

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

United States of America for Use and
Benefit of DAVIS/STRESSCON, a Joint
Venture comprised of Davis Rebar, Inc., a
Nebraska Corporation, and Stresscon, Inc.,
an Arizona Corporation,

Use-Plaintiff,

v.

UNITED FORMING, INC., a Georgia
Corporation;
ST. PAUL FIRE & MARINE
INSURANCE
COMPANY, a Minnesota Corporation;
ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation;
FIDELITY & DEPOSIT COMPANY OF
MARYLAND, a Maryland Corporation;
and SEABOARD SURETY COMPANY, a
New York Corporation,

Defendants,

and

CADDELL/BLAINE, a Joint Venture
comprised of Caddell Construction Co.,
Inc., an Alabama Corporation, and Blaine
Construction Corp., a Tennessee
corporation,

Defendant and Cross-Claimant.

Case No.: 3:09-cv-00087

**ANSWERS OF DEFENDANT
CADDELL/BLAINE, J.V., (1) TO THE
COMPLAINT OF USE-PLAINTIFF
DAVIS/STRESSCON, J.V., AND (2) TO
THE CROSSCLAIM OF UNITED
FORMING, INC., AND; (3)
CADDELL/BLAINE, J.V.'S CROSS-
CLAIM AGAINST DEFENDANT, UNITED
FORMING, INC.**

COMES NOW, Defendant Caddell/Blaine, a Joint Venture (hereinafter
"Caddell/Blaine") comprised of Caddell Construction Co., Inc., ("Caddell") and Blaine
Construction Corp. ("Blaine"), individually and collectively, and file this their: (1)
Answer to the Complaint of Use-Plaintiff, Davis/Stresscon, J.V. (hereinafter
"Davis/Stresscon"); (2) Answer to the Crossclaim of Defendant United Forming, Inc.;
and (3) Crossclaim Against Co-Defendant, United Forming, Inc. (hereinafter "UFI").

ANSWER TO COMPLAINT OF USE-PLAINTIFF DAVIS/STESSCON

JURISDICTION AND VENUE

1. Caddell/Blaine admits the allegations contained in paragraph 1 of the First Amended Complaint.

2. Caddell/Blaine admits the allegations contained in paragraph 2 of the First Amended Complaint.

PARTIES

3. Caddell/Blaine lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 3 of the First Amended Complaint, and therefore they are denied.

4. Caddell/Blaine admits the allegations contained in paragraph 4 of the First Amended Complaint.

5. Caddell/Blaine admits that it is a joint venture consisting of Caddell Construction Co., Inc., and Blaine Construction Corp. Caddell is an Alabama corporation and has its principal place of business in Montgomery, Alabama. Blaine is a Tennessee corporation and has its principal place of business in Knoxville, Tennessee.

6. Caddell/Blaine states that paragraph 6 of the First Amended Complaint does not relate to it, and therefore no answer is required.

7. Caddell/Blaine states that paragraph 7 of the First Amended Complaint does not relate to it, and therefore no answer is required.

8. Caddell/Blaine states that paragraph 8 of the First Amended Complaint does not relate to it, and therefore no answer is required.

9. Caddell/Blaine states that paragraph 9 of the First Amended Complaint does not relate to it, and therefore no answer is required.

FIRST CAUSE OF ACTION
(Breach of Contract Against Defendant UFI)

10. Caddell/Blaine incorporates herein by reference its answers and responses to paragraphs 1-9 above as though the same were set forth at length herein.

11. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response is required from Caddell/Blaine, but Caddell/Blaine nevertheless admits the allegations contained in paragraph 11 of the First Amended Complaint except to state that the building was designated as the “HEUMF” Building.

12. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response is required from Caddell/Blaine. Nevertheless, Caddell/Blaine admits the allegations contained in paragraph 12 of the First Amended Complaint.

13. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response to paragraph 13 is required from Caddell/Blaine, but Caddell/Blaine admits that Davis/Stresscon performed certain steel reinforcing work on the Project.

14. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response to paragraph 14 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 14 is denied.

15. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response paragraph 15 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 15 is denied.

16. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response to paragraph 16 is required from Caddell/Blaine. Nevertheless, Caddell/Blaine admits that it made certain advance payments to defendant

UFI. As to what transpired between Davis/Stresscon and UFI, Caddell/Blaine is without knowledge sufficient to form a belief.

17. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response to paragraph 17 is required from Caddell/Blaine.

18. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the First Cause of Action, no response to paragraph 18 is required from Caddell/Blaine, but to the extent an answer should be deemed required, Caddell/Blaine is without knowledge sufficient to form a belief.

SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith
and Fair Dealing Against Defendant UFI)

19. Caddell/Blaine incorporates herein by reference its answers and responses to paragraphs 1 through 18 above as though same were set forth at length herein.

20. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Second Cause of Action, no response to paragraph 20 is required from Caddell/Blaine, but Caddell/Blaine admits that Plaintiff performed certain steel reinforcing work on the Project.

21. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Second Cause of Action, no response to paragraph 21 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 21 is denied.

22. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Second Cause of Action, no response to paragraph 22 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 22 is denied.

23. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Second Cause of Action, no response to paragraph 23 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 23 is denied.

24. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Second Cause of Action, no response to paragraph 24 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 24 is denied.

25. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Second Cause of Action, no response to paragraph 25 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 25 is denied.

THIRD CAUSE OF ACTION
(Quantum Meruit Against Defendant UFI)

26. Caddell/Blaine incorporates herein by reference its answers and responses to paragraphs 1 through 25 above as though same were set forth at length herein.

27. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Third Cause of Action, no response to paragraph 27 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 27 is denied.

28. Inasmuch as no claim is alleged against Defendant Caddell/Blaine in the Third Cause of Action, no response to paragraph 28 is required from Caddell/Blaine, but to the extent an answer should be deemed required, paragraph 28 is denied.

FOURTH CAUSE OF ACTION
**(On Miller Act Payment Bond Against Defendants CBJV,
St. Paul, Zurich, Fidelity, and Seaboard)**

29. Caddell/Blaine incorporates herein by reference its answers and responses to paragraphs 1 through 28 above as though same were set forth at length herein.

30. Caddell/Blaine admits that the Payment Bond attached to the First Amended Complaint is a true and correct copy of the bond Caddell/Blaine and the four sureties executed. Answering further, Caddell/Blaine states that the Payment Bond is in writing, speaks for itself, and is the best evidence of the terms and conditions thereof.

31. In answer to paragraph 31 of the First Amended Complaint, Caddell/Blaine states that the subcontract with UFI is in writing, speaks for itself, and is the best evidence of the terms and conditions thereof.

32. Caddell/Blaine admits only that Davis/Stresscon furnished certain steel reinforcing work on the Project. Caddell/Blaine denies the remaining allegations of paragraph 32 as it was not a party to the written subcontract between Davis/Stresscon and UFI.

33. Paragraph 33 of the First Amended Complaint is denied.

34. Paragraph 34 of the First Amended Complaint is denied.

35. Paragraph 35 of the First Amended Complaint is denied.

36. Paragraph 36 of the First Amended Complaint is denied.

37. Paragraph 37 of the First Amended Complaint is denied.

FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint fails to state a claim against Caddell/Blaine upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Davis/Stresscon has failed to comply with all condition precedents for maintaining a Miller Act bond cause of action against Caddell/Blaine.

THIRD AFFIRMATIVE DEFENSE

Davis/Stresscon's alleged damages are offset by the damages for which Davis/Stresscon is liable to Caddell/Blaine in connection with Davis/Stresscon's project performance.

WHEREFORE, Caddell/Blaine:

1. Denies all allegations set forth in the ad damnum clauses of the First Amended Complaint;

2. Prays that judgment be entered in its favor;
 3. Prays that it recover the expenses of litigation, including attorney's fees;
- and
4. Prays for such other and further relief as the Court deems just and proper.

ANSWER TO CROSSCLAIM OF UFI

COMES NOW, Defendant Caddell/Blaine, and, pursuant to Rules 12 and 13 of the FRCP, and files these Defenses and Answers to the Crossclaim of United Forming, Inc. ("UFI").

1. Paragraph 1 of the Crossclaim is admitted.
2. Paragraph 2 of the Crossclaim is admitted. On January 18, 2008, according to the records of the Tennessee Secretary of State, BWXT Y-12, LLC filed papers to change its name to Babcock & Wilcox Technical Services Y-12, LLC ("B&W Y-12") and by Contract Modification No. 112, dated January 9, 2008, Caddell/Blaine was told "the rights and obligations of the parties remain unaffected."
3. Paragraph 3 of the Crossclaim is admitted.
4. In answer to paragraph 4 of the Crossclaim, Caddell/Blaine admits that its subcontract with UFI is dated October 19, 2004. The subcontract is in writing, speaks for itself, and is the best evidence of the terms and conditions thereof.
5. Caddell/Blaine is advised and believes the allegations of paragraph 5 to be true.
6. Caddell/Blaine admits that UFI, Davis/Stresscon, and Caddell/Blaine have substantially completed their respective scopes of work on the Project. The second and last sentence of paragraph 6 of the Crossclaim is denied.

COUNT I
(CLAIM OVER)

7. Caddell/Blaine admits that Davis/Stresscon claims that UFI owes it monies for work performed on the project. Caddell/Blaine is not aware of all claims between UFI and Davis/Stresscon. Caddell/Blaine pleads further that it has no obligation to pay UFI additional money until it has received additional monies from B&W Y-12. This condition has not yet occurred. The remaining allegations of paragraph 7 are denied.

8. For the foregoing reasons, and because UFI denies liability to Davis/Stresscon, the allegations of paragraph 8 are denied.

COUNT II
(UFI'S CLAIM FOR BREACH OF CONTRACT AGAINST CADDELL/BLAINE)

9. Caddell/Blaine incorporates herein by reference its answers set forth in paragraphs 1 through 8 of this Answer to UFI's Cross-Claim as if fully set forth herein.

10. Caddell/Blaine denies that it delayed, disrupted, hindered or impaired UFI's scope of work. Caddell/Blaine denies breaching its contract with UFI. To the extent UFI is entitled to recover for additional and extra work, B&W Y-12 is responsible. To the extent UFI's scope of work was delayed, disrupted, hindered, and impaired by others, B&W Y-12 is responsible.

11. Caddell/Blaine denies any breach of its subcontract Agreement with UFI. To the extent UFI has incurred damages, B&W Y-12 is responsible.

COUNT III
(QUANTUM MERUIT AGAINST CBJV)

12. Caddell/Blaine incorporates by reference its answers set forth in paragraphs 1 through 11 of its Answer to this Cross-Claim as if fully set forth herein.

13. Caddell/Blaine denies that it has benefited by UFI's work under the subcontract as described in Paragraph 13, and avers that to the extent a party has

benefited, that party was B&W Y-12. Caddell/Blaine has not been paid for that work. Caddell/Blaine denies that it is responsible for any burdensome and disruptive conditions on the project.

14. Caddell/Blaine denies that it is liable to UFI on the basis of quantum meruit, quasi contract, implied contract, unjust enrichment or any of those theories.

COUNT IV
(MILLER ACT)

15. Caddell/Blaine incorporates herein by reference its answers set forth in paragraphs 1 through 14 of its Answer to this Crossclaim, as if fully set forth herein.

16. The allegations of paragraph 16 are admitted.

17. Caddell/Blaine admits that UFI has standing under the Miller Act and has expended materials, equipment, tools, labor and services in connection with the Project. Caddell/Blaine admits that UFI has not been paid the amount of the claim set forth in paragraph 17. To the extent UFI is entitled to additional payments, the responsible party is B&W Y-12.

18. The allegations of paragraph 18 are denied because the conditions precedent to Caddell/Blaine's obligation to pay UFI any amount for its claims have not yet occurred.

19. Caddell/Blaine denies that the payment bond is a "non-statutory bond". Caddell/Blaine denies the allegations of paragraph 19.

FIRST AFFIRMATIVE DEFENSE

The Cross-Claim of UFI fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Conditions precedent to UFI's right to recover from Caddell/Blaine have not occurred.

THIRD AFFIRMATIVE DEFENSE

UFI has not satisfied all conditions precedent to final payment of its subcontract amounts.

FOURTH AFFIRMATIVE DEFENSE

UFI's alleged damages are offset by the damages for which UFI is liable to Caddell in connection with UFI's project performance.

WHEREFORE, Caddell/Blaine:

1. Prays that judgment be entered in its favor;
2. Prays that all costs and attorney's fees be assessed against UFI; and
3. Prays for such other and further relief as the Court deems just and proper.

CADDELL/BLAINE'S CROSS-CLAIM AGAINST UNITED FORMING, INC.

JURISDICTION, VENUE AND PARTIES

1. This Crossclaim is made pursuant to Federal Rules of Civil Procedure 13(g) and arises out of the transaction or occurrence that is the subject matter of the First Amended Complaint of Davis/Stresscon and the Crossclaim of UFI.

2. UFI is subject to the jurisdiction and venue of this Court. The Court has subject matter jurisdiction over the claims asserted in this Cross-Claim pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1367.

3. On or about August 26, 2004, Caddell/Blaine entered into a written subcontract agreement with an entity known as BWXT-Y-12, LLC, which has since changed its name to Babcock & Wilcox Technical Services Y-12 LLC ("B&W Y-12"). Pursuant to that written agreement, Caddell/Blaine was to provide and furnish labor, materials, tools, equipment and services to construct the new "HEUMF" Building within the Y-12 facility located in Anderson County, Tennessee ("Project").

4. In connection with this work on the Project, Caddell/Blaine entered into a written subcontract agreement with UFI on or about October 19, 2004, under which UFI agreed to perform certain labor, materials, and services pertaining to reinforced, cast-in-place concrete. UFI has a copy of that extremely lengthy subcontract.

5. UFI then entered into a sub-subcontract agreement with Davis/Stresscon on or about May 13, 2005, under which Davis/Stresscon agreed to perform for UFI certain rebar work on the project.

6. Caddell/Blaine has satisfied all conditions precedent to these claims or such conditions have been waived or excused.

COUNT I
CONTRACTUAL AND COMMON LAW INDEMNITY

7. Davis/Stresscon's Fourth Cause of Action seeks the same amount of damages from Caddell/Blaine that Davis/Stresscon seeks from UFI, and UFI asserts in its Crossclaim against Caddell/Blaine, Count I (Claim Over), that any monies owed by UFI to Davis/Stresscon are the responsibility of Caddell/Blaine. To the extent it is proven that Davis/Stresscon is owed damages, then UFI has a contractual obligation and an obligation at law and in equity to indemnify Caddell/Blaine for any such damages.

WHEREFORE, Caddell/Blaine:

- (1) Prays that this Court enter judgment in its favor on this Crossclaim;
- (2) Prays that all costs and attorney's fees be assessed against UFI; and
- (3) Prays for such other and further relief as the Court deems just and proper.

Respectfully submitted, this 10th day of May, 2010.

/s/ Aubrey L. Coleman, Jr.
Aubrey L. Coleman, Jr.
Georgia Bar No. 177500

Admitted Pro Hac Vice

Attorney for Defendants, Caddell/Blaine, JV

SMITH, CURRIE & HANCOCK LLP
2700 Marquis One Tower
245 Peachtree Center Avenue, N.E.
Atlanta, Georgia 30303-1227

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 10, 2010, I have served a copy of the within and foregoing *Answers of Defendant Caddell/Blaine, J.V., (1) To the Complaint of Use-Plaintiff Davis/Stresscon, J.V., (2) to the Crossclaim of United Forming, Inc., and (3) Caddell/Blaine, J.V.'s CrossClaim against Defendant, United Forming, Inc.* to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants and mailed by United States Postal Service, first-class, postage prepaid, a paper copy of the same document to counsel of record who are non-CM/ECF participants. Counsel of record are:

Wayne A. Ritchie, II, Esq.
Ritchie, Dillard & Davis, P.C.
Post Office Box 1126
Knoxville, TN 37901-1126
war@rddlawfirm.com

T. Bart Gary, Esq.
Freeman Mathis & Gary, LLP
100 Galleria Parkway
Suite 1600
Atlanta, GA 30339-5948
bgary@fmglaw.com

Attorneys for Defendant/Cross Claimant United Forming, Inc.

Dean B. Farmer, Esq.
Hodges Doughty & Carson, PLLC
617 Main Street
Post Office Box 869
Knoxville, TN 37901
dfarmer@hdclaw.com

Scott R. Omohundro, Esq.
Procopio, Cory, Hargreaves & Savitch, LLP
525 B Street
Suite 2200
San Diego, CA 92101
sro@procopio.com

Attorneys for Use-Plaintiff Davis/Stresscon, a Joint Venture
Comprised of Davis Rebar, Inc., a Nebraska corporation, and
Stresscon, Inc., an Arizona corporation

C. Paul Harrison
Long, Ragsdale & Waters, P.C.
1111 Northshore Drive, N.W.
Suite S 700
Knoxville, TN 37919-4074
pharrison@lrwlaw.com

Attorney for St. Paul Fire and Marine Insurance Company,
Zurich American Insurance Company, Fidelity and
Deposit Company of Maryland and Seaboard Surety Company

/s/ Aubrey L. Coleman, Jr.
Aubrey L. Coleman, Jr.

SMITH, CURRIE & HANCOCK LLP
2700 Marquis One Tower
245 Peachtree Center Avenue
Atlanta, Georgia 30303-1227