response to Interrogatories number 7.

ANSWER:

Roth Marz made it clear that it would not enter into any discussions with West Branch until all of its claimed charges were paid, including specifically Roth Marz's claim that it was a 6% of the contract with the construction manager, Quandel. See the November 28, 2007 letter from attorney Colosimo to Dr. Maulhauf, and the January 8, 2000 the letter from attorney Colosimo to attorney Hall.



13. Identify with specificity the "complaints" referenced in paragraph 30 of your Answer with New Matter and Counterclaim.

ANSWER:

Objection. The word "complaints" is not referenced in paragraph 30 of West Branch's Answer with New Matter and Counterclaim.

14. Identify with specificity what West can't branch believes it is entitled to under the contract but has not received as set forth in paragraph 33 of West Branch's Answer with New Matter and Counterclaim.

ANSWER:

West Branch claims that certain change orders that it paid for were the result of errors and omissions on the part of Roth Marz, as well as credit for overcharges for that portion of the fee charged based on insurance charges.

15. Identify under what specific section of the Commonwealth Procurement Code West branch brings count IV of West Branch's Answer with New Matter and Counterclaim.

ANSWER:

62 Pa. C.S. section 3935, and such other sections as may be applicable.

16. Identify, with particularity, the total amount expended by West Branch to construct the Project.

ANSWER:

Objection. West Branch is uncertain as to what is being asked. Roth Marz is in possession of the construction documents and the change orders. If Roth Marz is asking for project costs over and above the construction costs, West Branch objects based on relevancy for reasons in the answers to interrogatory 5, above. West Branch reserves the right to move for a protective order.

### **RESPONSE TO THE REQUEST FOR PRODUCTION OF DOCUMENTS**

1-14 [To be separately supplied.]

15. Please identify and produce any document reflecting a payment to Quandel or any other person or entity who or which provided construction management services for the project.

#### **RESPONSE:**

Objection. The amount paid to Quandel or any other entity providing construction management services is irrelevant. Such costs are not construction costs but are rather project costs. Under the terms of the Contract, Roth Marz is only entitled to 2% of the work is defined in the contract, but only in the event that Roth Marz is selected by West Branch to provide construction management services. Contract, article 10.1. If Roth Marz is claiming entitlement to compensation from West Branch based on a percentage of Quandel's fee per article 9.1 .1 of the Contract, it is still not entitled to any fee because construction management services is considered a "soft cost" and not a construction cost, or cost of construction. As such, the request for production calls for West Branch to

produce materials are relevant to the case. West Branch reserves the right to move for a protective order.

16. Please identify and produce all non-privileged documents concerning Roth Marz's performance on the project.

RESPONSE: objection. West Branch cannot discern what is being asked in this request for production. Clarification is asked for. Without waiting its objections, West Branch refers and incorporates by reference in its response in items one through 14 of the request for production of documents.

#### **RESPONSES TO REQUESTS FOR ADMISSIONS**

1. Please admit that Roth Marz has made demand upon you for payment of its unpaid invoices plus interest

RESPONSE: Admitted.

2. Please admit that WBASD has not paid those invoices attached as exhibit B., C. and D to Roth Marz's complaint.

RESPONSE: denied. To the contrary, West Branch has paid Roth Marz \$15,012.90, tendered under cover of a letter of April 14, 2008. which is not reflected in the invoices.

3. Admit that exhibit A to the Complaint is the Contract between the parties.

RESPONSE: Denied. Exhibit A to the complaint contains a notation at the top of the first page as well as the date of execution on the first page which do not appear on the copy in the possession of West Branch.

4. Please admit that Article 7.9.1 of the Contract requires Roth Marz to obtain insurance to "protect the OWNER and the OWNER'S respective officers, agents, servants, and employees against all claims arising out of the ARCHITECT'S services during the design and construction of the Project."

RESPONSE: denied. To the contrary, Oracle 7.9.1 of the Contract reads as follows:

**7.9.1 Architect Liability Insurance.** The ARCHITECT shall secure and maintain, at its sole cost and expense, Architect Liability Insurance to protect against loss resulting from design errors and omissions, failure to coordinate the Construction Documents on the Project, and failure to execute the construction administration duties for the Project.

5. Please admit that no demand was ever made upon Broth Mars at any time to procure general liability insurance for the project.

RESPONSE: Denied. See article 7.9 .1 and 7.9.2 of the Contract.

Date: 8/25/08


Kenneth A. Wise  
Kenneth A. Wise  
Levin and Wise  
27 W. 3rd St  
Lewistown PA  
(717) 247-3577  
Attorneys for Plaintiff

### CERTIFICATION OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the attached Answers and Objections to Plaintiff's discovery requests on the following individual by First Class U.S. Mail addressed as follows:

Andrew Jenkins Esq.  
Thorpe Reid and Armstrong LLP  
One Oxford Centre, 14th floor  
Pittsburgh, PA 15219 – 1425

Date: 8/25/01

  
Kenneth A. Wise, Esquire  
Id. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown, PA 17044-0231  
(717) 247-3577

Kenneth A Wise, Esquire  
Attorney I.D. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown PA 171044-0231  
(717) 247-3577  
Attorneys for Defendant

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC  
Plaintiff

v.

WEST BRANCH AREA SCHOOL DISTRICT  
Defendant

CIVIL ACTION – LAW

No. 08-104 CD

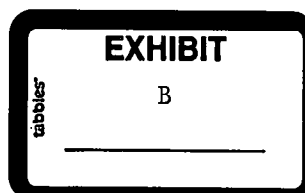
**DEFENDANT'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S  
INTERROGATORIES, AND REQUEST FOR PRODUCTION OF DOCUMENTS  
(FIRST SET).**

Defendant, (hereinafter also "Responding Party"), hereby supplements its response to Plaintiff's Interrogatories, and Request For Production Of Documents (hereinafter also "Propounding Party") with the following answers and objections.

**GENERAL ANSWERS AND OBJECTIONS**

The following general answers and objections are applicable to the Discovery requests served by Propounding Party.

1. Pursuant to the Pennsylvania Rules of Civil Procedure, the Discovery requests are objected to generally because the Discovery requests seek information in bad faith and will cause unreasonable annoyance, oppression, burden and expense to Responding Party in answering the Discovery requests.



2. The Discovery requests are objected to generally because some of the unintelligible Discovery requests are not capable of reasonable comprehension.

3. The Discovery requests are objected to generally as answering these Discovery requests would require Responding Party to make an unreasonable investigation.

4. The Discovery requests are objected to generally because the Discovery requests seek information beyond the scope of permissible discovery and in many cases are duplicative.

5. The set of Discovery requests is objected to generally as the number of Discovery requests, because of the vague, duplicative, and non-relevant nature thereof, will cause Responding Party to suffer unreasonable annoyance, oppression, burden and expense in answering them.

6. Responding Party objects to the Discovery requests to the extent that the Discovery requests seek to impose duty upon them of supplementation broader than that imposed by the Pennsylvania Rules of Civil Procedure.

7. Responding Party reserves the right to proceed by way of the Pennsylvania Rules of Civil Procedure where appropriate and if objections made herein are overruled by the Court in whole or in part.

8. Responding Party reserves the right to seek attorney's fees in responding to these Discovery requests in accordance with the Pennsylvania Rules of Civil Procedure and other applicable law.

9. Responding Party's case investigation is continuing and they reserve the right to supplement their answers and objections to these Discovery requests upon completion of discovery and their investigation.

10. By answering these Discovery requests, Responding Party does not intend to waive their right to move for a protective order pursuant to the Pennsylvania Rules of Civil Procedure and for appropriate sanctions pursuant to the Pennsylvania Rules of Civil Procedure.

### **SPECIFIC ANSWERS AND OBJECTIONS**

Subject to the foregoing general answers and objections, Responding Party hereby responds specifically to the Discovery requests as follows on the following attached pages:

### **SUPPLEMENTAL RESPONSE TO THE REQUEST FOR PRODUCTION OF DOCUMENTS**

1. 14 [RE: Documents identified in answers to interrogatories.]

#### **RESPONSE:**

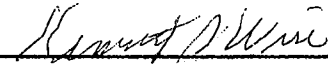
West Branch incorporates the responses and objections set forth in its answer to discovery (first set). In addition to those objections set forth above and in its answer to discovery (first set), documents dealing with amounts West Branch paid to other third-party contractors not involved in the bidding process conducted by Roth Marz, the information sought is irrelevant and in violation of the anti-kickback provisions of the Pennsylvania School Code of 1949, as amended, section 7-751.1.



Without leaving its objections, Defendant West Branch responses follows:

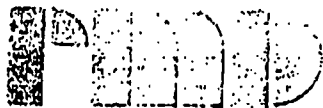
Documents responsive to the request for production of documents our catalog and an accompanying exhibit with the described documents attached here to. The exhibit lists those items for which objection is made and privilege from discovery is claimed

Date: 10 Oct '07

  
Kenneth A. Wise  
Levin and Wise  
27 W. 3rd St  
Lewistown PA  
(717) 247-3577  
Attorneys for Plaintiff

**WEST BRANCH AREA SCHOOL DISTRICT  
EXHIBIT LOG**

<b>Item No.</b>	<b>Date</b>	<b>Description</b>	<b>Pages</b>	<b>With held</b>
1	1/22/02	Letter from Giles, superintendent, to Marz	2	
2	1/21/03	Preliminary cost estimate	1	
3	11/28/07	Letter from Colosimo to Multhauf, superintendent	2	
4	1/8/08	Letter from Colosimo to Hall,	2	
5	4/7/08	Letter from wise to Jenkins	1	
6	4/14/08	letter from Wise to Jenkins	1	
7	1/29/04	Invoice from Pennsylvania School Boards Association Insurance Trust	1	Yes
8	10/20/06	Invoice from Pennsylvania School Boards Association Insurance Trust	1	Yes
9	2/12/03	Preliminary cost estimate	1	
10	6/14/07	Letter from Marz to Multhauf	2	
11	4/10/07	Letter from Marz to Carr	4	
12	9/21/06	Change order to log	4	
13	1/15/08	Letter from Levin to Colosimo	1	
14	1/8/08	Fax from Colosimo to Levin	1	
15	1/8/08	Letters from Colosimo to Halland from Colosimo To Multhauf	2	
16	Various	Invoice numbers 82,533, 83001, 83,000, and FC157	4	
17	Various	Bid tabulation logs	31	
18		Contract with Quandel		Yes
19				



ARCHITECTS  
INTERIORS  
PLANNERS  
PROJECT MANAGERS

☒ **CORPORATE OFFICE**  
3505 Chapin Street  
Erie, PA 16508  
P: (814) 860-8366  
F: (814) 860-8606  
info@rothmarz.com

☐ **LEHIGH VALLEY OFFICE**  
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Orefield, PA 18089  
P: (610) 366-2081  
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info@rmppc.com

☐ **PITTSBURGH OFFICE**  
2020 Beaver Avenue • Suite 204  
Monaca, PA 15081  
P: (724) 774-8020  
F: (724) 774-3465  
mail@rothmarz.com

Dale H. Roth, President • Robert L. Marz, Vice President • Mark R. Thompson, Vice President • Carl G. Baker, Vice President

January 22, 2002

Mr. Thomas Giles  
Superintendent  
West Branch Area School District  
RR 2, Box 194  
Morrisdale, PA 16858

*Design phase  
approved to  
proceed 1-28-02*

Dear Mr. Giles:

Based on the overwhelming consensus of the Committee at Thursday night's meeting to have us proceed to develop the New High School Option (Option Y), the next step would be to have your School Board appoint Roth Marz Partnership P.C. as the Architect of Record and Construction Manager for this project and authorize us to proceed to develop Schematic building drawings, Schematic site drawings and PlanCon "A" forms. PlanCon "A" is the initial step which notifies the PA Department of Education that your District is interested in doing a reimbursable project.

Roth Marz will prepare a typical AIA contract for your review. Our proposed fee for services is 8% of the cost of the work (6% for Architectural/Engineering services and 2% for Construction Management services).

The design process and our services can be stopped at any time should the District wish to modify, postpone, cancel the project. The District will only be charged for fees incurred prior to notice to stop. Typically an initial milestone is the submission and review of PlanCon A & B (schematic design). At the completion of this phase Roth Marz (Architectural/Engineering services) will be at 15% complete. Using a typical AIA fee breakdown, is as follows:

A.	Schematic Design	15%
B.	Design Development	25%
C.	Working Drawings	35%
D.	Bidding	5%
E.	Construction Services	20%
		100%

I am available to answer any questions you have regarding the PlanCon process. This project (new building or additions which increase the existing building more than 20%)

*Pg 14*

will require a public hearing called an Act 34 Hearing. It is estimated that the minimum time required from the start of the planning process to receiving construction bids is approximately 9 months.

Please call me if you or your Board have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Marz". The signature is fluid and cursive, with the first name "Robert" and last name "Marz" clearly distinguishable.

Robert L. Marz, R.A., AIA  
Vice President

RLM:sh

**WEST BRANCH AREA SCHOOL DISTRICT RENOVATIONS AND ADDITIONS  
TO MIDDLE/HIGH SCHOOL**

**PRELIMINARY COST ESTIMATE  
(Revised 1-21-03)**

**REVISED**

Partial demolition of existing High School & partial asbestos removal \$ 120,000

New Addition

61,000 SF x \$122/SF 7,442,000  
(includes air conditioning for administration,  
auditorium, and windowless classrooms)

New Addition at Main Entry

2300 SF x \$133/SF 305,900

Renovations (76000 SF)

HVAC (per Feasibility Study 1,388,000

(Coal fired Boiler) ~~210,000~~ 105,000

Plumbing ( per feasibility study) 421,000

Fire Protection 176,000

Electric (per feasibility study) 1,300,000

Roof Replacement 532,000

Locker Replacement (800 x \$220) 176,000

Partial asbestos flooring removal and new flooring  
replacement at disturbed areas only - Library,  
Administration, Cafeteria, Band Area, Science rms.,  
etc. ± 10,000 SF x \$6.00/SF = 60,000

General Construction modifications at proposed  
receiving, music, band cafeteria, library administration  
± 15,000 SF x \$24/SF = 360,000

**Total Estimated Construction/Renovation Cost** 4,623,000

**Total Preliminary Estimate of Construction Cost** 12,490,900

Estimated Soft Costs (18.5%)  
(6% A/E, 3% Const. Mgmt, 4.5% Furnishings, 3% Contingency,  
2% Bond/Legal) 2,310,817

**ESTIMATED PROJECT COSTS** \$ 14,801,717  
701

ATTORNEYS AT LAW SINCE 1895

November 28, 2007

Dr. Arleen Multhauf  
Superintendent  
356 Allport Cutoff  
Morrisdale, PA 16858-9752

Re: *Roth Marz Partnership P.C. v. West Branch Area School District*

Dear Dr. Multhauf:

We represent Roth Marz Partnership PC as regards the non-payment of certain outstanding invoices from the construction of the new West Branch Junior/Senior High School Building. The three unpaid invoices, together with a new invoice reflecting the accrued interest on the outstanding accounts, are enclosed with this letter.

Roth Marz fully performed under its contract with the West Branch Area School District and is entitled to be paid in full for its efforts on the High School. For reasons unknown, and despite persistent requests by Roth Marz, the District has failed to pay.

Furthermore, the District has refused to tender information regarding the contract it entered into with the construction manager on the project despite Roth Marz's repeated request. As you know, Roth Marz is entitled to be paid based on the *total cost* of the project - and the total cost undisputedly includes the amount of the contract between the District and the construction manager.

Roth Marz would like to expeditiously resolve this dispute. To that end, Roth Marz has authorized me to file suit on its behalf in order to recover the amounts remaining due and outstanding. I am prepared to do so. However, we wish to reach out before the initiation of formal litigation in an effort to resolve this matter before both Roth Marz and the District expend significant time and money in litigation. Please consider this letter as a final request short of litigation for payment in full of the current outstanding invoices, tender of the requested information regarding the construction manager's contract, and payment of the final invoice which will be provided upon review of the construction manager's documentation.

Pittsburgh

Philadelphia

Princeton

Wheeling

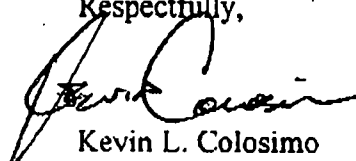
Thorp Reed & Armstrong, LLP  
One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, PA 15219-1425  
412 394 7711  
412 394 2555 Fax

00845199.DOC

November 28, 2008

I look forward to hearing from you at your very earliest convenience. Please be advised that if we have not resolved this matter on or before December 10, 2007, I will file suit against the West Branch Area School District on behalf of Roth Marz Partnership PC.

Respectfully,



Kevin L. Colosimo

Enclosures

cc: Bob Marz (w/encl.)  
Dale Roth (w/encl.)  
Andrew G. Jenkins, Esquire (w/o encl.)

00846199.DOC



Kevin L. Colosimo  
Direct Dial 412 394 2332  
Email: kcolosimo@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

VIA FACSIMILE (570) 748-9369  
AND REGULAR U.S.  
FIRST CLASS MAIL

January 8, 2008

Mr. Stuart L. Hall  
138 E. Water Street  
Lock Haven, PA 17745

Dear Mr. Hall,

It was a pleasure speaking with you on Friday afternoon. I understand your desire to arrange a meeting between Roth Marz and the West Branch Area School District School Board regarding the ongoing litigation with some of the contractors who worked on the West Branch Area School District Junior/Senior High School Building project.

However, as we discussed, outstanding invoices remain between Roth Marz and the West Branch Area School District (the "School District"). Furthermore, as-yet-to-be-determined further charges remain to be assessed after Roth Marz has had an opportunity to examine the contract between Quandel, the construction manager for the project, and the School District. Roth Marz has made multiple requests for payment and for a copy of the Quandel contract yet has received no payment and no contract. Until your recent phone call, my demand was unanswered.

The outstanding invoices total \$34,985.92. Furthermore, as of November 28, 2007 (the date of my demand to Dr. Multhaupt), \$2,978.59 in interest had accrued on the outstanding invoices. Further interest has since accrued. For your convenience, I enclose copies of the currently outstanding invoices, along with the interest calculation as of November 28, 2007, with this letter.

In light of the significant outstanding balance owed to Roth Marz, I am unwilling to produce a Roth Marz representative for any meeting unless payment in full is made on the outstanding invoices (including interest). Furthermore, no meeting will occur prior to the production to me of the contract between Quandel and the School District, together with a commitment to timely payment of the invoice which will result therefrom.

If Roth Marz' demands are satisfied, I will be happy to produce a Mr. Robert Marz for a meeting with the School Board. I understood you to reference the

Pittsburgh

Philadelphia

Princeton

Wheeling

Thorpe Reed & Armstrong, LLP  
One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, PA 15219-1425  
412 394 7711  
412 394 2555 Fax





Mr. Stuart L. Hall  
Page 2

January 8, 2008

possibility of a January 28, 2008 meeting; to the extent that we receive payment prior to that date, I will endeavor to produce Mr. Marz at that meeting.

Please be further advised that Roth Marz has shown patience in seeking payment of these long-overdue invoices; to the extent that we are unable to amicably resolve our differences short of litigation, I am authorized and prepared to file suit on Roth Marz' behalf to collect the unpaid amounts due it. Based upon your representation, we will refrain from filing suit until January 31, 2008.

If you should have any questions or concerns, please feel free to contact either me or my colleague, Andrew Jenkins. I look forward to hearing from you soon.

Very truly yours,

Kevin L. Colosimo

KLC/nrr  
Enclosures

cc: Allen Levine, Esq. (via e-mail)  
Robert Marz  
Andrew G. Jenkins, Esq. (via e-mail)

# FILE COPY

## LAW OFFICES

**ALLEN J. LEVIN & KENNETH A. WISE**

**27 West Third Street Post Office Box 231  
Lewistown, Pennsylvania 17044-0231  
(717) 247-3577  
Harrisburg area (717) 238-3838  
FAX (717) 247-3581**

April 14, 2008

Andrew G. Jenkins, Esq.  
Thorp Reed & Armstrong, LLP  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425

Re: Roth Marz Partnership v. West Branch Area School District  
Clearfield County No. 08-104-CD

Dear Andrew:

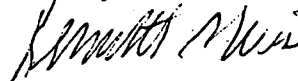
Enclosed please find a copy of a check made payable to the order of Roth Marz in the sum of \$15,012.90.

I have calculated this amount based on the base cost given (\$13,226,586.00) less the insurance component plus the change order in the amount of \$311,897.00. Together they provide a total base amount of \$162,461.80. There is an apparent credit of \$146,448.90 as listed in the invoice of Roth Marz. The difference is \$16,012.90, \$1000 more than the amount of the check.

This tender is being made without prejudice to the right of either party to pursue its claims and defenses, nor should it be considered an admission by either party against its own economic interest.

Please let me know if Roth Marz wishes to pursue the claim further.

Sincerely,



Kenneth A. Wise, Esq.

Enclosures  
KAW/lan  
cc: West Branch Area School District

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

**M&T Bank**  
Manufacturers and Traders Trust Company  
BUFFALO, N.Y. 14240  
West Branch Area  
School District

REMITTER

DATE 04/09/2008

476545067-1

23-87/1020

Security Features Details on Back

PAY TO THE ORDER OF Roth Marz Architects \$ 15,012.90

\*\*\*FIFTEEN THOUSAND TWELVE and 90/100\*\*\*USDollars

TWO AUTHORIZED SIGNATURES REQUIRED FOR AMOUNTS \$10,000.00 & OVER

RAWER: M & T BANK  
sued by Integrated Payment Systems Inc., Englewood, Colorado  
Morgan Chase Bank, N.A., Denver, Colorado

*Margaret Albright*  
AUTHORIZED SIGNATURE

*Nicole Coffey*  
AUTHORIZED SIGNATURE

⑈342532⑈ ⑆102000979⑆ 6800476545067⑈

# FILE COPY

## LAW OFFICES

**ALLEN J. LEVIN & KENNETH A. WISE**

**27 West Third Street Post Office Box 231**

**Lewistown, Pennsylvania 17044-0231**

**(717) 247-3577**

**Harrisburg area (717) 238-3838**

**FAX (717) 247-3581**

April 7, 2008

Andrew G. Jenkins, Esq.  
Thorp Reed and Armstrong, LLP  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425

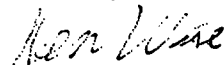
In re: Roth Marz v. West Branch Area School District  
Clearfield County No. 08-104-CD

Dear Andrew:

Enclosed per your request is a copy of the Agreement between West Branch and Quandel Group, Inc., the construction manager.

Please let me know if this is what you had in mind.

Sincerely,



Kenneth A. Wise, Esq.

Enclosures

KAW/lan

cc: West Branch Area School District

# WEST BRANCH AREA SCHOOL DISTRICT RENOVATIONS AND ADDITIONS TO MIDDLE/HIGH SCHOOL

## PRELIMINARY COST ESTIMATE (Revised 2-12-03)

### REVISED

Partial demolition of existing High School & partial asbestos removal \$ 120,000

#### New Addition

61,000 SF x \$120/SF 7,320,000

(includes air conditioning for administration,  
auditorium, and windowless classrooms)

#### New Addition at Main Entry

2300 SF x \$133/SF 305,900

#### Additional at 2nd Floor

5600 SF x \$90/SF = 504,000

#### Additional Seats Auditorium

(500 + 200 = 700 seats) 240,000

#### Renovations (76000 SF)

HVAC (per Feasibility Study 1,388,000

(1 Coal fired Boiler/1-Oil Fired Bumer) 105,000

Plumbing ( per Feasibility Study) 421,000

Fire Protection 176,000

Electric (per Feasibility Study) 1,300,000

Roof Replacement 513,000

Locker Replacement (800 x \$220) 176,000

New flooring replacement at disturbed areas only - Library,  
Administration, Cafeteria, Band Area, Science rms.,  
etc. ± 10,000 SF x \$2.50/SF = 25,000

General Construction modifications at proposed  
receiving, industrial arts, cafeteria, library, administration  
± 15,000 SF x \$24/SF = 360,000

Total Estimated Construction/Renovation Cost 4,464,000

Total Preliminary Estimate of Construction Cost 12,953,900

#### Estimated Soft Costs (18.5%)

(6% A/E, 3% Const. Mgmt, 4.5% Furnishings, 3% Contingency,  
2% Bond/Legal)

2,396,472

### ESTIMATED PROJECT COSTS

\$ 15,350,372



ARCHITECTS  
INTERIORS  
PLANNERS  
PROJECT MANAGERS

Dale H. Roth, President  
Robert L. Marz, Vice President

3505 Chapin Str  
Erie, PA 165  
Ph: (814) 860-83  
Fax: (814) 860-86  
info@rothmarz.c

June 14, 2007

Dr. Arleen Multhauf  
Superintendent  
356 Allport Cutoff  
Morrisdale, Pennsylvania 16858-9752



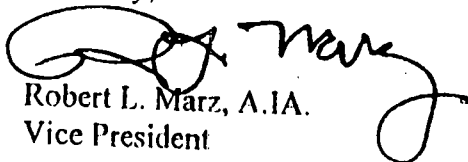
Dear Dr. Multhauf,

Enclosed please find a letter of May 18<sup>th</sup>, 2007 to Paul Carr and a letter of April 10<sup>th</sup>, 2007 to Paul Carr.

I have had no response from Paul Carr. Can you please respond to my letters? RMP would like to help resolve any issues outstanding with your contractors. RMP would like to know why our past invoices have not been paid.

Your assistance in this matter is greatly appreciated.

Sincerely,

  
Robert L. Marz, A.I.A.  
Vice President

May 18, 2007

Mr. Paul Carr  
West Branch Area School District  
356 Allport Cutoff  
Morrisdale, Pennsylvania 16858-9752

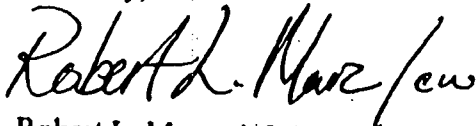
Dear Mr. Carr,

I have not had any response from you regarding my April 10<sup>th</sup>, 2007 letter (enclosed). Can you please forward the requested information as soon as possible?

I want to again extend my services to West Branch to help resolve any issues still open with the contractors. I understand Rodney Wolfe spoke to Dave Nelson regarding the emergency lighting at the auditorium and that you were going to have another electrical contractor review. Did they resolve the situation? The cost of this work should be charged against the E.C.

Please respond to my questions so we can resolve any outstanding issues.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Marz /ew". The signature is fluid and cursive, with a small "ew" at the end.

Robert L. Marz, A.I.A.  
Vice President

ROTH MARZ PARTNERSHIP P.C.



ARCHITECTS  
INTERIORS  
PLANNERS  
PROJECT MANAGERS

Dale H. Roth, President  
Robert L. Marz, Vice President

3505 Chapin Street  
Erie, PA 16508  
Ph: (814) 860-8388  
Fax: (814) 880-8806  
info@rothmarz.com

April 10, 2007

West Branch Area School District  
ATTN: Paul Carr  
356 Allport Cutoff  
Morrisdale, PA 16858-9752

Dear Mr. Carr:

It has been some time since I was at the West Branch School. From our recent conversation I understand that the district has not paid Fiore or DeGol final payments and possibly previous authorized payments.

Can you please send me an accounting of each contract and the amount paid so I can review? Please let me know if there are issues beyond the one-year inspection punch list. I am glad to meet again with the contractors and the district to try and resolve outstanding items.

As you are aware, Roth Marz Partnership had not been paid our last invoice dated June 9, 2005 for \$9,763.26? Can you please forward payment immediately? No explanation has been provided why the District is holding up payment. Please provide your concerns so we can resolve.

Roth Marz Partnership has included an invoice for 100% of construction and for add change orders per Quandel spread sheet (enclosed). Only the change orders highlighted are tallied.

Can you please provide me with the amount of the contract the District had with Quandel? Roth Marz Partnership feels this is part of the construction cost and therefore should be included in our overall fee calculation.

Please let me know if you would like to meet regarding any outstanding items.

Sincerely,

Robert Marz  
Vice President

RM/ds





ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET  
ERIE, PA 16508  
PH: 814-860-8366  
FAX: 814-860-8606

# INVOICE

DATE	INVOICE #
6/9/2005	82533

BILL TO
WEST BRANCH AREA SCHOOL DISTRICT ATTN: PAUL CARR 356 ALLPORT CUTOFF MORRISDALE, PA 16858-9752

JOB NUMBER	TERMS	PROJECT
	NET 30 DAYS	

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
ARCHITECTURAL/ENGINEERING SERVICES RENOVATIONS & ADDITIONS TO THE MIDDLE/HIGH SCHOOL				
ACTUAL TOTAL BIDS + ADD ALTERNATES INSURANCE COSTS	\$13,226,586.00 + 333,497.00 \$13,560,083.00			
ARCHITECT FEE = 6%	X 6% \$ 813,604.98			
CONSTRUCTION PHASE = 20% OF FEE	X 20% \$ 162,271.00			
CONSTRUCTION COMPLETE TO DATE = 96%		0.96	162,721.00	156,212.16
LESS PREVIOUSLY INVOICED			-146,448.90	-146,448.90
<b>Total</b>				\$9,763.26



ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET  
ERIE, PA 16508  
PH: 814-860-8366  
FAX: 814-860-8606

# INVOICE

DATE	INVOICE #
4/10/2007	83000

BILL TO
WEST BRANCH AREA SCHOOL DISTRICT ATTN: PAUL CARR 356 ALLPORT CUTOFF MORRISDALE, PA 16858-9752

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
ARCHITECTURAL/ENGINEERING SERVICES				
RENOVATIONS & ADDITIONS TO THE MIDDLE/HIGH SCHOOL				
ACTUAL TOTAL BIDS + ADD ALTERNATES	13,226,586.00			
INSURANCE COSTS	+ 333,497.00			
ARCHITECT FEE OF 6%	13,560,083.00			
CONSTRUCTION PHASE = 20% OF FEE	X 6% 813,604.98			
CONSTRUCTION 100% COMPLETE	X 20% 162,271.00			
LESS PREVIOUS INVOICED		1	162,721.00	162,721.00
			-156,212.16	-156,212.16
Total			\$6,508.84	



ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET

ERIE, PA 16508

PH: 814-860-8366

FAX: 814-860-8606

# INVOICE

DATE	INVOICE #
4/11/2007	83001

**BILL TO**

WEST BRANCH AREA SCHOOL DISTRICT  
ATTN: PAUL CARR  
356 ALLPORT CUTOFF  
MORRISDALE, PA 16858-9752

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
INVOICE FOR CHANGE ORDERS ADDED TO THE CONTRACT				
TOTAL "ADD" CHANGE ORDERS TO DATE				
SEE ATTACHED CHANGE ORDER LOG				
RMP MARK-UP		0.06	311,897.00	18,713.82
<b>Total</b>				\$18,713.82

# WEST BRANCH AREA SCHOOL DISTRICT

## JR/SR. HIGH SCHOOL ADDITIONS AND ALTERATIONS

### CHANGE ORDER LOG

PC NO	DESCRIPTION	CONTRACTORS IMPACTED	ESTIMATED and / or SUBMITTED	PENDING and/or IN REVIEW	RECOMMEND BOARD APPROVAL	BOARD APPROVED	CO NO	STATUS	GENERATED BY
1	Add Doors/Hardware from Alt. #1	Flore	74,758.00			74,758.00	01-01	Approved	District
2	Revisions to Special Education Office	Flore	(438.00)			(438.00)	01-03	Approved	District
3	Revisions to Nurse's Suite	Allied	893.00			893.00	12-05	Approved	District
4	Sprinkler Revisions per L&I	Showalter	1,456.00			1,456.00	01-04	Approved	District
5	Add Fabric under Parking/Delete parking areas	Quick Response	4,286.00			4,286.00	02-01	Approved	District
6	Provide Additional Manhole	Flore	(15,950.00)			(15,950.00)	11-01	Approved	Permit
7	Front Canopy Revisions	Overdorf	(1,253.00)			(1,253.00)	01-02	Approved	Unforeseen Conditions/VE
8	Altoona Pipe	Flore	2,405.00			2,405.00	09-01	Approved	Design
9	American Roofing	Allied	14,659.00			0.00	na	Void	District
10	Revisions to American Roofing	Allied	5,585.00			0.00	na	Void	District
11	Revisions to American Roofing	Allied	(1,563.00)			0.00	na	Void	District
12	Revisions to American Roofing	Allied	3,980.00			0.00	na	Void	District
13	Revisions to American Roofing	Allied	5,578.00			5,578.00	12-03	Approved	Design
14	Revisions to American Roofing	PDG	10,794.00			0.00	14-01	Approved	Unforeseen Conditions
15	Revisions to American Roofing	Overdorf	(7,180.00)			(1,050.00)	05-01	Approved	District
16	Revisions to American Roofing	Flore	11,700.00			0.00	na	Void	Value Engineering
17	Revisions to American Roofing	Silverstrip	(8,260.00)			(12,008.00)	10-02	Approved	District
18	Revisions to American Roofing	Flore	(2,506.00)			(2,506.00)	01-10	Approved	Design
19	Revisions to American Roofing	Showalter	(361.00)			(361.00)	02-03	Approved	Design
20	Revisions to American Roofing	Altoona Pipe	(1,926.00)			(1,926.00)	03-03	Approved	Design
21	Revisions to American Roofing	Allied	(2,942.00)			(4,342.00)	04-01	Approved	Design
22	Revisions to American Roofing	Allied	22,315.00			22,315.00	12-04	Approved	Design
23	Revisions to American Roofing	Flore	(6,150.00)			(6,150.00)	12-01	Approved	Value Engineering
24	Revisions to American Roofing	Allied	57,848.00			0.00	na	Void	District
25	Revisions to American Roofing	Flore	9,167.00			0.00	na	Void	District
26	Revisions to American Roofing	Overdorf	30,092.00			28,261.00	01-09	Approved	Design/Scope
27	Revisions to American Roofing	Flore	13,823.00			13,823.00	09-03	Approved	Design
28	Revisions to American Roofing	Flore	(558.00)			(558.00)	01-05	Approved	District
29	Revisions to American Roofing	Flore	1,936.00			1,936.00	01-05	Approved	District
30	Revisions to American Roofing	Allied	1,004.00			1,004.00	12-02	Approved	District
31	Revisions to American Roofing	Showalter	354.00			354.00	02-02	Approved	District
32	Revisions to American Roofing	Flore	1,344.00			1,344.00	01-05	Approved	District
33	Revisions to American Roofing	Overdorf	22,332.00			0.00	na	Void	Permit
34	Revisions to American Roofing	Flore	1,904.00			1,904.00	01-06	Approved	District
35	Revisions to American Roofing	Showalter	(2,466.00)			(2,466.00)	02-02	Approved	District
36	Revisions to American Roofing	Altoona Pipe	577.00			577.00	03-01	Approved	District
37	Revisions to American Roofing	DeGol	564.00			0.00	na	Void	District
38	Revisions to American Roofing	Flore	1,136.00			1,136.00	01-05	Approved	Design
39	Revisions to American Roofing	Flore	350.00			350.00	01-05	Approved	District
40	Revisions to American Roofing	Flore	7,409.00			7,409.00	01-05	Approved	District
41	Revisions to American Roofing	DeGol	(5,746.00)						District

# WEST BRANCH AREA SCHOOL DISTRICT

## JR/SR. HIGH SCHOOL ADDITIONS AND ALTERATIONS

### CHANGE ORDER LOG

PC NO	DESCRIPTION	CONTRACTORS IMPACTED	AMOUNTS				BOARD APPROVED	CO NO	STATUS	GENERATED BY
			ESTIMATED and / or SUBMITTED	PENDING and/or IN REVIEW	Recommend Board Approval					
27	Provide Additional Exhaust Fan	Silvertip	395.00				0.00	na	Rejected	Contractor
28	Revise Electrical Room Door	Flors	518.00				518.00	01-05	Approved	District
29	Add Wall Pad Lettering	Flors	630.00				630.00	01-05	Approved	District
30	Credit for Premium VCT Colors	DeGol	(2,619.00)				(2,619.00)	05-02	Approved	District
31	Add for Library Carpet Revision	DeGol	564.00				0.00	na	Rejected	District
32	Provide Additional Deck Support @ Front Canopy	Altoona Pipe								Contractor
33	Dust Collector Duct Revisions	Silvertip	3,683.00				3,683.00	03-02	Approved	Design
34	Technology Value Engineering	The Comm Group	1,840.00				1,511.00	10-01	Approved	District
35	Additional Asbestos Abatement	PDG	(13,168.00)				(13,168.00)	13-01	Approved	Value Engineering
36	Provide Additional Fireproofing	Flors	6,128.00				6,128.00	14-02	Approved	Unforeseen Conditions
37	Front Canopy Repair Work	American Roofing	945.00				945.00	01-06	Approved	Unforeseen Conditions
38	Provide Additional Fanned Tube in E115	Silvertip	9,350.00				8,925.00	04-01	Approved	Unforeseen Conditions
39	Credit for Roof Drains in Existing	Overdorf	2,600.00				1,235.00	10-01	Approved	Design
40	Delete Light Fixtures E124 & E134	Allied	(9,155.00)				(9,155.00)	09-03	Approved	Contractor
41	Replace Glass Panel in Library	Flors	0.00				0.00	na	Void	Design
42	Provide Door to Cafeteria/Revise Door D147	Flors	2,058.00				1,978.00	01-07	Approved	Design
43	Deduct for Food Items Lost	Allied	2,154.00							
44	Revise Auditorium Chairs	Maffei Strayer	(8,663.00)				1,420.00	01-09	Approved	District
45	Relocate Grease Trap	Overdorf	2,950.00				(8,363.00)	12-02	Approved	Contractor
46	Revise Sound Booth	Flors	2,582.00				2,950.00	07-01	Approved	District
		Showwater	(3,431.00)				2,582.00	09-02	Approved	Design
			5,272.00				(3,431.00)	01-10	Approved	District
							5,272.00	02-03	Approved	District
									Approved: Need Under-ground T&M pricing	District
47	Delete Vinyl Base	The Comm Group	20,000.00	4,870.00			25,184.00	13-02	Approved	District
48	Provide New Fire Pump	DeGol	26,184.00				(1,962.00)	05-03	Approved	District
		Quick Response	(1,962.00)				35,716.00	11-02	Approved	Design
			35,716.00						Approved: Need Final T&M pricing	Design
			39,955.00	29,438.00			29,438.00			Design
			3,740.00				3,740.00	09-05	Approved	Design
49	Additional Freezer Electrical Requirements	Allied	965.00				937.00	12-03	Approved	District
50	Add Map Basins in Area CC & E115	Overdorf	(4,564.00)				(4,564.00)	09-02	Approved	District
51	Add Continuous Hinges @ Door D153B	Flors	426.00				425.00	01-07	Approved	Design
52	Parking Lot Revisions	Flors	10,924.00				4,290.00	01-08	Approved	District
53	Add Electronic Hardware per Sketch FS-26	Flors	6,931.00				6,931.00	01-11	Approved	District
		Allied	0.00				0.00	na	Allowance	District
54	Replace 2" Waterline to Field House	The Comm Group	4,076.00				4,076.00	13-03	Approved	District
		District	2,975.00				0.00	na	District's T&M costs	Design
		Overdorf	1,323.00				1,323.00	09-04	Approved	Design
55	Celeste Mechanical Room Ceiling	Flors	1,473.00				1,473.00	01-07	Approved	Design
			(1,335.00)				(2,210.00)	01-08	Approved	Design

# WEST BRANCH AREA SCHOOL DISTRICT JR./SR. HIGH SCHOOL ADDITIONS AND ALTERATIONS CHANGE ORDER LOG

PC NO	DESCRIPTION	CONTRACTORS IMPACTED	AMOUNTS				CO NO	STATUS	GENERATED BY
			ESTIMATED and / or SUBMITTED	PENDING and/or IN REVIEW	Recommend Board Approval	BOARD APPROVED			
56	Additional Wood Blocking	Flore	2,880.00			2,880.00	01-12	Approved	Design
57	Additional Work above Door C141	Flore	2,715.00			2,195.00	01-13	Approved	Design
		Showalter	(643.00)			(643.00)	02-05	Approved	Design
58	Provide Additional Sidelwalks at Front	Flore	4,505.00						
59	Additional Caulking Required	Flore	791.00						
60	Credit for Base on Locker Base	DeGol	(153.00)			0.00	na	Rejected	District
61	Provide New Door A112B	Flore	0.00			791.00	01-10	Approved	Design
62	Extra Work at Ramp D103	Flore	435.00			0.00	na	Void. Apply to Contract Allowance	District
63	Lower Storm Sewer @ NE Corner	Flore	460.00			435.00	01-08	Approved	District
64	Revise Hardware on Door D140A	Flore	7,212.00			460.00	01-07	Approved	District
65	Refine Library Bulthead	Flore	211.00			6,962.00	01-12	Approved	Unforeseen Condition
66	Provide Framing for Skylights	Flore	888.00			211.00	01-09	Approved	District
67	Add Double doors to Restroom Doors	Flore	6,957.00			888.00	01-09	Approved	Unforeseen Condition
		Flore	2,188.00			4,718.00	01-09	Approved	Unforeseen Condition
68	Provide Stone & Fabric for Temporary Road	Flore	1,389.00			2,188.00	01-07	Approved	District
69	Curbing Backcharge	Flore	4,482.00			1,389.00	01-07	Approved	District
		Showalter	(4,482.00)			4,482.00	01-11	Approved	Contractor
70	Credit for Receipts at Student Desks	Allied				(4,482.00)	02-03	Approved	Contractor
71	Revise Concrete Mix Design at Stage	Flore	(873.00)						
		Flore	1,490.00			0.00	na	Void	District
72	Modify Cafeteria PVC Ceiling	Showalter	(1,490.00)			1,490.00	01-09	Approved	Contractor
73	Add VCT back into IA Office	Flore	1,535.00			(1,490.00)	02-03	Approved	Contractor
74	Modify Area AA Entrance Doors	DeGol	200.00			0.00	na	Void. RMP to handle	Contractor
	Add Obscure Glass to Locker Room	Flore	1,900.00			0.00	na	Void	Design
75	Skylights	Flore				1,900.00	01-13	Approved	Design
76	Provide New Unit Heaters in Existing Corridors	Silvertop	1,368.00			0.00	na	Void - Contract Allowance	Design
77	Provide Fume Hood Exhaust	Silvertop	11,630.00			0.00			Design
		American Roofing	7,448.00			7,448.00	10-03	Approved	District
78	Provide Fill for Electrical Ductbank	Allied	0.00			0.00	na	Void	Design
79	Provide 140 Degree to Elementary	Flore	803.00			0.00	na	Void	Design
80	Reconfigure Linear Diffusers in Aud.	Overdorf	3,458.00			803.00	01-10	Approved	Unforeseen Condition
	Change Hose Bibbs in Existing Toilet Rooms	Silvertop	5,307.00			0.00	na	Void	District
31	Rooms	Overdorf				5,307.00	10-04	Approved	Design
32	Plaster Credit	Flore	872.00						
33	Revise Mezzanine Finishes	Flore	(780.00)			872.00	09-06	Approved	District
		DeGol	0.00			(780.00)	01-11	Approved	District
84	Delete Blinds in Admin Areas/Add Blinds in Library	DeGol	(127.00)			0.00	na	Void	District
35	Replace Damaged Ceiling Tile	Flore	0.00			0.00	na	Void. Apply to Contract Allowance	District
		Allied	2,755.00			0.00			
		Overdorf	(551.00)			2,755.00	01-13	Approved	District
						(551.00)	12-05	Approved	Contractor

Status of Contingency Funds:  
Original Value of Contingency Fund  
District Adjustment to Fund  
Available Funds:  
Amount Approved to Date

1.75% of total concentration

\$ 5,052,912.30

# WEST BRANCH AREA SCHOOL DISTRICT JR./SR. HIGH SCHOOL ADDITIONS AND ALTERATIONS CHANGE ORDER LOG

PC NO	DESCRIPTION	CONTRACTORS IMPACTED	AMOUNTS				CO NO	STATUS	GENERATED BY
			ESTIMATED and / or SUBMITTED	PENDING and/or IN REVIEW	Recommend Board Approval	BOARD APPROVED			

Remaining Contingency Funds

\$ 144,710

1.11% of total construction remaining

Totals for Generated By:

Contractor Items  
Owner Added Items  
Design Coordination Related Items  
Field Condition Items  
Permit Items  
Other

Approved  
-\$59,944  
\$157,240  
\$152,233  
\$28,445  
-\$15,950  
-\$21,819  
240,405

-0.47%  
1.22%  
1.18%  
0.22%  
-0.12%  
-0.17%

TOTAL

\$



**LAW OFFICES**

**ALLEN J. LEVIN & KENNETH A. WISE**

**27 West Third Street Post Office Box 231  
Lewistown, Pennsylvania 17044-0231  
(717) 247-3577  
Harrisburg area (717) 238-3838  
FAX (717) 247-3581**

January 15, 2008

Kevin L. Colosimo, Esq.  
Thorp, Reed & Armstrong  
One Oxford Centre  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425

In re: Roth Marz Partnership v. West Branch Area School District

Dear Sir:

I have received your correspondence of the last week and I am disappointed by it. It is my understanding that your client and the District desire a meeting and have for some time. Why the meeting has not occurred is not known to me.

I noticed that your demands includes a fee for construction management services. I include a copy of the last page of the contract with Article 10 (Other Conditions or Services). It specifically states that the Architect is entitled to a fee if the owner retains the Architect for those services. You may remember from law school "inclusio unius est exclusio alterius". (The inclusion of one thing is the exclusion of everything else.) I did not write this contract but I have no trouble reading it. Please discuss this with your client and respond.

Very truly yours,

Levin & Wise

By

  
Allen J. Levin, Esq.

AJL/lan

cc: Superintendent, West Branch School District  
David Consiglio, Esq.

Facsimile

**THORP REED**  
  
**ARMSTRONG**

1143

ATTORNEYS AT LAW SINCE 1895

To: Allen Levine, Esquire Fax Number: 717 247 3581  
 Company: Phone Number:  
 From: Kevin L. Colosimo Pages: 9  
 Date: January 8, 2008 Client/Matter No.: 018803-096105  
 I.D. No.: 1396  
 Messages:

Please see attached letter and attachments.

**IRS CIRCULAR 230 NOTICE**

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Princeton

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Thorp Reed & Armstrong, LLP  
 One Oxford Centre  
 301 Grant Street, 14<sup>th</sup> Floor  
 Pittsburgh, Pennsylvania 15219-1425  
 412 394 7711  
 412 394 2555 Fax

**CONFIDENTIALITY NOTICE**

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**TRANSMISSION PROBLEMS**

If you have any problems with this transmission, please call 412 394 2348.



Kevin L. Colosimo  
Direct Dial 412 394 2332  
Email: kcolosimo@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

VIA FACSIMILE (570) 748-9369  
AND REGULAR U.S.  
FIRST CLASS MAIL

January 8, 2008

Mr. Stuart L. Hall  
138 E. Water Street  
Lock Haven, PA 17745

Dear Mr. Hall,

It was a pleasure speaking with you on Friday afternoon. I understand your desire to arrange a meeting between Roth Marz and the West Branch Area School District School Board regarding the ongoing litigation with some of the contractors who worked on the West Branch Area School District Junior/Senior High School Building project.

However, as we discussed, outstanding invoices remain between Roth Marz and the West Branch Area School District (the "School District"). Furthermore, as-yet-to-be-determined further charges remain to be assessed after Roth Marz has had an opportunity to examine the contract between Quandel, the construction manager for the project, and the School District. Roth Marz has made multiple requests for payment and for a copy of the Quandel contract yet has received no payment and no contract. Until your recent phone call, my demand was unanswered.

The outstanding invoices total \$34,985.92. Furthermore, as of November 28, 2007 (the date of my demand to Dr. Multhaupt), \$2,978.59 in interest had accrued on the outstanding invoices. Further interest has since accrued. For your convenience, I enclose copies of the currently outstanding invoices, along with the interest calculation as of November 28, 2007, with this letter.

In light of the significant outstanding balance owed to Roth Marz, I am unwilling to produce a Roth Marz representative for any meeting unless payment in full is made on the outstanding invoices (including interest). Furthermore, no meeting will occur prior to the production to me of the contract between Quandel and the School District, together with a commitment to timely payment of the invoice which will result therefrom.

If Roth Marz' demands are satisfied, I will be happy to produce a Mr. Robert Marz for a meeting with the School Board. I understood you to reference the

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One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, PA 15219-1425  
412 394 7711  
412 394 2555 Fax

THORP REED  
ARMSTRONG

Mr. Stuart L. Hall  
Page 2

January 8, 2008

possibility of a January 28, 2008 meeting; to the extent that we receive payment prior to that date, I will endeavor to produce Mr. Marz at that meeting.

Please be further advised that Roth Marz has shown patience in seeking payment of these long-overdue invoices; to the extent that we are unable to amicably resolve our differences short of litigation, I am authorized and prepared to file suit on Roth Marz' behalf to collect the unpaid amounts due it. Based upon your representation, we will refrain from filing suit until January 31, 2008.

If you should have any questions or concerns, please feel free to contact either me or my colleague, Andrew Jenkins. I look forward to hearing from you soon.

Very truly yours,

*Kevin L. Colosimo / nrr*  
Kevin L. Colosimo

KLC/nrr  
Enclosures

cc: Allen Levine, Esq. (via e-mail)  
Robert Marz  
Andrew G. Jenkins, Esq. (via e-mail)



Kevin L. Colosimo  
Direct Dial 412 394 2332  
Email: kcolosimo@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

November 28, 2007

Dr. Arleen Multhauf  
Superintendent  
356 Allport Cutoff  
Morrisdale, PA 16858-9752

Re: *Roth Marz Partnership P.C. v. West Branch Area School District*

Dear Dr. Multhauf:

We represent Roth Marz Partnership PC as regards the non-payment of certain outstanding invoices from the construction of the new West Branch Junior/Senior High School Building. The three unpaid invoices, together with a new invoice reflecting the accrued interest on the outstanding accounts, are enclosed with this letter.

Roth Marz fully performed under its contract with the West Branch Area School District and is entitled to be paid in full for its efforts on the High School. For reasons unknown, and despite persistent requests by Roth Marz, the District has failed to pay.

Furthermore, the District has refused to tender information regarding the contract it entered into with the construction manager on the project despite Roth Marz's repeated request. As you know, Roth Marz is entitled to be paid based on the *total cost* of the project – and the total cost undisputedly includes the amount of the contract between the District and the construction manager.

Roth Marz would like to expeditiously resolve this dispute. To that end, Roth Marz has authorized me to file suit on its behalf in order to recover the amounts remaining due and outstanding. I am prepared to do so. However, we wish to reach out before the initiation of formal litigation in an effort to resolve this matter before both Roth Marz and the District expend significant time and money in litigation. Please consider this letter as a final request short of litigation for payment in full of the current outstanding invoices, tender of the requested information regarding the construction manager's contract, and payment of the final invoice which will be provided upon review of the construction manager's documentation.

Pittsburgh

Philadelphia

Princeton

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Thorpe Reed & Armstrong, LLP  
One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, PA 15219-1425  
412 394 7711  
412 394 2555 Fax

THORP REED

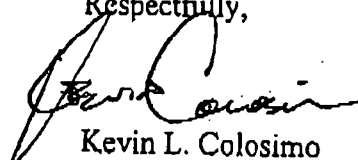
ARMSTRONG

Dr. Arlene Multhauf  
Page - 2 -

November 28, 2008

I look forward to hearing from you at your very earliest convenience. Please be advised that if we have not resolved this matter on or before December 10, 2007, I will file suit against the West Branch Area School District on behalf of Roth Marz Partnership PC.

Respectfully,



Kevin L. Colosimo

Enclosures

cc: Bob Marz (w/encl.)  
Dale Roth (w/encl.)  
Andrew G. Jenkins, Esquire (w/o encl.)



ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET

ERIE, PA 16508

PH: 814-860-8366

FAX: 814-860-8606

**I N V O I C E**

DATE	INVOICE #
6/9/2005	82533

**BILL TO**

WEST BRANCH AREA SCHOOL DISTRICT  
 ATTN: PAUL CARR  
 356 ALLPORT CUTOFF  
 MORRISDALE, PA 16858-9752

JOB NUMBER	TERMS	PROJECT
	NET 30 DAYS	

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
ARCHITECTURAL/ENGINEERING SERVICES RENOVATIONS & ADDITIONS TO THE MIDDLE/HIGH SCHOOL				
ACTUAL TOTAL BIDS + ADD ALTERNATES INSURANCE COSTS	\$13,226,586.00 + 333,497.00 \$13,560,083.00			
ARCHITECT FEE = 6%	X 6%			
	\$ 813,604.98			
CONSTRUCTION PHASE = 20% OF FEE	X 20%			
	\$ 162,271.00			
CONSTRUCTION COMPLETE TO DATE = 96%		0.96	162,721.00	156,212.16
LESS PREVIOUSLY INVOICED			-146,448.90	-146,448.90
<b>Total</b>				<b>\$9,763.26</b>



ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET

ERIE, PA 16508

PH: 814-860-8366

FAX: 814-860-8606

## I N V O I C E

DATE	INVOICE #
4/11/2007	83001

## BILL TO

WEST BRANCH AREA SCHOOL DISTRICT  
 ATTN: PAUL CARR  
 356 ALLPORT CUTOFF  
 MORRISDALE, PA 16858-9752

JOB NUMBER	TERMS	PROJECT
	NET 30 DAYS	

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
INVOICE FOR CHANGE ORDERS ADDED TO THE CONTRACT				
TOTAL "ADD" CHANGE ORDERS TO DATE SEE ATTACHED CHANGE ORDER LOG				
RMP MARK-UP		0.06	311,897.00	18,713.82
			<b>Total</b>	<b>\$18,713.82</b>





ROTH MARZ PARTNERSHIP P.C.

3505 CHAPIN STREET

ERIE, PA 16508

PH: 814-860-8366

FAX: 814-860-8606

## I N V O I C E

DATE	INVOICE #
4/10/2007	83000

BILL TO
WEST BRANCH AREA SCHOOL DISTRICT ATTN: PAUL CARR 356 ALLPORT CUTOFF MORRISDALE, PA 16858-9752

JOB NUMBER	TERMS	PROJECT
	NET 30 DAYS	

DESCRIPTION	FEE	QUANTITY	COST	AMOUNT
ARCHITECTURAL/ENGINEERING SERVICES				
RENOVATIONS & ADDITIONS TO THE MIDDLE/HIGH SCHOOL				
ACTUAL TOTAL BIDS + ADD ALTERNATES	13,226,586.00			
INSURANCE COSTS	+ 333,497.00			
TOTAL	13,560,083.00			
ARCHITECT FEE OF 6%	X 6% 813,604.98			
CONSTRUCTION PHASE = 20% OF FEE	X 20% 162,271.00			
CONSTRUCTION 100% COMPLETE		1	162,721.00	162,721.00
LESS PREVIOUS INVOICED			-156,212.16	-156,212.16
Total				\$6,508.84

**FAX: 814-860-8606**

Date	Invoice #
11/30/2007	FC 157

Bill To

WEST BRANCH AREA SCHOOL DISTRICT  
ATTN: PAUL CARR  
356 ALLPORT CUTOFF  
MORRISDALE, PA 16858-9752

Terms
-------

Description	Amount
<b>Finance Charges on Overdue Balance</b> <b>Invoice #82533 for 9,763.26 on 06/09/2005</b> <b>Invoice #83000 for 6,508.84 on 04/10/2007</b> <b>Invoice #83001 for 18,713.82 on 04/11/2007</b>	<b>2,978.59</b>
	<b>Total</b> <b>\$2,978.59</b>
	<b>Payments/Credits</b> <b>\$0.00</b>
	<b>Balance Due</b> <b>\$2,978.59</b>

1/2

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[illegible]

[illegible]

4/3

Common Group

[illegible]

[illegible]



#21

Bid Bond	Addenda 1-6
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[illegible]





WEST BRANCH AREA SCHOOL DISTRICT  
BID TABULATION

HVAC

10

CONTRACTOR	Bid Bond	Addenda 1-6	BASE BID	ADD Alternate CB	DEDUCT Alternate 1	DEDUCT Alternate 1/CB	DEDUCT Alternate 2	DEDUCT Alternate 2/CB	DEDUCT Alternate 3	DEDUCT Alternate 3/CB	DEDUCT Alternate 4	DEDUCT Alternate 4/CB	DEDUCT Alternate 5	DEDUCT Alternate 5/CB
G. M. McCrossin, Inc.	X													
Overdorf Mechanicals, Inc.	X	X	1,984,000.											
S.P. McCart & Company														
W.G. Tomko	X	X	1,827,000.	Bidder declined to accept award of Bid 12-18-03										
Season-Aire, Inc.														
Eber HVAC														
State College Elec/Mech db/a Allied Mech & Elect	X	X	2,438,000.											
D. C. Goodman & Sons														
John Hall, Inc.	X	X	2,105,700.											
Alleghany Industrial Insulation														
Renick Brothers Mechanical	X	X	2,005,000.											
Mervac Plumbing & Heating	X	X	2,097,000.											
Silvertip, Inc.	X	X	1,944,000.	next Lowest Bidder										
Kricon Breco, Inc.														

WEST BRANCH AREA SCHOOL DISTRICT  
 BID TABULATION  
 HVAC

CONTRACTOR	DEDUCT Alternate 6	DEDUCT Alternate 6/CB	ADD/DEDUCT Alternate 6a	ADD/DEDUCT Alternate 6a/CB	DEDUCT Alternate 7	DEDUCT Alternate 7/CB	DEDUCT Alternate 8	DEDUCT Alternate 8/CB	ADD Alternate 9	ADD Alternate 9/CB	ADD Alternate 10	ADD Alternate 10/CB
G. M. McCrossin, Inc.												
Overdorf Mechanicals, Inc.											+63,000.	
S.P. McCart & Company												
W.G. Tomko									+2,400.		+53,000.	
Season-Aire, Inc.												
Eber HVAC												
State College Elec/Mech d/b/a Allied Mech & Elect											+28,000.	
D. C. Goodman & Sons												
John Hall, Inc.									+300.		+69,000.	
Alleghany Industrial Insulation												
Renick Brothers Mechanical									+2,000.		+52,000.	
Mervac Plumbing & Heating											+75,000.	
Silverip, Inc.									+2,000.		+64,000.	
Kircon Breco, Inc.												

WEST BRANCH AREA SCHOOL DISTRICT  
 BID TABULATION  
 HVAC

CONTRACTOR	ADD Alternate 11	ADD Alternate 11/CB	ADD Alternate 12	ADD Alternate 12/CB	ADD Alternate 13	ADD Alternate 13/CB	ADD/DEDUCT Alternate 14	ADD/DEDUCT Alternate 14/CB	Unit Price #1	Unit Price #2	Unit Price #3	Unit Price #4	Unit Price #5	TOTALS recommended
G. M. McCrossin, Inc.														\$
Overdorf Mechanicals, Inc.	+ 326,000.													\$ 2,373,000.
S.P. McCarl & Company														\$
<del>W.G. Fenske</del>	<del>+ 279,000.</del>													\$ <del>2,163,400.</del>
Season-Aire, Inc.														\$
Eber HVAC														\$
State College Elect/Mech d/b/a Allied Mech & Elect	+ 361,800.													\$ 2,877,800.
D. C. Goodman & Sons														\$
John Hall, Inc.	+ 608,000.													\$ 2,776,700.
Alleghany Industrial Insulation														
Renick Brothers Mechanical	+ 305,000.													\$ 2,364,000.
Mervac Plumbing & Heating	+ 314,000.													\$ 2,486,000.
Silvertip, Inc.	+ 214,000.													\$ 2,334,000.
Kricon Breco, Inc.														

WEST BRANCH AREA SCHOOL DISTRICT  
 BID TABULATION  
 PLUMBING #9

CONTRACTOR	Bid Bond	Addenda 1-6	BASE BID	ADD Alternate CB	DEDUCT Alternate 1	DEDUCT Alternate 1/CB	DEDUCT Alternate 2	DEDUCT Alternate 2/CB	DEDUCT Alternate 3	DEDUCT Alternate 3/CB	DEDUCT Alternate 4	DEDUCT Alternate 4/CB	DEDUCT Alternate 5	DEDUCT Alternate 5/CB
Overdorf Mechanicals	X	X	719,000.											
S. P. McCarl & Company	X	X	1,037,730.											
K&K Plumbing	X	X	762,500.											
W.G. Tomko, Inc.	X	X	907,777.											
State College Elect/Mech d/b/a Allied Mech & Elect	X	X	844,700.											
D. C. Goodman & Sons														
Alleghany Industrial Insulation														
Mervac Plumbing & Heating	X	X	725,000.											
Silvertip, Inc.	X	X	994,000.											
Kircon Breco, Inc.														



WEST BRANCH AREA SCHOOL DISTRICT  
 BID TABULATION  
 PLUMBING

CONTRACTOR	DEDUCT Alternate 6	DEDUCT Alternate 6/CB	ADD/DEDUCT Alternate 6a	ADD/DEDUCT Alternate 6a/CB	DEDUCT Alternate 7	DEDUCT Alternate 7/CB	DEDUCT Alternate 8	DEDUCT Alternate 8/CB	ADD Alternate 9	ADD Alternate 9/CB	ADD Alternate 10	ADD Alternate 10/CB
Overdorf Mechanicals											+1200.	
S. P. McCarl & Company											+1836.	
K&K Plumbing											<del>1200.</del>	
W.G. Tomko, Inc.											+2000.	
State College Elec/Mech d/b/a Allied Mech & Elect												
D. C. Goodman & Sons												
Alleghany Industrial Insulation												
Mervac Plumbing & Heating											+200.	
Silvertip, Inc.												
Kiron Breco, Inc.												

WEST BRANCH AREA SCHOOL DISTRICT  
BID TABULATION  
PLUMBING

CONTRACTOR	ADD Alternate 11	ADD Alternate 11/CB	ADD Alternate 12	ADD Alternate 12/CB	ADD Alternate 13	ADD Alternate 13/CB	ADD/DEDUCT Alternate 14	ADD/DEDUCT Alternate 14/CB	Unit Price #1	Unit Price #2	Unit Price #3	Unit Price #4	Unit Price #5	TOTALS recommended
Overdorf Mechanicals	+5200.													725,400.
S. P. McCarl & Company	+4287.													\$ 1,043,853.
K&K Plumbing	+2400.													\$ 764,800.
W.G. Tomko, Inc.	+8950.													\$ 918,727.
Slate College Elect/Mech d/b/a Allied Mech & Elect														\$ 844,700.
D. C. Goodman & Sons														\$
Alleghany Industrial Insulation														\$
Mervac Plumbing & Heating	+3000.													\$ 798,200.
Silvertip, Inc.	+6400.													\$ 1,000,400.
Kircon Breco, Inc.														

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## CARPET RESILIENT FLOORING

[illegible]



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27

27

USE ADHERED  
MEMBRANE  
ROOFING

## BID TABULATION

## GENERAL TRADES

Delete New  
Furnishings for Library  
GENERAL TR

DO NOT DEMOLISH  
CHIMNEY STACK

Replace Kitchen Hood  
& air system. Lighting

Air Conditioning: Gym  
Locker rooms, Cafeteria +  
Kitchen

[illegible]

Air Condition Existing Jr./Sr. H. Building	Extend PA system into elem.	GENERAL TRADES	USE POLYURETHAN CABINETRY IN LABORATORY CASSWORK
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3 of 3

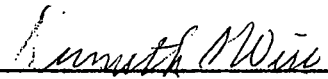


### CERTIFICATION OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the attached Supplemental Answers and Objections to Plaintiff's Discovery Requests (first set) on the following individual by First Class U.S. Mail addressed as follows:

Andrew Jenkins Esq.  
Thorpe Reed and Armstrong LLP  
One Oxford Centre, 14th floor  
Pittsburgh, PA 15219 – 1425

Date: 20 Oct '09

  
Kenneth A. Wise, Esquire  
Id. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown, PA 17044-0231  
(717) 247-3577

Kenneth A Wise, Esquire  
Attorney I.D. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown PA 171044-0231  
(717) 247-3577  
Attorneys for Defendant

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC  
Plaintiff

v.

WEST BRANCH AREA SCHOOL DISTRICT  
Defendant

CIVIL ACTION – LAW

No. 08-104 CD

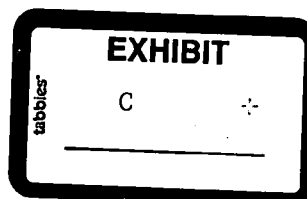
**DEFENDANT'S RESPONSE TO PLAINTIFF'S INTERROGATORIES,  
and REQUEST FOR PRODUCTION OF DOCUMENTS  
(SECOND SET)**

Defendant, (hereinafter also "Responding Party"), hereby responds to Plaintiff's Interrogatories, and Request For Production Of Documents (second set) (hereinafter "discovery requests") of Defendants, (hereinafter also "Propounding Party") with the following answers and objections.

**GENERAL ANSWERS AND OBJECTIONS**

The following general answers and objections are applicable to the Discovery requests served by Propounding Party.

1. Pursuant to the Pennsylvania Rules of Civil Procedure, the Discovery requests are objected to generally because the Discovery requests seek



information in bad faith and will cause unreasonable annoyance, oppression, burden and expense to Responding Party in answering the Discovery requests.

2. The Discovery requests are objected to generally because some of the unintelligible Discovery requests are not capable of reasonable comprehension.

3. The Discovery requests are objected to generally as answering these Discovery requests would require Responding Party to make an unreasonable investigation.

4. The Discovery requests are objected to generally because the Discovery requests seek information beyond the scope of permissible discovery and in many cases are duplicative.

5. The set of Discovery requests is objected to generally as the number of Discovery requests, because of the vague, duplicative, and non-relevant nature thereof, will cause Responding Party to suffer unreasonable annoyance, oppression, burden and expense in answering them.

6. Responding Party objects to the Discovery requests to the extent that the Discovery requests seek to impose duty upon them of supplementation broader than that imposed by the Pennsylvania Rules of Civil Procedure.

7. Responding Party reserves the right to proceed by way of the Pennsylvania Rules of Civil Procedure where appropriate and if objections made herein are overruled by the Court in whole or in part.

8. Responding Party reserves the right to seek attorney's fees in responding to these Discovery requests in accordance with the Pennsylvania Rules of Civil Procedure and other applicable law.

9. Responding Party's case investigation is continuing and they reserve the right to supplement their answers and objections to these Discovery requests upon completion of discovery and their investigation.

10. By answering these Discovery requests, Responding Party does not intend to waive their right to move for a protective order pursuant to the Pennsylvania Rules of Civil Procedure and for appropriate sanctions pursuant to the Pennsylvania Rules of Civil Procedure.

#### SPECIFIC ANSWERS AND OBJECTIONS

Subject to the foregoing general answers and objections, Responding Party hereby responds specifically to the Discovery requests as follows on the following attached pages:

#### **OBJECTIONS TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (second set)**

Defendant objects to these interrogatories and request for production of documents with specific reference to the Pennsylvania Rules of Civil Procedure 1042.1 et seq. relating to professional liability actions. Under these rules, the identity of the expert who gave the reports upon which a certificate of merit has been filed by the attorney for a party is not obliged to reveal the identity of the maker of the reports were the report itself unless and until the party bringing the claim does not prevail. See PA RCP Rule 1042.7 (a).

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Compel Complete Responses to Plaintiff's First and Second Sets of Discovery Requests and Motion for Sanctions and Proposed Order have been served upon counsel of record this 9<sup>th</sup> day of March, 2009, by First Class U.S. Mail, postage prepaid, as follows:

Kenneth A. Wise, Esquire  
Levin and Wise  
27 West Third Street  
Lewistown, PA 17044



---

Andrew G. Jenkins

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,

Plaintiff,

v.

WEST BRANCH AREA SCHOOL  
DISTRICT,

Defendant.

CIVIL DIVISION - LAW

CASE NO. 08-104-CD

FILED

MAR 11 2009

William A. Shaw  
Prothonotary/Clerk of Courts

1 cent to  
Atty

ORDER

AND NOW, this 11 day of March, 2009, upon consideration of the foregoing Motion, it is hereby ORDERED, ADJUDGED, and DECREED that:

(1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;

~~(2)~~ the respondent shall file an answer to the Motion within \_\_\_\_ days of this date;

(3) the Motion shall be decided under Pa.R.C.P. 206.7;

~~(4)~~ depositions and all other discovery shall be completed within \_\_\_\_ days;

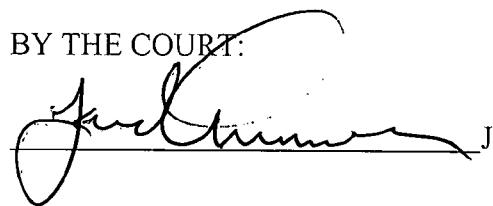
~~(5)~~ an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_

\_\_\_\_\_, 2009, at the Clearfield County Courthouse, Clearfield, Pennsylvania, Courtroom No. \_\_\_\_\_;

(6) argument shall be held on April 17, 2009, in Courtroom No. 1 of the Clearfield County Courthouse; and 2:30 p.m.

(7) notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

 J.

FILED

MAR 11 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3-11-09

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

Kenneth A Wise, Esquire  
Attorney I.D. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown PA 17044-0231  
(717) 247-3577  
Attorneys for Defendant

**FILED** *2cc Atty*  
*m/d. 12m*  
**APR 06 2009** *Wise*  
*GW*  
William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC  
Plaintiff

v.

WEST BRANCH AREA SCHOOL DISTRICT  
Defendant

CIVIL ACTION – LAW

No. 08-104 CD

**DEFENDANT'S MOTION FOR A PROTECTIVE ORDER**

AND NOW comes Defendant, West Branch Area School District, by its undersigned counsel, and, pursuant to Pa.R.C.P. 4012, respectfully moves this Court for a protective order, and sets forth in support thereof as follows:

1. Movant herein is Defendant, West Branch.
2. Respondent herein is Plaintiff Roth Marz.
3. This suit has been brought by Plaintiff, Roth Marz against West Branch on a claim for architectural services in connection with renovations and construction of an expansion of the School District's building. Roth Marz claims that its bill is partially unpaid. West Branch vigorously contests Roth Marz's claim, and has made a counterclaim.
4. A significant part of Roth Marz's claim is that, under the contract, it is entitled to 6% of all work done by all contractors in connection with the



renovation/expansion project, even though Roth Marz had nothing to do with the selection, hiring, or supervising of that contractor. In paragraph 12 of its Complaint, Roth Marz states in pertinent part, "Roth Marz is entitled, pursuant to the Contract, to payment of a fixed percentage of the total cost of the Project, including amounts expended for construction management services." West Branch has filed an answer disputing this claim.

5. Specifically, Roth Marz is claiming 6% of the \$333,497.00 construction insurance premium for coverage West Branch obtained on its own, and 6% of the \$418,000.00 fee for the contract manager, also selected, hired, and supervised by West Branch.

6. Roth Marz is also claiming 6% of the bill of any other contractor who may have provided goods or services in connection with the renovation/expansion project. In this regard, Roth Marz is also seeking discovery of the identity and amount of money paid to any other entity involved in the renovation/expansion project.

7. On or about July 25, 2008, Plaintiff propounded certain written discovery, which included written interrogatories, request for production of documents, and request for admissions. A copy of this written discovery that is in dispute is attached hereto as Exhibit A to Plaintiff's Motion to Compel and incorporated herein by reference.

8. West Branch objects to interrogatories 2, 3, and 4, since they call for the disclosure of other amounts spent by West Branch in connection with the project, including contractors whom Roth Marz had nothing to do with the recruitment,

selection, or supervising. The information sought is therefore irrelevant even for discovery purposes.

9. Based on discussions with counsel, Roth Marz has taken the position that it is entitled to full disclosure of every contractor and expense incurred in connection with the renovation/expansion project, and it intends to move for an order of this Court compelling discovery, and for attorney's fees.

10. Roth Marz is not entitled to 6% of all project costs because:

A. Under the contract, Roth Marz, which performed only basic services under the contract, is entitled to compensation of 6% of "construction cost."

B. The term "construction cost" is not specifically defined in the contract. However, as used in the contract, and based on prior conduct of Roth Marz, the term "construction cost" refers only to those costs of construction contractors who were successful bidders on the bid packages prepared and advertised by Roth Marz. West Branch's construction manager, Quandel, was not hired as a result of successfully bidding on a bid package prepared and advertised by Roth Marz.

C. There are other expenses, known as general "project costs" or "soft costs" that are over and above construction costs and deal with vendors with whom Roth Marz, had no involvement. This has been established by conduct on the part of Roth Marz in submitting to West Branch an estimate of project costs, which included such soft costs as the cost of construction manager, which were

not included in construction costs. Such a cost estimate is attached hereto as Exhibit A, and incorporated by reference herein.

D. While all construction costs are included in the project costs, not all project costs are construction costs.

E. Roth Marz's position that it is entitled to a percentage of the construction manager contract and the insurance contract even though it had nothing to do with the selection of the contractor or supervision of the contractor runs afoul of section 7-751 of the Pennsylvania Public School Code, which prohibits kickbacks or referral fees for which no work was done.

11. Roth Marz does not seek disclosure of construction costs, that is, the costs of those contractors for whom Roth Marz put together bid packages and solicited bids.

12. A protective order is necessary in this case to protect West Branch from unreasonable annoyance, embarrassment, oppression, burden and expense.

A. Among other things, unless the protective order is granted, West Branch will be under an obligation to affirmatively identify any and all conceivable costs at all related to the project, at the risk of imposition of sanctions for any that are overlooked.

B. Unless a protective order is granted, West Branch may be under an obligation to disclose the salary cost of its own personnel who were involved with the project and saddled with the burden of having to apportion that expense.

C. Unless a protective order is granted, West Branch may be under an obligation to identify indirect salary costs as well as identify items purchased for


those of the expansion project and other non-project related expenses, such as supplies and furnishings.

13. A protective order will also help narrow the issues in this case. Over \$45,000 is in dispute over the issue of construction costs versus project costs.

14. Counsel for Defendant West Branch has contacted attorney Andrew Jenkins, counsel for Roth Marz, informed attorney Jenkins that this motion would be brought, and sought his concurrence or nonconcurrence. He was not available, and the phone message was left. I believe that he does not concur.

WHEREFORE Defendant West Branch respectfully requests a protective order barring Plaintiff, Roth Marz from seeking discovery of non-construction costs which are part of project costs.

Date: 3 Apr. '01

  
Kenneth A. Wise  
Levin and Wise  
27 W. 3rd St  
Lewistown PA  
(717) 247-3577  
Attorneys for Defendant

# WEST BRANCH AREA SCHOOL DISTRICT RENOVATIONS AND ADDITIONS TO MIDDLE/HIGH SCHOOL

## PRELIMINARY COST ESTIMATE (Revised 2-12-03)

### REVISED

Partial demolition of existing High School & partial asbestos removal \$ 120,000

#### New Addition

61,000 SF x \$120/SF

7,320,000

(includes air conditioning for administration,  
auditorium, and windowless classrooms)

#### New Addition at Main Entry

2300 SF x \$133/SF

305,900

#### Additional at 2nd Floor

6800 SF x \$90/SF =

504,000

#### Additional Seats Auditorium

(500 + 200 = 700 seats)

240,000

#### Renovations /78000 SF/

HVAC (per Feasibility Study

1,388,000

(1 Coal fired Boiler/1-Oil Fired Burner)

108,000

Plumbing ( per Feasibility Study)

421,000

Fire Protection

178,000

Electric (per Feasibility Study)

1,300,000

Roof Replacement

513,000

Locker Replacement

(800 x \$220)

176,000

New flooring replacement at disturbed areas only - Library,  
Administration, Cafeteria, Band Area, Science rms.,  
etc. ± 10,000 SF x \$2.50/SF =

25,000

General Construction modifications at proposed  
receiving, industrial arts, cafeteria, library, administration  
± 15,000 SF x \$24/SF =

360,000

Total Estimated Construction/Renovation Cost

4,484,000

Total Preliminary Estimate of Construction Cost

12,853,900

Estimated Soft Costs (18.5%)

(8% A/E, 3% Const. Mgmt, 4.5% Furnishings, 3% Contingency,  
2% Bond/Legal)

2,366,472

ESTIMATED PROJECT COSTS

\$ 15,350,372

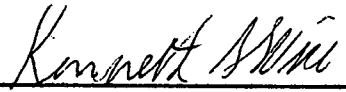
EXHIBIT "A"

## CERTIFICATION OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the attached Motion for a Protective Order on the following individual by First Class U.S. Mail addressed as follows:

Andrew Jenkins Esq.  
Thorpe Reed and Armstrong LLP  
One Oxford Centre, 14th floor  
Pittsburgh, PA 15219 – 1425

Date: 3 Mar '09

  
Kenneth A. Wise, Esquire  
Id. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown, PA 17044-0231  
(717) 247-3577

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF ALA-BAMA

STATE OF ALABAMA, Plaintiff,  
vs.  
JAMES EARL RAY, Defendant.

JOHN EDGAR HOOVER  
FEDERAL BUREAU OF INVESTIGATION  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D. C. 20535

TO THE HONORABLE CLERK OF COURT  
AND TO THE ATTORNEY GENERAL  
AND TO THE ATTORNEY GENERAL  
AND TO THE ATTORNEY GENERAL  
AND TO THE ATTORNEY GENERAL  
AND TO THE ATTORNEY GENERAL  
AND TO THE ATTORNEY GENERAL

FILED

APR 06 2009

William A. Shaw  
Prothonotary/Clerk of Courts

Kenneth A Wise, Esquire  
Attorney I.D. No. 16142  
Levin and Wise  
27 West Third Street  
P. O. Box 231  
Lewistown PA 171044-0231  
(717) 247-3577  
Attorneys for Defendant

**Nature of proceeding:** *Motion by Plaintiff to compel discovery*

FILED *acc Atty*  
*m/12:12pm Wise*  
APR 06 2009 *GO*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, P.C.	:	CIVIL ACTION -- LAW
Plaintiff	:	
	:	No. 08-104 CD
v.	:	
	:	
WEST BRANCH AREA SCHOOL	:	
DISTRICT,	:	
Defendant	:	

**REPLY OF DEFENDANT, WEST BRANCH TO MOTION TO COMPEL  
RESPONSES TO DISCOVERY REQUESTS**

AND NOW comes Defendant, West Branch Area School District  
("West Branch"), by its undersigned counsel, and respectfully responds to  
Plaintiff's Motion to Compel Complete Responses to Plaintiff's First and  
Second Sets of Discovery Requests and Motion for Sanctions as follows:

1. Admitted and denied. Admitted the Roth Marz initiated this  
action in 2008. Denied that it is owed anything by Defendant.
2. Admitted
3. Admitted.



4. Denied. To the contrary, Defendant's responses were complete, based on information and documents available to it at any time. As for inadequacy or insufficiency of the answers to inform Roth Marz of the basis upon which the Defendant has denied payment of Roth Marz's outstanding invoices, after reasonable investigation, West Branch is without information sufficient to form a belief as to the truth of this part of the averment. Proof is demanded.

5. Denied.

(1) RE: failure to answer certain interrogatories -- admitted that interrogatories two and three are not answered. Denied that to Plaintiff is entitled to this information since it is irrelevant even for discovery purposes.

(2) RE: identification of deficiencies of work done by Roth Marz: -- West Branch's engineering and architectural expert has asked to see Plaintiff's change order files before rendering a comprehensive report. West Branch, through counsel, informally asked counsel for Roth Marz to see Roth Marz's change order files to assist the expert in preparing his report. In this regard, counsel for Roth Marz was to see what arrangements Defendant was willing to make in this regard. This was memorialized in letter from counsel for West Branch to counsel for Roth

Marz, dated December 19, 2008. A copy of this letter is attached hereto as Exhibit "A". and incorporated by reference herein.

(3) RE: refusal to specify how rejections of work by Roth Marz were made -- The motion at bar fails to direct the reader's attention to a specific interrogatory or request for production of documents, and therefore West Branch is unable to respond.

(4) RE: Failure to make a legitimate production of responsive documents -- West Branch is unable to identify any documents or class of documents which Roth Marz is referring, other than those of Quandel, the construction manager. The contract for construction manager services between West Branch and Quandel has been previously given to counsel for Roth Marz shortly after oral argument on preliminary objections.

6. Admitted.

7. Admitted.

8. Denied. With respect to the worthlessness allegation, it suffices to say that nothing has been identified showing that the responses were incomplete in this regard. As for reports, no disclosable report exists, and such was reported to Plaintiff. West Branch is still awaiting word on whether or not amicable arrangements can be made for its expert to see Plaintiff's change order files. See paragraph 5 (2), above.

9. Denied as stated. The responses West Branch has made are complete.

10. Pennsylvania Rule of Civil Procedure 4006 speaks for itself.

11. Pennsylvania Rule of Civil Procedure 4009.12 speaks for itself.

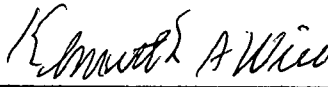
12. Denied. To the contrary defendants motion should be refused for failure to specify how the complained of response is incomplete.

Meaningfulness of a discovery response to the proponent by itself is not a consideration in a motion to compel.

13. Pennsylvania Rules of Civil Procedure 4019 (a)(1) (i) and (vii) speak for themselves.

WHEREFORE plaintiff respectfully requests that this motion be denied.

Date: 3/11/09

  
\_\_\_\_\_  
Kenneth A. Wise, Esq.  
Levin and Wise  
27 West Third Street  
P.O. Box 231  
Lewistown, PA  
Tel: 717-247-3577  
Attorneys for Defendant, West Branch

**LAW OFFICES  
ALLEN J. LEVIN & KENNETH A. WISE**

**27 West Third Street Post Office Box 231  
Lewistown, Pennsylvania 17044-0231  
(717) 247-3577  
FAX (717) 247-3581**

December 19, 2008

Andrew Jenkins Esq.  
Thorpe Reed and Armstrong LLP  
One Oxford Centre, 14th floor  
Pittsburgh, PA 15219 – 1425

RE: Roth Marz v. West Branch

Dear Andrew:

This is in response to your letter of December 3, 2008.

As I read your letter, you have essentially two objections. First, you claim that West Branch's failure to answer interrogatories two and three is without basis. Second, you claim that you are entitled to more specific answers with respect to deficiencies in the work of Roth Marz.

With respect to the first matter, our position is and has been that what West Branch paid in project costs ("soft costs") is irrelevant since the contract does not permit Roth Marz to claim these amounts.

With respect to the second matter, if you will recall, I explained to you that our expert has not prepared a disclosable report, and has asked to see the files of Roth Marz dealing with change orders before making a definitive report. You were going to see if your client was agreeable to such an arrangement, and I was going to check with our expert. I believe that is the way we left it until now.

Getting back to the first matter, for the reasons I discuss below, West Branch demands that your client and immediately discontinue its claim for a percentage of the cost of the construction manager, its claim for a percentage of the cost of insurance acquired by West Branch, and its claim for a percentage of all other non-construction cost project costs. The history of the negotiation process reveals that Roth Marz's desire to claim a percentage of these costs was refused by West Branch. Furthermore, it appears that Mr. Marz was aware of this before suit was filed.

*EXHIBIT 2A*

Andrew Jenkins Esq.  
December 19, 2008  
Page 2

On or about September 23, 2002 Roth Marz presented West Branch with a proposed agreement for services based on AIA document B141 -- 1997. Article 1.3.1 of the proposed agreement dealt with the term called, "Cost of the Work." That term arguably included a fee based on the percentage of a cost of the contract manager and other third-party suppliers of labor and materials with respect to those portions of a project designed or specified by Roth Marz. However, that contract form was rejected by West Branch and another form of agreement was prepared by attorney Scott Etter, representing the School District. The School District's form was the form ultimately adopted, after various changes were made back and forth. The language in article 1.3.1 of AIA document B141 does not appear anywhere in the contract instrument ultimately signed by the parties.

On or about December 2, 2004, Mr. Marz contacted the superintendent and business manager at West Branch and asked for payment of a percentage of the cost of the construction manager based on AIA contract with section 1.3.1.2, which section was not adopted in the contract at issue. Mr. Marz was ultimately informed of the position taken by West Branch, but nonetheless chose to proceed.

Accordingly, I ask that you immediately discontinue your claims for a percentage of the cost of the construction manager, a percentage of the cost of insurance, and the percentage of all other non-construction cost "soft costs". I have prepared a voluntary discontinuance for your convenience, which is enclosed.

We reserve the right to claim costs, including reasonable attorneys fees, under the Commonwealth Procurement Code, and Pa. R. C. P. Rule 1023, as well as any other provisions that are applicable.

Sincerely,

Kenneth A. Wise

Encl.

C: West Branch Area School District

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC  
Plaintiff

v.

WEST BRANCH AREA SCHOOL DISTRICT  
Defendant

CIVIL ACTION – LAW

No. 08-104 CD

**PRAECIPE FOR VOLUNTARY DISCONTINUANCE WITH PREJUDICE OF  
CERTAIN CLAIMS**

To the Prothonotary:

Please note for the record that Plaintiff voluntarily discontinues with prejudice its claims for a percentage of the cost of the construction manager, a percentage of the cost of insurance, and the percentage of all other non-construction cost "soft costs". Plaintiff reserves all other claims.

Date: \_\_\_\_\_


\_\_\_\_\_  
Andrew Jenkins Esq.  
Thorpe Reed and Armstrong LLP  
One Oxford Centre, 14th floor  
Pittsburgh, PA 15219-1425  
Attorneys for Plaintiff

**CERTIFICATION OF SERVICE**

I hereby certify that I am this day serving a true and correct copy of the attached response to motion on the following individual by First Class U.S. Mail addressed as follows:

Andrew Jenkins, Esq.  
THORP REED & ARMSTRONG  
301 Grant St., 14<sup>th</sup> Floor  
Pittsburgh PA 15219-1425

Date: 2 Apr '09

  
\_\_\_\_\_  
Kenneth A. Wise, Esquire  
Id. No. 16142  
27 West Third Street  
Lewistown PA 17044  
(717) 247-3577

Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, P.C.  
Plaintiff

: CIVIL ACTION -- LAW

: No. 08-104 CD

v.

WEST BRANCH AREA SCHOOL  
DISTRICT,

Defendant

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2009 in consideration of Plaintiff's Motion to Compel Complete Responses to Plaintiff's First and Second Sets of Discovery Requests and Motion for Sanctions, and Defendant West Branch's Reply thereto, Plaintiff's Motion is hereby denied.

BY THE COURT,

\_\_\_\_\_, P.J.

arg. for  
Sch. For  
4/17 @  
2:30



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-0-

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC  
Plaintiff

v.

WEST BRANCH AREA SCHOOL DISTRICT  
Defendant

CIVIL ACTION – LAW

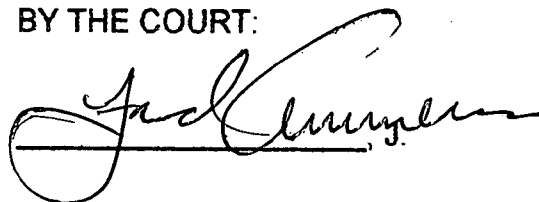
No. 08-104 CD

ORDER

AND NOW, this 7 day of April 2009, upon consideration of the foregoing Motion, it is hereby ORDERED, ADJUDGED, and DECREED that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file in answer to the Motion within \_\_\_\_\_ days of this date;
- (3) the Motion shall be decided under Pa.R.C.P. 206.7;
- (4) depositions and all other discovery shall be completed within \_\_\_\_\_ days;
- (5) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_ m. at the Clearfield County Courthouse, Clearfield, Pennsylvania, courtroom number \_\_\_\_\_.
- (6) argument shall be held on April 17, 2009, at 2:30 o'clock 1 m. at the Clearfield County Courthouse, Clearfield, Pennsylvania, courtroom number 1.
- (7) notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:



**FILED**

APR 08 2009

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ROTH MARZ PARTNERSHIP, PC :  
-VS- : No. 08-104-CD  
WEST BRANCH AREA SCHOOL :  
DISTRICT :

O R D E R

AND NOW, this 17th day of April, 2009, following argument on the Plaintiff's Motion to Compel and the Defendant's Motion for Protective Order; in consideration of the issues, it is the ORDER of this Court that the Plaintiff's Motion to Compel be and is hereby granted. The Defendant shall provide the information requested within thirty (30) days from this date. However, the school district shall not be required to supply any information based upon West Branch School District employee costs.

The Motion for Protective Order is hereby denied.

BY THE COURT,

*Judith J. Carminian*

President Judge

<sup>9</sup> FILED 2cc/Arlys:  
04:00 PM Wise  
APR 20 2009 Colasimo  
William A. Shaw  
Prothonotary/Clerk of Courts

FILED

APR 20 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4/20/09

\_\_\_ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

\_\_\_ Plaintiff(s) X Plaintiff(s) Attorney \_\_\_ Other

\_\_\_ Defendant(s) X Defendant(s) Attorney

\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,

Plaintiff,

v.

WEST BRANCH AREA SCHOOL  
DISTRICT,

Defendant.

) CIVIL ACTION - LAW  
)

) CASE NO. 08-104-CD  
)

) **REPLY TO DEFENDANT'S MOTION**  
) **FOR A PROTECTIVE ORDER**  
)

) Filed on behalf of Plaintiff,  
) Roth Marz Partnership, PC  
)

) Counsel of Record for This Party:  
)

) Kevin L. Colosimo  
) PA ID No. 80191  
) Andrew G. Jenkins  
) PA ID No. 91322  
)

) THORP REED & ARMSTRONG, LLP  
) Firm ID No. 282  
) One Oxford Centre  
) 301 Grant Street, 14<sup>th</sup> Floor  
) Pittsburgh, PA 15219-1425  
) Phone: (412) 394-2332  
) Fax: (412) 394-2555

5  
**FILED** 3cc  
012102304 Atty  
APR 17 2009 Jenkins  
William A. Shaw  
Prothonotary/Clerk of Courts (610)

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC,	)	CIVIL DIVISION - LAW
	)	
Plaintiff,	)	CASE NO. 08-104-CD
	)	
v.	)	
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

**REPLY TO DEFENDANT'S MOTION FOR A PROTECTIVE ORDER**

Plaintiff, Roth Marz Partnership, PC ("Roth Marz") and files this Reply to Defendant's Motion for a Protective Order as follows:

1. Admitted.
2. Admitted.
3. Roth Marz's Complaint and West Branch's response thereto are written documents which speak for themselves. Accordingly, no response to Paragraph 3 is required.
4. Roth Marz's Complaint and West Branch's response thereto are written documents which speak for themselves. Accordingly, no response to Paragraph 4 is required.
5. Roth Marz's Complaint and West Branch's response thereto are written documents which speak for themselves. Accordingly, no response to Paragraph 5 is required.
6. Roth Marz's Complaint and West Branch's response thereto are written documents which speak for themselves. Accordingly, no response to Paragraph 6 is required.
7. Admitted.
8. Denied as a legal conclusion to which no response is required.

9. Roth Marz's Motion to Compel is a written document which speaks for itself. Any attempt to characterize its terms is denied.

10. Paragraph 10, and its subparts, is denied in whole as a legal conclusion. Defendant seeks, by his Motion for a Protective Order, to short-circuit this entire lawsuit. It is not his, nor the Court's, role at this stage to make a finding, without the benefit of documentary or testimonial evidence, and at this preliminary stage of this lawsuit, on what appears to be a disputed issue of material fact.


11. Denied as impertinent.

12. Paragraph 12, and its subparts, is denied in whole as a legal conclusion.

13. Denied. Defendant's requested "protective order" will not narrow the issues – it seeks to decide them. If Defendant wishes to file a Motion for Summary Judgment, it should do so.

14. Denied. To the contrary, counsel for Plaintiff conversed with counsel for Defendant regarding Defendant's Motion for Protective Order. It is admitted, however, that Plaintiff's counsel does not consent to Defendant's request for a Protective Order. WHEREFORE, Plaintiff, Roth Marz Partnership, PC, respectfully requests that Defendant's Motion for a Protective Order be denied in full.

Respectfully submitted,

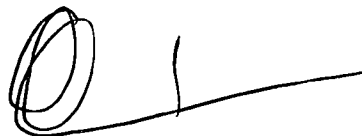
By:   
Kevin L. Colosimo  
PA ID No. 80191  
Andrew G. Jenkins  
PA ID No. 91322

THORP REED & ARMSTRONG, LLP  
Firm ID No. 282  
One Oxford Centre  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425  
Phone: (412) 394-2332  
Fax: (412) 394-2555  
Attorneys for Plaintiff, Roth Marz  
Partnership, PC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Reply to Defendant's Motion for a Protective Order has been served upon counsel of record this 17<sup>th</sup> day of April, 2009, by hand delivery, as follows:

Kenneth A. Wise, Esquire  
Levin and Wise  
27 West Third Street  
Lewistown, PA 17044

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line extending to the right.

---

Andrew G. Jenkins



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

ROTH MARZ PARTNERSHIP, PC,

Plaintiff and

Counterclaim Defendant,

v.

WEST BRANCH AREA SCHOOL  
DISTRICT,

Defendant and

Counterclaim Plaintiff.

) CIVIL DIVISION - LAW  
)  
)  
)

) CASE NO. 08-104-CD  
)  
)

) **PRAECIPE FOR VOLUNTARY**  
) **DISCONTINUANCE WITH PREJUDICE**  
)  
)

) Filed on behalf of Plaintiff,  
) Roth Marz Partnership, PC  
)  
)

) Counsel of Record for This Party:  
)  
)

) Kevin L. Colosimo, Esquire  
) PA ID No. 80191  
)

) Andrew G. Jenkins, Esquire  
) PA ID No. 91322  
)  
)

) THORP REED & ARMSTRONG, LLP  
)

) Firm ID No. 282  
)

) One Oxford Centre  
)

) 301 Grant Street, 14<sup>th</sup> Floor  
)

) Pittsburgh, PA 15219-1425  
)

) T: (412) 394-7711  
)

) F: (412) 394-2555  
)

FILED

ICC Atty  
Jenkins  
JUN 14 2010  
3:29 PM

William A. Shaw  
Prothonotary/Clerk of Courts

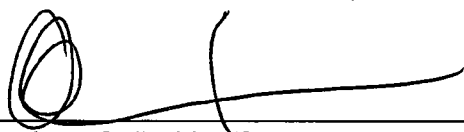
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

ROTH MARZ PARTNERSHIP, PC,	)	
	)	
Plaintiff and	)	
Counterclaim Defendant,	)	CIVIL ACTION - LAW
	)	
v.	)	No. 08-104-CD
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	)	
Defendant and	)	
Counterclaim Plaintiff.	)	


**PRAECIPE FOR VOLUNTARY DISCONTINUANCE WITH PREJUDICE**

The parties, by and through their respective undersigned counsel, voluntarily discontinue with prejudice their respective claims, cross claims, setoffs and counterclaims of every nature. Each party hereto consents also to the voluntary discontinuance of all claims, cross claims, setoffs and counterclaims and/or other claims filed by the other party.

Date: June 10, 2010

  
\_\_\_\_\_  
Andrew G. Jenkins Esq.  
THORP REED & ARMSTRONG, LLP  
One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, PA 15219-1425  
(412) 394-2379  
Attorneys for Plaintiff

Date: 24 May '10

  
\_\_\_\_\_  
Kenneth A. Wise  
LEVIN AND WISE  
27 West Third Street  
Lewistown, PA 17044-0231  
(717) 247-3577  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served this 10<sup>th</sup> day of June, 2010, by First-Class U.S. mail, postage prepaid, and Electronic Mail upon the following:

Kenneth A. Wise, Esq.  
Law Offices of Allen J. Levin & Kenneth A. Wise  
27 West Third Street  
PO Box 231  
Lewistown, PA 17044-0231

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line extending to the right.

---

Andrew G. Jenkins