

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 24-00311

BC ONE CONGRESS TOWER OWNER LLC,

Plaintiff,

v.

CBT/CHILDS BERTMAN TSECKARES INC.
and WSP USA INC.,

Defendants.

2024 FEB - 2 P 3:28
JOHN E. POWERS III
ACTING CLERK MAGISTRATE
SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

COMPLAINT

Plaintiff BC One Congress Tower Owner LLC (as successor-in-interest to BC One Congress Tower JV LLC) ("One Congress"), by and through its undersigned counsel, hereby makes this Complaint against CBT/Childs Bertman Tseckares Inc. ("CBT") and WSP USA Inc. ("WSP"), and states as follows:

NATURE OF THE CASE

1. One Congress seeks damages for professional negligence, breach of contract, negligent misrepresentation, and indemnification as a result of the failures of CBT and WSP to provide a proper design for One Congress, a new 43-story, approximately 1.1 million square foot, trophy office building located at One Congress Street in Boston, Massachusetts (the "Project"). CBT and WSP each failed to perform its services in accordance with the standard of care expected and required of a competent design professional providing design services.

2. Because of CBT's and WSP's failures to perform the design services (i) as required by their respective contracts, and (ii) in accordance with the standard of care applicable to a

competent design professional for a project of the size, value, and complexity of the Project, One Congress was forced to incur costs to redesign the Project's mechanical and plumbing systems, implement corrective work, replace mechanical and plumbing equipment, and forfeit approximately 1,388 square feet of rentable space to accommodate bifurcating the initial CBT/WSP-designed hydronic high-pressure mechanical system into the remedial split-system plumbing system that was needed to ensure that the system would perform safely and effectively over a span of years.

3. The Project's initial high-pressure mechanical system design was never presented to One Congress for discussion prior to completion of the original base building design. Further, the 100% Construction Documents drawings prepared by CBT and WSP did not properly coordinate, or even identify, what CBT and WSP now acknowledge was a defective high-pressure system that would present operational, maintenance, and longevity challenges.

4. In addition, WSP failed to design adequate freeze protection measures to enable a functioning building during Boston's cold winters, and also failed to design an appropriate condenser water loop for the building.

THE PARTIES

5. Plaintiff One Congress is a Delaware limited liability company with its principal place of business located at 1615 L Street NW, Suite 650, Washington, District of Columbia 20036.

6. Upon information and belief, defendant CBT is a Massachusetts domestic profit corporation with its principal place of business located at 1 Constitution Road, Suite 200, Boston, Massachusetts 02129.

7. Upon information and belief, defendant WSP is a New York domestic business corporation with its principal place of business located at One Penn Plaza, 4th Floor, New York,

New York 10119. WSP also maintains an office in the Commonwealth of Massachusetts located at 100 Summer Street, 13th Floor, Boston, Massachusetts 02110.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter in accordance with M.G.L. c. 212, § 3 and M.G.L. c. 223A, §§ 1 and 3.

9. Venue is proper under M.G.L. c. 223, §§1 and 8.

STATEMENT OF FACTS

10. One Congress, as owner, and CBT, as architect, entered into an architect agreement on September 26, 2019 for the performance of architectural services in connection with the design and development of the Project (the "Architect Agreement"). A copy of the Architect Agreement is attached hereto as Exhibit 1 and is incorporated herein by reference.

11. Pursuant to the terms of the Architect Agreement, CBT agreed to provide design services, including architectural, structural, mechanical, electrical, plumbing, and fire protection engineering services, as well as coordinating the efforts of all other consultants and design professionals. CBT was also responsible for providing construction administration services for the Project. CBT was further required to prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for construction of the Project. Indeed, under Article 2 of the Architect Agreement, CBT agreed to "provide or cause its Subconsultants to provide, as applicable, all professional services necessary for the complete design and construction documentation of the Project." See Exhibit 1.

12. CBT assumed responsibility for all of the services under the Architect Agreement, expressly acknowledged that responsibility, and confirmed that neither One Congress's rights of approval, nor the granting of any approval, would be deemed to relieve CBT from its

responsibilities. *See id.* at ¶ 1.1.

13. CBT also expressly agreed that “[n]othing herein shall relieve [CBT] of responsibility for the design of the Project, and no feature, item or detail required or previously approved by [One Congress] shall be deemed waived by [One Congress] merely by its approval of any subsequent design, drawing, specification or other documents inconsistent with or failing to include features previously required by [One Congress] in writing, and any such waiver shall be accomplished only by an express written waiver by [One Congress] following request therefor by [CBT].” *See id.*

14. CBT agreed that “all Services provided by, through or under [CBT] would be performed in accordance with the standards and quality of professional skill and care applicable to architectural or engineering firms (as the case may be) providing services for projects of comparable size, quality, complexity and value in Boston, Massachusetts.” *See id.* at ¶ 1.3.

15. CBT further agreed to “defend, indemnify and hold [One Congress], HYM, lender, the entities identified on Exhibit J attached hereto, and their respective partners, members, officers, employees and affiliates (collectively, “Indemnitees”) harmless from and against all claims, damages, causes of action, liabilities, losses and expenses, including but not limited to attorneys’ fees and expenses (including expert expenses), but only to the extent resulting from willful misconduct or any negligent act, error or omission of [CBT], or its employees, Subconsultants or others for whose conduct [CBT] may be liable” *See id.* at ¶ 17.1.

16. CBT and WSP entered into an agreement for WSP to provide certain engineering services associated with the Project (the “WSP Agreement”). A copy of the WSP Agreement is attached hereto as Exhibit 2 and incorporated herein by reference. *See id.* at Exhibit H3; Exhibit 2.

17. Pursuant to the WSP Agreement, WSP was responsible for the design of the "HVAC, plumbing, fire protection and electrical systems, including fire alarm." See Exhibit 2.

18. During construction, J.C. Cannistraro ("JCC"), a Project mechanical and plumbing subcontractor, raised concerns with WSP about the calculated system pressures in the Project's base building mechanical and plumbing systems. These concerns affected Project piping systems, including: (1) the chilled water loop, (2) condenser water loop, and (3) hot water loop (the "Pipe Pressure Issue"). Although the design process included multiple iterations, due diligence to coordinate system pressure was not completed by CBT or WSP. As a result, the Pipe Pressure Issue was not identified until it was discovered by JCC and brought to CBT's and WSP's attention during base building construction.

19. After JCC called attention to the Pipe Pressure Issue, subsequent investigation revealed (i) that WSP's high pressure mechanical system design, which required above-standard rated equipment to operate the Project, was not properly shown within the 100% Construction Documents prepared by CBT and WSP that would be used during construction by the general contractor, John Moriarty & Associates ("JMA"), and its subcontractors, and (ii) that CBT and WSP had failed to coordinate the building's plumbing system on the core/shell riser diagram with the equipment schedules and specifications issued for the Project.

20. Subsequent evaluation confirmed that the high-pressure system would require a greater and costlier level of maintenance, would increase "wear and tear" on the system resulting in a shorter lifecycle and, more importantly, if constructed as designed, would have created an unsafe Project due to unacceptably high pressures in the system piping.

21. One Congress engaged an independent mechanical engineering consultant to review the Pipe Pressure Issue. The consultant's analysis confirmed that the WSP-designed high-

pressure system was defective and was not identified or coordinated within the 100% construction documents, as the Project's specifications included combinations of materials, equipment, and pipe sizes that would have failed with a high-pressure system.

22. Corgan Associates Inc. ("Corgan") was responsible for designing the build-out of approximately twenty floors of the Project for the Project's anchor tenant. Corgan engaged WSP to perform the mechanical design for the tenant space and, upon information and belief, the two parties entered into a separate contract for the same. WSP's tenant space design necessarily required its evaluation of the base building systems, providing it with an additional opportunity to identify any earlier design errors or coordination issues. Notwithstanding this "second bite at the apple" in which to discover its errors in the base building's mechanical design, WSP failed to do so.

23. At the time of discovery of the Pipe Pressure Issue, construction on the Project was well underway, with the concrete core of the Project in place up to levels 27-28 and structural steel up to levels 18-19. Additionally, most of the mechanical and plumbing equipment, as well as other components for the Project, had been submitted, approved, and released for procurement.

24. Given the Project's ongoing construction status and timing, WSP and CBT initially proposed a design solution that would locate a part of the mechanical and plumbing system on the 28th and 29th floors in a space that had previously been planned to be a part of the Project's tenant space. The recommended solution resolved the calculated excessive pressure problem, and served to mitigate the effect of the change on the overall construction schedule for the Project.

25. After discovery of the Pipe Pressure Issue, CBT, WSP, One Congress, and One Congress's development manager held a meeting on February 10, 2021. At that meeting, Tom Burroughs, a WSP representative, stated that "[w]e made a mistake . . ." in connection with the

base building design.

26. Shortly after that meeting, on February 19, 2021, One Congress sent a defect notice letter to CBT. After receipt of the defect notice, CBT and WSP proposed an alternate solution, which would have required increasing the pressure rating of piping and equipment to accommodate the increased pressures in the mechanical system. This alternative remediation approach would have required modifications to both the base building and tenant buildout systems, resulting in increased costs. More importantly, the significant delay in completing construction of the Project under this approach would have jeopardized One Congress's lease obligations to its anchor tenant.

27. One Congress engaged a separate third-party consultant to review the mechanical, plumbing, and electrical design for the Project as originally prepared by WSP, to review the solutions recommended by CBT and WSP to address the excessive pressure defect, and to advise if there were other viable solutions. The third-party consultant advised that the solution described at Paragraph 24 above was the preferred and most reasonable solution given the state of construction, submittals, and Project schedule at the time of discovery.

28. Change Proposal Number CR-050 R3 was developed by JMA to implement the proposed solution. Because the proposed solution changed the scope of work as established by the existing construction documents, JMA initially priced the increase in the construction hard costs at \$2.97 million. One Congress authorized implementation of the solution through Construction Change Directive Numbers 63, 63.1, 63.2, and 63.3.

29. Other costs stemming from the redesign of the mechanical and plumbing systems include the additional management time, cost and schedule consultant's time, and legal expenses, which continue to accrue.

30. As the Pipe Pressure Issue remediation was underway, One Congress discovered

that WSP's original base building mechanical design was defective in another regard; namely, it provided base building freeze protection only to approximately seven degrees Fahrenheit (7°F) (the "Freeze Protection Issue").

31. Per National Weather Service data, winter temperatures in Boston fall to temperatures well below the seven degrees Fahrenheit (7°F) threshold included in the WSP design. The mechanical design thus presented an unacceptable freezing risk of the building's plumbing systems.

32. To correct the Freeze Protection Issue, additional freeze protection pumps similar to the building's penthouse energy recovery units ("ERUs") were required to be installed alongside the existing stacked ERUs on the building's lower floors. One Congress directed JMA to install these additional pumps pursuant to Construction Change Directive Number 91 issued on September 30, 2021.

33. In addition to the freeze protection pumps, to remedy the shortcomings of the original freeze protection design, One Congress also had to authorize installation of (i) three-way control valves to divert hot water from the heating coil loop, and (ii) controls to circulate the hot water into the chilled water coil once the discharge air flowing from the energy recovery wheel dropped below a dry bulb temperature of thirty-seven degrees Fahrenheit (37°F). One Congress issued Construction Change Directive Number 128 on July 8, 2022 to implement these additional elements.

34. To implement the changes required to correct the Freeze Protection Issues, One Congress incurred costs of at least \$942,839.

35. WSP's services included design of the base building water condenser pumps. In June 2023, during the Project's commissioning process, it was discovered that several water

condenser pumps were creating excessive noise and also cavitating when operated within permitted speeds (the “Water Condenser Issue”). After WSP performed additional testing, WSP provided a temporary solution that would reduce the pumps to sixty-eight percent (68%) capacity. This temporary solution, however, did not resolve the problem, which became more acute as building tenancy increased. To implement a proper solution, on January 5, 2024, WSP informed One Congress that the Project’s mechanical condenser water pumps located in the mechanical penthouse will need to be replaced. In addition, several ancillary components will also need to be replaced. Thus, WSP’s water condenser system design was not suitable for its purpose.

36. WSP’s failure to address the issue in 2021 has resulted in additional cost and threatens the ability to provide or meet required temperature levels.

COUNT I

(Professional Negligence – One Congress v. CBT)

37. One Congress restates and realleges each of the allegations set forth in Paragraphs 1 through 36 as if fully set forth herein.

38. As a licensed architectural firm, CBT had a duty to perform its services in accordance with the professional standard of care. The Architect Agreement required CBT to perform design services “in accordance with the standards and quality of professional skill and care applicable to architectural or engineering firms (as the case may be) providing services for projects of comparable size, quality, complexity and value in Boston, Massachusetts.” See Exhibit 1 at ¶ 1.3.

39. In addition, the Architect Agreement provides that CBT “acknowledges that [One Congress] and HYM are relying upon the opinions, conclusions and determinations made by [CBT], and [CBT] shall exercise professional care and conduct consistent with the Standard of Care set forth in paragraph 1.3 in forming such opinions and reaching such conclusions and

determinations.” *Id.* at ¶ 1.10.

40. CBT also “acknowledge[d] and agree[d] that it and its employees, agents and Subconsultants are sufficiently familiar with, and shall respond in the design of the Project to, [sic] all applicable laws, codes, ordinances, and regulations.” *Id.* at ¶ 1.3.

41. CBT breached its duty to provide services in connection with the Project in compliance with the professional standard of care. CBT breached the standard of care by, among other things, providing the Drawings and Specifications with significant errors and omissions concerning the required mechanical, electrical, and plumbing work.

42. As a direct and proximate result of CBT’s breaches of its duty to perform design services in accordance with the professional standard of care, One Congress suffered significant costs, expenses, losses, and damages in an amount to be determined at trial.

COUNT II
(Breach of Contract – One Congress v. CBT)

43. One Congress restates and realleges each of the allegations set forth in Paragraphs 1 through 42 as if fully set forth herein.

44. One Congress and CBT entered into the Architect Agreement whereby CBT agreed to provide professional architectural services in connection with the construction of the Project.

45. CBT failed to provide drawings and specifications free of defects, including (i) the defects related to excessive pressures in the Project’s mechanical and plumbing systems, (ii) the failure to properly design adequate freeze protection measures to enable a functioning Project during Boston’s cold winters, and (iii) the failure to design an appropriate condenser water loop for the Project, resulting in additional work performed by or for One Congress to achieve a suitable mechanical and plumbing system for the Project.

46. CBT breached the Architect Agreement by providing professional services that

failed to comply with its obligations under the Architect Agreement. To the contrary, One Congress has complied with all contractual obligations and conditions precedent in the Architect Agreement to maintain this action.

47. As a direct and proximate result of CBT's breaches of the Architect Agreement, One Congress suffered and will continue to suffer significant costs, expenses, losses, and damages in an amount to be determined at trial.

COUNT III
(Contractual Indemnification – One Congress v. CBT)

48. One Congress restates and realleges each of the allegations set forth in Paragraphs 1 through 47 above as if fully set forth herein.

49. Under the terms of the Architect Agreement, CBT agreed to defend, indemnify, and hold harmless One Congress "from and against all claims, damages, causes of action, liabilities, losses and expenses, including but not limited to attorneys' fees and expenses (including expert expenses) . . . to the extent resulting from willful misconduct or any negligent act, error or omissions of Architect, or its employees, Subconsultants or others for whose conduct Architect may be liable." See Exhibit 1 at ¶ 17.1.

50. CBT's design documents for the Project, upon which One Congress relied in contracting with JMA and otherwise securing the Project, contained errors and omissions in breach of the contractual professional standard of care and its contractual obligations.

51. As a direct and proximate result of CBT's errors, omissions, negligence, and breaches of the Architect Agreement, One Congress has suffered and will continue to suffer significant costs, expenses, losses, and damages in an amount to be determined at trial. One Congress is contractually entitled to indemnification for such costs, expenses, losses, and damages resulting from the willful misconduct or negligent acts, errors, or omissions of CBT or its

Subconsultants, including WSP.

COUNT IV
(Negligent Misrepresentation – One Congress v. CBT)

52. One Congress restates and realleges each of the allegations set forth in Paragraphs 1 through 51 above as if fully set forth herein.

53. CBT, as a professional architectural firm, had a duty to perform its services in accordance with a contractual and professional standard of care.

54. CBT, in the performance of its duties as a professional architectural firm, failed to exercise reasonable care and/or competence when it provided false information to One Congress, who justifiably relied on the information, causing and resulting in pecuniary loss to One Congress.

55. CBT falsely represented to One Congress, *inter alia*, that the specified mechanical and plumbing systems that CBT or its subconsultant, WSP, designed were constructible and were designed in accordance with the requisite professional standard of care.

56. CBT negligently made these representations, without reasonable or sufficient justification or support, and One Congress relied on these representations for the construction of the Project. Accordingly, the Project was priced for construction in justifiable reliance on this false information and failure to disclose by CBT.

57. The false information provided by CBT and failure to disclose by CBT resulted in additional work and design services to construct and design the Project in accordance with the standard of care, as well as additional costs to correct work due to CBT's errors.

58. CBT produced plans and specifications, reviewed, revised, and approved shop drawings and submittals, issued sketches, responded to requests for information, and provided other communications during the Project, which contained information that CBT knew or should have known to be false. CBT failed to exercise reasonable care or competence in obtaining,

analyzing, and/or communicating all of the above information.

59. As a direct and proximate result of CBT's negligent misrepresentations, One Congress suffered and will continue to suffer significant costs, expenses, losses, and damages in an amount to be determined at trial.

COUNT V
(Negligent Misrepresentation – One Congress v. WSP)

60. One Congress restates and realleges each of the allegations set forth in Paragraphs 1 through 59 above as if fully set forth herein.

61. WSP, as a firm providing professional engineering services, had a duty to perform its services in accordance with a contractual and professional standard of care.

62. WSP, in the performance of its duties as a professional engineering firm, failed to exercise reasonable care and/or competence when it provided false information to One Congress that it knew or should have known would be received and justifiably relied upon by One Congress, who so reasonably relied, causing and resulting in pecuniary loss to One Congress.

63. WSP falsely represented to One Congress, *inter alia*, that the specified mechanical and plumbing systems that WSP designed were constructible and were in accordance with the requisite professional standard of care.

64. WSP negligently made these representations, without reasonable or sufficient justification or support, and One Congress relied on these representations for the construction of the Project. Accordingly, the Project was priced for construction in justifiable reliance on this inaccurate information and WSP's failure to provide accurate information.

65. The false and inaccurate information provided by WSP and its failure to provide accurate information resulted in additional work and design services to construct and design the Project in accordance with the standard of care, as well as, additional costs to correct work due to

WSP's error.

66. WSP produced plans and specifications, reviewed, revised and approved shop drawings and submittals, issued sketches, responded to requests for information, and provided other communications during the Project, which contained information that WSP knew or should have known to be false. WSP failed to exercise reasonable care or competence in obtaining, analyzing, and/or communicating all of the above information.

67. As a direct and proximate result of WSP's negligent misrepresentations, One Congress suffered and will continue to suffer significant costs, expenses, losses, and damages in an amount to be determined at trial.

COUNT VI
(Contractual Indemnification – One Congress v. WSP)

68. One Congress restates and realleges each of the allegations set forth in Paragraphs 1 through 67 above as if fully set forth herein.

69. Under the terms of the WSP Agreement, WSP agreed to "indemnify and hold [CBT] and [CBT's] officers and employees and [One Congress] and [One Congress's] indemnitees as identified in the Prime Agreement harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of or breach of this Agreement by [WSP], its employees and its consultants and all persons for whom [WSP] may be legally responsible in the performance of professional services under this Agreement." See Exhibit 2 at ¶ 8.1.2.

70. WSP's design documents for the Project, upon which One Congress relied in contracting with JMA and otherwise securing the Project, contained errors and omissions in breach of the professional standard of care and its contractual obligations.

71. As a direct and proximate result of WSP's errors, omissions, negligence, and breaches of the WSP Agreement, One Congress has suffered and will continue to suffer significant costs, expenses, losses, and damages in an amount to be determined at trial, including, without limitation, losses resulting from claims by third parties. One Congress is entitled to indemnification for such costs, expenses, losses and damages resulting from the negligent acts and omissions of, and breach of the WSP Agreement by, WSP.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff One Congress requests that this Honorable Court:

- A. Enter judgment against CBT and in favor of One Congress on each of One Congress's claims;
- B. Enter judgment against WSP and in favor of One Congress on each of One Congress's claims;
- C. Award One Congress its damages in an amount to be determined at trial;
- D. Award interest, costs, and attorneys' fees to One Congress; and
- E. Grant such further relief as this Court deems necessary and just.

Respectfully submitted,

BC One Congress Tower Owner LLC

By its attorneys,



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Dated: February 2, 2024