

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO:

COMMONWEALTH OF MASSACHUSETTS,)
MASSACHUSETTS HIGHWAY DEPARTMENT AND)
MASSACHUSETTS TURNPIKE AUTHORITY,)
))
Plaintiffs,)
))
v.)
))
BECHTEL CORPORATION F/K/A BECHTEL CIVIL,)
INC. AND BECHTEL CIVIL & MINERALS, INC.,)
BECHTEL INFRASTRUCTURE CORPORATION,)
PARSONS BRINCKERHOFF QUADE & DOUGLAS,)
INC., BECTHEL/PARSONS BRINCKERHOFF,)
MODERN CONTINENTIAL CONSTRUCTION)
CO., INC., GANNETT FLEMING, INC., POWERS)
FASTENERS, INC., SIKA CHEMICAL)
CORPORATION, NEWMAN RENNER COLONY, LLC,)
NEWMAN ASSOCIATES, INC., RENNER COLONY,)
LLC, SIGMA ENGINEERING INTERNATIONAL, INC.,)
CONAM, INC., FIREMAN’S FUND INSURANCE)
COMPANY, UNITED STATES FIDELITY AND)
GUARANTY COMPANY, AND NATIONAL SURETY)
CORPORATION,)
))
Defendants.)

COMPLAINT AND DEMAND FOR TRIAL BY JURY

This is a civil action for damages sustained by the Commonwealth of Massachusetts, Massachusetts Highway Department and Massachusetts Turnpike Authority.

THE PARTIES

1. Plaintiff, COMMONWEALTH OF MASSACHUSETTS (“Commonwealth”), is a sovereign state within the United States of America.

2. Plaintiff, MASSACHUSETTS HIGHWAY DEPARTMENT (“MHD”), is an agency of the Commonwealth pursuant to G.L.c. 16 having a principal place of business in Boston, Massachusetts.

3. Plaintiff, MASSACHUSETTS TURNPIKE AUTHORITY (“MTA”), is an independent body politic and corporate established under G.L. c. 81A, having a principal place of business in Boston, Massachusetts.

4. Defendant, BECHTEL CORPORATION, is a corporation organized under the laws of Nevada with a principal place of business in San Francisco, California. Bechtel is an international construction management company and is registered to do business in Massachusetts. The plaintiffs have been advised and believe that Bechtel Corporation also has been formerly known as Bechtel Civil and Minerals, Inc. and Bechtel Civil, Inc., and at all times relevant hereto has been a subsidiary of Bechtel Group, Inc.

5. Defendant, BECHTEL INFRASTRUCTURE CORPORATION, is a corporation organized under the laws of Nevada with a principal place of business in San Francisco, California. (Bechtel Corporation and Bechtel Infrastructure Corporation are hereinafter collectively referred to as “Bechtel”.)

6. Defendant, PARSONS BRINCKERHOFF QUADE AND DOUGLAS, INC. (“Parsons Brinckerhoff”), is a corporation organized under the laws of New York, with a principal place of business at One Penn Plaza, New York, New York 10119. Parsons Brinckerhoff is an international engineering company.

7. Defendant, BECHTEL/PARSONS BRINCKERHOFF (“B/PB”), is a joint venture formed between Bechtel and Parsons Brinckerhoff, with a principal place of business in Boston, Massachusetts. B/PB was formed for the purpose of providing services in connection with the

Central Artery/Third Harbor Tunnel Project (the “Project”). Bechtel and Parsons Brinckerhoff are jointly and severally liable for the acts and omissions of B/PB.

8. Defendant, MODERN CONTINENTAL CONSTRUCTION CO., INC. (“Modern”), is a Massachusetts corporation, headquartered in Cambridge, Massachusetts.

9. Defendant, GANNETT FLEMING, INC. (“Gannett”), is a Pennsylvania corporation with a Massachusetts office at 150 Wood Road, Braintree.

10. Defendant, POWERS FASTENERS, INC. (“Powers”), is a New York corporation with a principal place of business at 2 Powers Lane, Brewster, New York 10509.

11. Defendant, NEWMAN RENNER COLONY, LLC (“NRC”), is a Massachusetts corporation with a principal place of business at 190 University Avenue, Westwood, Massachusetts 02090.

12. Defendant, NEWMAN ASSOCIATES, INC. (“Newman”), is a Massachusetts corporation with a principal place of business at 80 Hudson Road, Suite 200, Canton, Massachusetts 02021.

13. Defendant, RENNER COLONY, LLC (“Renner”), is a Massachusetts corporation with a principal place of business at 5 Robert J. Way, Camelot Industrial Park, Plymouth, Massachusetts 02360. Upon information and belief, Newman and/or Renner are the successor(s) to the obligations and liabilities of NRC. (Newman, Renner and NRC are hereinafter collectively referred to as “Newman Renner”.)

14. Defendant, SIKA CHEMICAL CORPORATION (“Sika”), is, upon information and belief, a New Jersey corporation with a principal place of business at 201 Polito Avenue, Lyndhurst, New Jersey 07071.

15. Defendant, SIGMA ENGINEERING INTERNATIONAL, INC. (“Sigma”), is a Rhode Island corporation with a principal place of business at 1525 Louisquisset Pike, Suite C204, Lincoln, Rhode Island 02865.

16. Defendant, CONAM INSPECTION & ENGINEERING SERVICES, INC. (“Conam”), is a Delaware corporation, with a principal place of business at 2 Millbury Street, Auburn, MA 01501.

17. Defendant, FIREMAN’S FUND INSURANCE COMPANY (“Fireman’s Fund”), is a California corporation, with a principal place of business at 777 San Marin Drive, Novato, California 94998.

18. Defendant, UNITED STATES FIDELITY AND GUARANTY COMPANY (“USF&G”), is a Maryland corporation, with a principal place of business at 6225 Centennial Way, Baltimore, Maryland 21203.

19. Upon information and belief, defendant, NATIONAL SURETY CORPORATION (“National”), is an Illinois corporation, with a principal place of business at 777 San Marin Drive, Novato, California 94998.

JURISDICTION AND VENUE

20. Jurisdiction is properly conferred by G.L. c. 212, § 4 and c. 223A, §§ 2 and 3.

21. Venue is proper under G.L. c. 223, § 1.

STATEMENT OF FACTS

22. The Project widened and depressed the Central Artery between the Massachusetts Avenue interchange northerly to an interchange with Interstate 93 and Route 1 and to a point on I-93 north of the John F. Gilmore Bridge, and extended the Massachusetts Turnpike (Interstate 90) from its former terminus, under Boston Harbor, to a new terminus at Logan International Airport.

23. In 1997, MHD and MTA entered into an agreement pursuant to which MTA was to act on behalf of the MHD in accordance with Chapter 81A.

24. Due to the complex nature of the Project and the need for very advanced management skills and a very high level of coordination, MHD (and later MTA) entered into a contract with B/PB consisting of a series of work programs (“Work Programs”). The Work Programs identified specific services that B/PB was obligated to perform for the Project.

25. The Work Programs provided that the Commonwealth relied on B/PB’s expertise with large construction projects. For example, Work Program 14 provided that the Commonwealth was “entering into this Agreement in reliance upon the Management Consultant’s national and international reputation for excellence,” and that it was the parties’ intention at that time to continue their “partnering relationship of trust and confidence....”

26. At all relevant times the Work Programs provided that B/PB was responsible for, among other things: (a) overall management, coordination and interfacing of all design and construction contracts; and (b) quality assurance, including implementing actions necessary to assure that work and products satisfied specified requirements for quality.

27. The extension of the Massachusetts Turnpike (I-90) from I-93 to Logan Airport included a harbor tunnel known as the Ted Williams Tunnel and a connector tunnel known as the I-90 Connector Tunnel. B/PB performed the preliminary design for the tunnel finishes for the I-90 Connector Tunnel.

28. MHD contracted with Gannett to be the Section Design Consultant for the portion of work on the I-90 Connector Tunnel known as the “tunnel finishes” contract and referred to as Contract D009B – I-90 Fort Point Channel Crossing.

29. Gannett's design for the ceiling system was based upon B/PB's preliminary design and specified precast concrete panels placed into steel framing modules and suspended from bolts with metal hanger assemblies with the bolts anchored with epoxy into holes drilled into the roof of the tunnel shell or anchored with nuts and washers into steel unistruts in the roof of the tunnel (the "Ceiling System").

30. MHD contracted with Modern to perform the "tunnel finishes" work in the I-90 Connector Tunnel. That contract was known as Contract C09B2. Modern was responsible for installing the Ceiling System. Modern contracted with Sigma to provide engineering calculations for the Ceiling System. Modern contracted with Conam to perform "pull tests" on anchor bolts in the Ceiling System after those bolts were installed. Modern purchased the epoxy from Newman Renner, which, upon information and belief, purchased the epoxy from Powers. Upon information and belief, Powers purchased the epoxy from Sika.

31. On July 10, 2006, concrete ceiling panels and associated components over the eastbound lanes of the I-90 Connector Tunnel fell onto the roadway and crushed a traveling vehicle, resulting in the death of a passenger and the injury of the driver. That event caused extensive damage, including but not limited to, property damage, the shutdown of the I-90 Connector Tunnel and related roadways and extensive inspection and repair work on the Project.

32. Fireman's Fund, USF&G and National issued a Performance Bond, Nos. 24-0120-52356981 / 11127399811, dated November 10, 1998 (the "Performance Bond") guaranteeing to plaintiffs the obligations of Modern under Contract C09B2.

COUNT I

Breach of Contract against Bechtel, Parsons Brinckerhoff, B/PB, Gannett, and Modern

33. The plaintiffs reallege the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

34. B/PB, Gannett and Modern entered into respective written contracts to provide services to the plaintiffs, and each breached its contract.

35. As a result of such breaches the plaintiffs have suffered and will continue to suffer damages, including but not limited to property damage, for which Bechtel, Parsons Brinckerhoff, B/PB, Gannett, and Modern are each liable to plaintiffs.

WHEREFORE, the plaintiffs pray that, after trial, a judgment be entered in their favor and against defendants, Bechtel, Parsons Brinckerhoff, B/PB, Gannett, and Modern and that damages be awarded to the plaintiffs in an amount to be determined at trial, plus interest, and costs.

COUNT II

Negligence against All Defendants Except Fireman's Fund, USF&G and National

36. The plaintiffs reallege the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

37. All defendants respectively provided services or products in connection with the Ceiling System.

38. All defendants had a duty to exercise the applicable standard of care and/or provide products that were free from defect, and each breached its duty.

39. The plaintiffs have incurred and will continue to suffer damage including but not limited to property damage as a direct and proximate result of such breaches.

40. All defendants are liable to plaintiffs for all damage including but not limited to property damage caused by such breaches.

WHEREFORE, the plaintiffs pray that, after trial, a judgment be entered in their favor and against all defendants (except Fireman's Fund, USF&G and National) jointly and severally, and that damages be awarded to the plaintiffs in an amount to be determined at trial plus interest, and costs.

COUNT III

Gross Negligence against Bechtel, Parsons Brinckerhoff, and B/PB

41. The plaintiffs reallege the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

42. B/PB provided services, including but not limited to design and construction management services, in connection with the Ceiling System, and owed a duty of care to the plaintiffs. However, B/PB breached its duty.

43. B/PB acted with indifference to its legal duty and with utter forgetfulness of legal obligations so far as others may be affected.

44. The plaintiffs have incurred and will continue to incur damage including but not limited to property damage as a direct and proximate result of the gross negligence of B/PB.

45. B/PB, Bechtel and Parsons Brinckerhoff are each liable to plaintiffs for all damage including but not limited to property damage caused by such gross negligence.

WHEREFORE, the plaintiffs pray that, after trial, a judgment be entered in their favor and against Bechtel, Parsons Brinckerhoff, and B/PB jointly and severally and that damages be awarded to the plaintiffs in an amount to be determined at trial, plus interest and costs.

COUNT IV

Breach of Warranties against All Defendants

46. The plaintiffs reallege the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

47. All defendants made express and/or implied warranties, but each breached its warranties and as a direct and proximate result plaintiffs have incurred and will continue to incur damage including but not limited to property damage.

48. All defendants are each liable to plaintiffs for all damage including but not limited to property damage caused by such breaches.

WHEREFORE, the plaintiffs pray that, after trial, a judgment be entered in their favor and against defendants, jointly and severally, and that damages be awarded to the plaintiffs in an amount to be determined at trial plus interest and costs.

COUNT V

Contractual Indemnity against Bechtel, Parsons Brinckerhoff, B/PB, Modern and Gannett

49. The plaintiffs reallege the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

50. In each of their respective contracts, B/PB, Modern and Gannett agreed to indemnify and hold harmless plaintiffs from and against damages, claims and losses, including but not limited to property damage incurred by plaintiffs as a result of its acts or omissions.

51. The plaintiffs have incurred and will continue to incur damage including but not limited to property damage as a direct and proximate result of the wrongful acts or omissions of B/PB, Modern and Gannett.

52. B/PB, Bechtel, Parsons Brinckerhoff, Modern and Gannett are each liable to plaintiffs for contractual indemnity for all such damage including but not limited to property damage.

WHEREFORE, the plaintiffs pray that, after trial, a judgment be entered in their favor and against B/PB, Bechtel, Parsons Brinckerhoff, Modern and Gannett, jointly and severally, and that damages be awarded to the plaintiffs in an amount to be determined at trial plus interest and costs.

COUNT VI

Common Law Indemnity against All Defendants

53. The plaintiffs reallege the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

54. All defendants are obligated under the common law to indemnify plaintiffs from and against any damage including but not limited to property damage incurred by plaintiffs as a result of the wrongful acts or omissions of defendants.

55. The plaintiffs have incurred and will continue to incur damage including but not limited to property damage as a direct and proximate result of the wrongful acts or omissions of the defendants.

56. Defendants are each liable to plaintiffs for common law indemnity for all such damage including but not limited to property damage.

WHEREFORE, the plaintiffs pray that, after trial, a judgment be entered in their favor and against the defendants, jointly and severally, and that damages be awarded to the plaintiffs in an amount to be determined at trial plus interest and costs.

COUNT VII

**Surety Claim Under the Performance Bond against
Fireman's Fund, USF&G and National**

57. The plaintiffs reallege the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

58. Under the Performance Bond, Fireman's Fund, USF&G and National guaranteed all of the obligations of Modern under its contract with the plaintiffs.

59. Fireman's Fund, USF&G and National are obligated under the Performance Bond for all amounts for which Modern is found liable to plaintiffs in this lawsuit.

WHEREFORE, the plaintiffs pray that, after trial, a judgment be entered in their favor and against defendants, Fireman's Fund, USF&G and National, based upon their obligations under the Performance Bond, and that damages be awarded to the plaintiffs in an amount to be determined at trial plus interest and costs.

PLAINTIFFS DEMAND A JURY TRIAL AS TO ALL CLAIMS SO TRIABLE

COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS TURNPIKE
AUTHORITY

By its attorneys
THOMAS F. REILLY
ATTORNEY GENERAL

By its attorneys,
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP

James Sweeney, BBO #543636
Jason Barshak, BBO #564040
Assistant Attorneys General
One Ashburton Place, 20th Floor
Boston, MA 02108
617-727-2200

Thomas F. Holt, Jr., BBO #238830
John C. Blessington, BBO #549754
State Street Financial Center
One Lincoln Street
Boston, MA 02111-2950
(617) 261-3100