

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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TROY SHANE SMITH and ALLYSON JANE SMITH,

Index No.: 814633/2023

Plaintiffs,

-against-

84 LUMBER COMPANY, et al.,

Defendants.

**FOSTER WHEELER LLC'S
VERIFIED ANSWER TO
PLAINTIFFS' VERIFIED
COMPLAINT, AFFIRMATIVE
DEFENSES, CROSS-CLAIMS,
AND ANSWER TO CROSS-
CLAIMS**

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COUNSELORS:

Defendant FOSTER WHEELER, LLC, survivor to a merger with Foster Wheeler Corporation (hereinafter "Foster Wheeler") by its attorneys, Tanenbaum Keale LLP, hereby answers Plaintiffs' Verified Complaint (hereinafter "Verified Complaint") as follows:

THE PARTIES

1. Foster Wheeler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 through 3 of the Verified Complaint and leaves the Plaintiffs to their proofs.

2. The statements contained in paragraph 4 of Plaintiffs' Verified Complaint do not require any admissions or denials as said statements merely define "Defendants" as used within the context of Plaintiffs' Verified Complaint.

3. Foster Wheeler admits that it is a foreign business corporation authorized to and transacting business in the State of New York, with its principal place of business outside of the State of New York. Foster Wheeler denies the remaining allegations contained in paragraphs 5 through 64 of Plaintiffs' Verified Complaint to the extent they pertain to Foster Wheeler and

denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they pertain to any other defendant in this action.

4. Foster Wheeler denies each and every allegation contained in paragraphs 65 through 69 of Plaintiffs' Verified Complaint to the extent that such allegations are directed toward Foster Wheeler. Foster Wheeler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 65 through 69 of Plaintiffs' Verified Complaint as they relate to any other defendant in this action. Foster Wheeler also refers all conclusions of law contained in paragraphs 65 through 69 to the Court.

**AS AND FOR A FIRST CAUSE OF ACTION SOUNDING IN NEGLIGENCE,
FOSTER WHEELER ANSWERS AS FOLLOWS:**

5. Foster Wheeler repeats and reiterates each and every answer to each and every allegation contained in paragraphs 1 through 69 of Plaintiffs' Verified Complaint with the same force and effect as if fully set forth at length herein answer to paragraph 70 of Plaintiffs' Verified Complaint.

6. Foster Wheeler denies the allegations contained in paragraphs 71 through 78 of Plaintiffs' Verified Complaint, including their subparts, to the extent they pertain to Foster Wheeler and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they pertain to any other defendant in this action. Foster Wheeler also refers all conclusions of law contained in paragraphs 71 through 78 to the Court.

**AS AND FOR A SECOND CAUSE OF ACTION SOUNDING IN BREACH OF
WARRANTY.
FOSTER WHEELER ANSWERS AS FOLLOWS:**

7. Foster Wheeler repeats and reiterates each and every answer to each and every allegation contained in paragraphs 1 through 78 of Plaintiffs' Verified Complaint with the same

force and effect as if fully set forth at length herein answer to paragraph 79 of Plaintiffs' Verified Complaint.

8. Foster Wheeler denies the allegations contained in paragraphs 80 through 83 of Plaintiffs' Verified Complaint to the extent they pertain to Foster Wheeler and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they pertain to any other defendant in this action. Foster Wheeler also refers all conclusions of law contained in paragraphs 80 through 83 to the Court.

**AS AND FOR A THIRD CAUSE OF ACTION SOUNDING IN STRICT
LIABILITY,
FOSTER WHEELER ANSWERS AS FOLLOWS:**

9. Foster Wheeler repeats and reiterates each and every answer to each and every allegation contained in paragraphs 1 through 83 of Plaintiffs' Verified Complaint with the same force and effect as if fully set forth at length herein answer to paragraph 84 of Plaintiffs' Verified Complaint.

10. Foster Wheeler denies the allegations contained in paragraphs 85 through 93 of Plaintiffs' Verified Complaint to the extent they pertain to Foster Wheeler and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they pertain to any other defendant in this action. Foster Wheeler also refers all conclusions of law contained in paragraphs 85 through 93 to the Court.

**AS AND FOR A FOURTH CAUSE OF ACTION LABOR LAW VIOLATIONS,
FOSTER WHEELER ANSWERS AS FOLLOWS:**

11. Foster Wheeler repeats and reiterates each and every answer to each and every allegation contained in paragraphs 1 through 93 of Plaintiffs' Verified Complaint with the same force and effect as if fully set forth at length herein answer to paragraph 94 of Plaintiffs' Verified Complaint.

12. Foster Wheeler denies each and every allegation contained in paragraphs 95 through 112 of Plaintiffs' Verified Complaint, including their subparts, to the extent that such allegations are directed toward Foster Wheeler. Foster Wheeler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 95 through 112 of Plaintiffs' Verified Complaint as they relate to any other party or third party in this action. Foster Wheeler also refers all conclusions of law contained in paragraphs 95 through 112 to the Court.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT
METROPOLITAN LIFE INSURANCE COMPANY,
FOSTER WHEELER ANSWERS AS FOLLOWS:**

13. Foster Wheeler repeats and reiterates each and every answer to each and every allegation contained in paragraphs 1 through 112 of Plaintiffs' Verified Complaint with the same force and effect as if fully set forth at length herein answer to paragraph 113 of Plaintiffs' Verified Complaint.

14. Foster Wheeler denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 114 through 120 of Plaintiffs' Verified Complaint as they relate to defendant Metropolitan Life Insurance Company and leaves the Plaintiffs to their proofs.

**AS AND FOR A SIXTH CAUSE OF ACTION SOUNDING IN CONSPIRACY AND
COLLECTIVE LIABILITY/CONCERT OF ACTION,
FOSTER WHEELER ANSWERS AS FOLLOWS:**

15. Foster Wheeler repeats and reiterates each and every answer to each and every allegation contained in paragraphs 1 through 120 of Plaintiffs' Verified Complaint with the same force and effect as if fully set forth at length herein answer to paragraph 121 of Plaintiffs' Verified Complaint.

16. Foster Wheeler denies each and every allegation contained in paragraphs 122 through 136 of Plaintiffs' Verified Complaint, including their subparts, to the extent that such allegations are directed toward Foster Wheeler. Foster Wheeler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 122 through 136 of Plaintiffs' Verified Complaint as they relate to any other party or third party in this action. Foster Wheeler also refers all conclusions of law contained in paragraphs 122 through 136 to the Court.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT
CONTRACTORS,
FOSTER WHEELER ANSWERS AS FOLLOWS:**

17. Foster Wheeler repeats and reiterates each and every answer to each and every allegation contained in paragraphs 1 through 136 of Plaintiffs' Verified Complaint with the same force and effect as if fully set forth at length herein answer to paragraph 137 of Plaintiffs' Verified Complaint.

18. The statements contained in paragraph 138 of Plaintiffs' Verified Complaint do not require any admissions or denials as said statements merely define "contractor(s)" as used within the context of Plaintiffs' Verified Complaint.

19. Foster Wheeler denies each and every allegation contained in paragraphs 139 through 150 of Plaintiffs' Verified Complaint, including their subparts, to the extent that such allegations are directed toward Foster Wheeler. Foster Wheeler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 139 through 150 of Plaintiffs' Verified Complaint as they relate to any other party or third party in this action. Foster Wheeler also refers all conclusions of law contained in paragraphs 139 through 150 to the Court.

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