

the course of the arbitration proceedings. However, said malice and distortion of the facts continued even during the arbitration process. One telling example of this is set forth below.

During the course of the arbitration proceeding Mr. Arvay indicated that the outdoor ornamental quarry tile installation at the front entrance area was defective but nonetheless the County had approved this particular installation. Mr. Arvay testified at lines 12-15, page 910:

"The ornamental tile on the stucco front was accepted as-is even though the control joint is incomplete...

This point was brought up by Mr. Arvay on several further occasions during the course of the proceedings. On more than one occasion he shrugged his shoulders in a theatric way while simultaneously stating that he could not understand why the County accepted this portion of the job.

Obviously the purpose of these statements and Mr. Arvay's behavior was to communicate to the arbitrators the County's position that Wand's incompetence was endemic throughout the job while the fact that the County accepted the outdoor front entrance area and the fact this area is not part of the arbitration is clear, the fact that the owner/architect felt the need to repeatedly bring it up is significant. Therefore I would like to discuss this area further.

In truth and in fact this point is illustrative of Mr. Arvay's incompetence. First, the quarry tiles specified to be used by Mr. Arvay on the building's exterior in the

specifications were interior tiles (Dandrow testimony, page 671). Secondly, Mr. Arvay's drawings are inconsistent and inadequate relative to the installation of the ornamental quarry tile. Exhibit 21-A is a photograph which depicts the front entranceway of the Clinton County Highway Department as it appeared on January 11, 1994, the very date Wand Electric, Inc. was terminated by the County. It is interesting to note that the photograph shows the quarry tile as installed being held in place by gray colored grout. The quarry tiles are 6" x 6" in size. The rows are 12 tiles wide. The space between the two control joints as shown in the drawings is 72 inches. During the course of the arbitration proceedings Mr. Arvay made a point of advising the arbitrators that the tiles were defectively installed (Arvay testimony at page 910). Yet a review of the drawings in Exhibit 1 reveal that Mr. Arvay is the cause for any failure. Drawing number GC4 clearly depicts the entire facade to consist of a width of 12 tiles installed side by side within two control joints. However, drawing GC10 clearly depicts a width of ten tiles located side by side within the two control joints. Obviously Mr. Arvay's drawings are inconsistent.

Moreover, and even more importantly Mr. Arvay's drawings neglect to include any space for the grout placed between each of the tiles, a space of approximately 1/8" to 1/4" between each tile. Therefore, when the grout is factored in the width of the ornamental tile facade is approximately 1 1/2" to 3" wider than drawing GC4 shows. This would place the ends of the first and

last tiles on any row overlapping the control joints and cause the very problem which Mr. Arvay described at page 910.

The purpose of pointing this out is to show how the County and its representative distorted this point as they have distorted almost every contact, every issue and every conversation between the parties. It must be pointed out that this has been the never ending pattern of behavior of Mr. Arvay, the County's representative and the County in dealing with Wand Electric, Inc. on this job.

Another example of inconsistencies, lack of clarity and inadequacies on the part of the architect is that the topographic map which is part of Exhibit 1 shows that the drainage, backfilling and land restoration is to be performed by the general contractor. Yet the contractual specifications under Section 02225, page 1, part 1, General A, clearly reveals that the same work is required to be performed by the electrical contractor. Thus again there is inconsistency and lack of clarity in Mr. Arvay's plans and specifications.

With respect to handrails and railings under 05520 of the subject contract's specifications said items are to be provided by the general contractor. Yet there is absolutely nothing included in any of the plans or drawings regarding handrails and railings.

Examples of such inadequacies, lack of clarity and inconsistencies between the drawings and specifications were confronted by the general contractor throughout this job.

Further examples of such include the plywood underlayment and the threshold issue between the corridor, bathrooms and the garage, both of which were previously set forth in this letter.

Perhaps under different circumstances these inconsistencies, lack of clarity and mistakes could and would have been overcome by communication between the parties. Yet the architect/owner in this case refused to communicate with the contractor. At the construction meetings the owner's representative, Felix Burns, merely sat to one side and in his one-dimensional, arrogant, stolid approach persistently contributed only one point - "when is the job going to be done?" There was no input, no contribution, no assistance.

Never is this arrogance and disregard for law and contractual rights more vividly revealed than in the testimony of Bruce Kipp. Mr. Kipp testified on October 16, 1995 at pages 2260-2261 as follows:

"Did there come a time in 1993 when you were requested to remove certain asbestos tiles from this project?"

A. Yes.

Q. And who made that request of you?

A. Mr. -- oh, my God; it's been so long. It had to have been Mr. Burns. Burns.

Q. All right. And did you have any certification to do that type of removal?

A. No; no.

Q. And what did you remove, sir?

A. I removed the tile in that bathroom right there, front hall (indicating). Gulf Charley

two Alpha, that's the name.

Q. Okay.

A. In room -- in bathroom number 106, which is now a -- at the time it wasn't a bathroom.

Q. Did you remove any other asbestos tiles from this project?

A. No."

All of the foregoing points to a reckless disregard for this contractor's rights and the law.

POINT IV

ANY AND ALL COUNTER-CLAIMS INTERPOSED
BY THE COUNTY SHOULD BE DENIED FOR ITS
TOTAL FAILURE TO FOLLOW THE CONTRACT'S
CLAIM PROCEDURE.

Under the terms of the contract (Exhibit 1) entered into between the parties, if any party to the contract intends to bring a claim against the other party written notice of said claim must be provided to the architect within 21 days.

Section 4.3 of the contract includes the following language:

"4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation

of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the claim has been referred to the Architect or (5) the claim relates to a mechanic's lien.

4.3.3 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial claim has been implemented by Change Order will not be considered unless submitted in a timely manner."

At no time did Mr. Arvay ever receive any type of claim from the County of Clinton. It is undisputed that at no time did the County provide any written claim to the architect for a decision. Mr. Arvay testified as follows relative to this issue at pages 853-854:

Q. Now, with respect to the flooring on the first floor, at any time did Clinton County present to you a written notice of its claim for damages against Wand Electric by reason of that portion of the job?

A. No.

Q. Now, are you familiar with that part of the contract which calls for written notice to be given to the architect regarding any dispute arising under the contract?

A. Yes.

Q. Could you turn to that section or sections,

please?

(Witness does so)

MR. WOLFE: It's Article

14.

Q. I'd like you to turn to Section 4.3 under Article 4, please. It's on Page 11. I call it the Boiler Plate General Conditions.

A. Yes.

Q. Now, when a claim is brought or a party wants to bring a claim under this contract, without reciting the exact language, they're required to give you written notice of same within twenty-one days?

A. That is correct."

Mr. Arvay further testified as follows regarding this issue at pages 910-911:

"Q. Now, at any time has the county given you written notice of any claim they have against Wand Electric resulting from this contract?

A. Yes.

Q. Can I see that, please?

A. I don't have that. They made me aware of that claim.

Q. Did they give you a written notice within twenty-one days of their being aware of their claims?

A. No.

Q. What were you provided with? Are you referring to copies of pleadings in connection with this arbitration and correspondence in connection with the arbitration after it was commenced?

A. Yes.

Q. My question, though, is -- I understand what you're about to produce, but beyond that were you given any written notice of their intention to file any claim for damages against Chilstead or Wand?

A. No.

Therefore, it is respectfully submitted that there is absolutely no basis for any counter-claim made by the County of Clinton against Wand Electric, Inc.. The County's complete failure to follow the claim procedure in the contract its representatives prepared and compiled renders its counter-claims null and void.

Contrasted with the County's absolute failure to bring its claim to the architect's attention at any time, Wand Electric, Inc. repeatedly brought its intention to file a claim to the architect's attention. By letters dated September 7, 1993 (Exhibit 6) and November 15, 1993 (Exhibit 62) Leo Smith communicate in writing about the delays caused by the County and/or its representative, the architect. That Wand Electric, Inc. preserved its right to make a delay claim is reflected in paragraph 2 of the September 29, 1993 meeting notes:

"2. Change Order number 1 was discussed and the General Contractor refused to execute Change Order number 1 because it did not address the current claim for delay with regard to door frames etc. The Architect explained that Change Order number 1 was solely for the purposes of extending the contract due to the delay in starting the project (lack of Building Permit) and in no way would preclude the Contractor's rights to make a delay claim."

That Wand Electric, Inc. preserved its right to make a claim under the electrical contract for the power line which was

damaged during excavation was also preserved at that same meeting under paragraph 7:

"7. Wand Electric stated it would make a claim for the power line which was damaged during excavation by Wand Electric. Wand Electric claims it notified all appropriate parties to identify any existing telephone and power lines. Wand Electric reported that the existing underground power line is apparently County property. Wand Electric's claim is for approximately \$750.00."

These letters and statements at the construction meetings were followed up with my letter dated January 17, 1994 (a copy of which is attached to the original Demand for Arbitration) wherein Wand Electric clearly spells out to the architect its claims against the owner.

Yet the County entirely failed to follow any of these procedures. It has failed to exercise the condition precedent necessary to sustain a valid claim.

POINT V

MAJOR DELAYS ON THE COUNTY'S PART

It is undisputed that this contract was to be completed within 120 calendar days which were to run from the date the contract was signed, i.e., May 18, 1993. Wand Electric, Inc. was absolutely entitled to perform said contract within said time period under the terms of the parties' contract (Exhibit 1) and seek money damages for any delay. The contract specifically states that the time limits stated in the contract documents are of the essence of the contract (8.2.1 of Exhibit 1). Wand was entitled to bring a delay claim under the terms of the contract

under Section 8.3 entitled "Delays and Extensions of Time" for any owner caused delay. Said section provides as follows:

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents."

The delays which form the Contractor's delay claim are clearly compensable.

There are essentially three types of delay. Construction delay can be classified as nonexcusable, excusable or compensable. Nonexcusable delay is caused by factors within the contractor's reasonable control. In essence, it is the contractor's fault, so the contractor will not be entitled to an extension of time or additional compensation.

When a delay is caused by factors beyond the contractor's reasonable control, but not caused by the owner's actions or inaction, it is considered excusable. The contractor will not be

entitled to receive compensation for the cost of the delay, but will be entitled to an extension of the performance period. This can be significant, as it may enable the contractor to avoid a default termination or the assessment of liquidated damages.

Compensable delay is caused by the owner's failure to meet an obligation stated or implied in the construction contract. If the delay is compensable, the owner must grant a time extension and reimburse the contractor for the increased costs caused by the delay (See Construction Claims Monthly, September, 1983 issue, Compensable Delay: Comparing The Standard Agreements). It is Wand's position that the delays complained of are compensable.

Initially a delay of over two months resulted directly due to the Owner's failure to timely secure a building permit. Mr. Arvay clearly stated that the Owner assumed the responsibility for obtaining the permit (Arvay pages 807-808). The County's application for a building permit is dated May 4, 1993. The owner failed to obtain the building permit until July 12, 1993, and the work site was not available for access by the contractor until July 19, 1993. (Exhibit 3). Thus a delay of sixty days occurred due directly to the failure of the Owner to promptly obtain the building permit.

This delay and the County's responsibility for same is acknowledged in Exhibit Number 11 with the architect and the County agreeing to increase the contract time by 55 days. Yet Wand refused to accept change order number 1 (Exhibit 11) because

the delay should have been recognized to be at least sixty days and because no compensation was allotted to contractor by virtue of this delay in this change order.

But Wand's compensatory delay claims do not end there. Delays occurred due to changes in materials authorized by the owner's representative. Important changes which led to major delays were the following, as reflected in Exhibits 6 and 24. Incidentally Mr. Arvay admitted that Wand's transmittal dates were accurate (Arvay, page 2305).

1. Change from VHM vent (windows) to thermal broken windows:

The architect was advised prior to the date the building permit was obtained that the specified VHM vent windows were no longer being made. He later insisted that this be placed in writing which was promptly provided on July 7, 1993 (Exhibit 4). Yet no decision was made or received from the architect until August 29, 1993. This caused an extensive delay which could have been avoided had the architect diligently pursued the matter in May or June of 1993 instead of waiting until August, 1993.

2. Change from welded door frames to knockdown door frames.

Submittals were prepared on July 9, 1993 and the architect approved the change on July 21, 1993 at a construction meeting. On July 22, 1993 the submittals were forwarded to the architect. Approval was not granted until August 26, 1993 (Leo Smith testimony, pages 463-465). This also caused a long delay due to

the architect's failure to promptly respond to the contractor's time saving request and by his further failure to expeditiously approve the submittals.

3. Delays In Makins Vinyl Wall Covering and Paint Selections.

This delay lasted nearly three months due to the architect's and owner's dilatory actions (Exhibit 6, Leo Smith testimony).

4. Heat

The above-described delays caused the project to be performed during the heating season. Since the contract was originally to have been performed under its terms within 120 calendar days after May 18, 1993, which would have put completion prior to the advent of the heating season, no monetary figure was made or included for the provision of heat on this job by the contractor. Yet the lack of heat, LaBarge's insistence on turning off the heat at night and the County's failure to provide a change order for same were amply demonstrated during the course of the arbitration proceedings by testimony and exhibits (Exhibits 17, 18, 19, 20, 62).

Not only did the foregoing delay the project but it also rendered the Contractor unable to establish a progress schedule or completion date (Exhibit 6). Thus the early written complaints made by the architect about the Contractor's alleged failure to submit and adhere to progress schedules were caused by the actions of the owner and architect.

The delays resulting in damages to Wand are set forth in Mr. Krill's testimony (pages 1402-1529) and in the loose-leaf binders

POINT VI

THE CONTRACTOR'S DAMAGES

In legal contemplation, the term "damages" describes the amount which the law awards as pecuniary compensation, or satisfaction, for an injury done or a loss sustained, either as a result of a breach of a contractual obligations or of a tortious act, and which is intended to put the injured party in the position he was in before he was injured. See 36 NY Jur. 2nd, Damages, Section 1, Page 12.

Damages generally are of two kind:

1. Compensatory damages which are given in satisfaction or recompense for a loss or injury;

and

2. Exemplary or punitive damages which may be awarded beyond the actual damages sustained because of the character of the act complained of.

Compensatory damages or actual damages in turn may be subdivided into general damages and special damages. General damages are those which naturally result from the wrongful act or omission complained of, and which the law presumes to have accrued therefrom. 36 NY Jur. 2nd, Damages, Section 10, Page 24. General damages are those which are traceable to, and the probable and necessary result of the injury, whereas special damages are those which arise from the special circumstances of the case. Compensatory damages, whether general or special,

serve to make good, so far as it is possible to do so in dollars and cents, the harm done by a wrongdoer.

The term "special damages" has been held to mean damages which are something in addition to, or at least apart from, the loss resulting directly and naturally in the ordinary course of events as a result of the wrong for which the damages are to be awarded. Special damages include such items as loss of prospective profits. They are also called consequential damages.

In actions arising out of breach of contract, special damages may be awarded only when they are the natural and proximate result of the breach of contract and are within the contemplation of the parties. 36 NY Jur. 2nd, Damages, Section 10, Page 24. In the case at hand, no one is arguing that the arbitrators do not have the power or authority to award general compensatory damages if the evidence warrants same. Therefore, the first issue is does the panel have the power to award special or consequential damages such as lost future profits, attorneys fees, expert witness fees, losses due to delays and disruptions, losses due to increased bonding and insurance costs, losses due to shutdown, delay and startup costs and other such losses. Also, secondly, do the arbitrators have the power to award punitive or exemplary damages if the evidence warrants same.

LEGAL ARGUMENT

IN ADDITION TO GENERAL DAMAGES, ARBITRATORS
HAVE THE POWER AND AUTHORITY TO AWARD
CONSEQUENTIAL OR SPECIAL DAMAGES WHICH FLOW
FROM THE BREACH OF CONTRACT BY OWNER.

Essentially, it should be pointed out that Section 4.5.1 of

the subject project manual (Exhibit 1) requires the parties to the subject written contract to submit all disputes arising out of related to the subject contract to arbitration. Said section provides in pertinent part as follows:

"4.5 ARBITRATION

4.5.1 Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.3.5.

Thus, under the very contract which required Wand Electric, Inc. to bring its claims against the County in an arbitration forum, the panel of arbitrators presiding over this matter has the power and authority to resolve any and all controversies or claims arising out of or related to the contract or the breach thereof.

There is practically no limitation to the power of the arbitrators provided in this clause of the contract or in any other part of the contract. Moreover, since the contract was prepared and provided by the owner, any interpretation of this clause must be construed most favorably to the contractor, Wand Electric, Inc. It is a contract of adhesion.

Under Rule 43 of the AAA Construction Industry Arbitration Rules, the panel of arbitrators may grant any remedy or relief that is deemed just and equitable and within the scope of the agreement of the parties. Section 43 of the Construction Industry Arbitration Rules of the American Arbitration

Association states as follows:

"43. Scope of Award

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Section 48, 49, and 50 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA."

Thus, the panel of arbitrators in the arbitration at hand has full authority to render any remedy or relief that it deems just and equitable based upon the evidence presented during the course of the arbitration.

It is well settled law that the panel of arbitrators has the power, authority and right to include in its award compensatory damages, either general or special (consequential). In the 1991 case of J. M. Weller Associates, Inc. v. Clause Charlebois, et. al., 169 AD 2d 958, the Third Department, Appellate Division unequivocally ruled in a case involving a three member arbitration panel, that the inclusion of an award of \$450,000.00 for consequential damages was appropriate. In Weller, supra, the Appellate Court held that arbitrators may apply their own sense of justice to the facts and made an award reflecting the spirit rather than the letter of the agreement.

In Weller, supra, the arbitration panel specifically determined that the petitioning architect/contractor was entitled to consequential damages. In Weller, supra, the petitioner had made a written demand for arbitration because of respondents' failure to make payments alleged to be due as and for additional

damages. The respondents counterclaimed in the arbitration alleging defective design and construction. Following hearings, the three-member panel awarded petitioner \$1,300,400.54 plus costs and expenses of \$8,190.01. \$450,000.00 of this total award was for consequential damages. The Supreme Court granted judgment to petitioner confirming the award and denying the respondents' Cross Motion to vacate. On appeal to the Appellate Division, Third Department, the respondents contended that including consequential damages in the award went beyond the scope of authority of the arbitrators. The Appellate Division, Third Department disagreed with that contention and determined that the arbitrators had such authority and power.

Specifically at issue in Weller, supra, was whether recovery of consequential damages (which include lost future profits) was covered in the contract. In ruling that petitioner was entitled to recover for consequential damages (which includes lost future profits) the Court held that the arbitrators had the power to make such an award absent an explicit contractual limitation of the arbitrators' powers in the contract. In our case, as in Weller, supra, there is no explicit limitation of the arbitrators' powers.

A copy of said case is annexed hereto and made a part hereof.

It is axiomatic that arbitration awards are often made on the basis of an arbitration agreement that give arbitrators broad discretion in the types of relief they may grant. As set forth

above, in Section 43 of the AAA Construction Industry Arbitration Rules provides that the arbitrators "may grant any remedy or relief which they deem just and equitable and within the scope of the parties agreement." As a result, in those cases that are based on this broad clause, courts are likely to approve awards including consequential damages. See AAA, 8 Lawyer's Arbitration Letter, No. 2, Page 2 (June, 1984). Such consequential damages may include loss of reputation. In re De Laurentiis, 9 N.Y. 2d 503, 215 NYS 2d 60 (1961). They may also include "loss of opportunity". MSP Collaborative Devs v. Fidelity and Deposit Co. 596 F 2d 247 (7th Cir., 1979).

ARBITRATORS ARE PERMITTED TO
AWARD PUNITIVE DAMAGES

The case of Trustee of Columbia Univ. Gwathmv Siesel Assocs. Architects, 601 N.Y.S. 2d 116 (App. Div. 1993) stands for the proposition that punitive damages may be awarded against a contractor, not as compensation for actual loss, but as punishment for willful and unlawful acts that society desires to deter. Punitive damages can be as large as three times what actual damages are. Such improper acts include fraud, intentional interference with business relations, gross negligence and infliction of intentional harm to others. Punitive damages are not awarded for mere breaches of contract. However, contractors must avoid engaging in any associated improper conduct where a breach occurs.

Thus, the language of Trustee of Columbia Univ., supra, would also apply to conduct of Clinton County in the case at bar.

The arbitrators have full power and authority to award punitive damages to Wand Electric, Inc. if the evidence warrants same.

SUMMARY OF DAMAGES

Incorporated herein and attached hereto in appendix form is a summary of Wand's damages.

POINT VII

THE CONDUCT OF THE COUNTY FOLLOWING ITS TERMINATION OF THE GENERAL CONSTRUCTION CONTRACT WITH WAND FURTHER REVEALS ITS TRUE MOTIVES AND ITS BAD FAITH

Following the county's unjustified termination of the general construction contract with Wand Electric, Inc. it entered into an agreement with Murnane Building Contractors, Inc. to have Murnane complete the job and effectuate numerous changes in the original bid plans and specifications on a time and materials basis (Arvay testimony, page 957).

The county essentially entered into an agreement whereby it received a "blank check" to have any work, purchase any materials and make any changes it saw fit relative to the Clinton County Highway Garage project without regard to cost control or containment.

That changes were made from the original plans and specifications is uncontroverted. Robert Wicichowski testified that the following changes or deviations were made from the original plans and specifications at pages 2413-2421 of his testimony:

1. Paint was applied instead of the wallpaper covering originally specified (page 2413) obviously due to the

fact that the wallpaper originally specified was not seamless.

2. On five of the rooms on the first floor, rooms 101, 107, 110, 119, 112, the work performed by the new contractor included the installation of floor tile instead of carpeting. Obviously the plans and specifications made by Mr. Arvay were either deficient or subsequently determined to be unsuited to the County's liking and therefore changes were made (Wicihowski, pages 2414-2415). This decision was made by the architect and owner (page 2415 of Mr. Wicihowski's testimony).

3. The ceiling tiles were changed to a 2' x 2' ungrooved tile instead of the 2' x 4' grooved tile (Wicihowski, pages 2416-2419). The reason for this was that the tile which had originally been specified by Arvay was more difficult to install than the replacement ceiling tiles used on the job and it was easily damaged.

4. On the second floor knockdown doors were used instead of welded doors because the welded doors were not obtainable (see pages 2420-2421 of Mr. Wicihowski's testimony).

Therefore, instead of rebidding this job to obtain the lowest cost, the County saw fit to hire another contractor without any limitation on the dollar amount which would be spent to finish the job. Moreover the job would be completed, not as originally specified, but according to numerous new specifications.

This reveals the County's bad faith and true malicious intentions. Numerous defects and inadequacies with the plans and

specifications were discovered during the early month's of construction and the County's termination of Wand's contract was a malevolent disguise to effectuate these changes while saddling Wand with the bill.

CONCLUSION

By reason of the foregoing the claims of Wand Electric, Inc. should be in all respects sustained and approved and any counterclaims of the County of Clinton should be in all respects denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen A. Johnston". The signature is written in a cursive style with a large initial "S".

ASADOURIAN & JOHNSTON P.C.

By: Stephen A. Johnston, Esq.