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IN THE COURT OF CLAIMS OF OHIO

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COURT OF CLAIMS
OF OHIO

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| JAMES DANIEL HUGHES, et al. | ) | |
| | ) | |
| Plaintiffs, | ) | Case No.: 2012-09059 |
| | ) | |
| v | ) | Judge: Patrick M. McGrath |
| | ) | |
| THE OHIO STATE UNIVERSITY | ) | |
| | ) | |
| Defendant. | ) | |

**ANSWER OF DEFENDANT THE OHIO STATE UNIVERSITY**

Defendant The Ohio State University ("Ohio State"), for its answer to plaintiffs' Complaint:

**FIRST DEFENSE**

1. Admits paragraph 1.

2. Admits paragraph 2.

3. Admits paragraph 3.

4. Admits paragraph 4.

5. Admits paragraph 5.

6. Admits paragraph 6.

7. Admits paragraph 7.

8. Admits paragraph 8.

9. States it requested proposals related to a building to be constructed on its main campus known as the Chemical and Biomolecular Engineering and Chemistry Building (hereinafter the "CBEC Building"), and engaged in communications and activities related to the CBEC Building, including certain such activities and communications in 2009, but further

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answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 9, and therefore denies the same.

10. States it requested proposals related to the construction of the CBEC Building and engaged in communications related to the same, including, communications describing the proposed location for the CBEC Building, denies the quote as stated by plaintiff, and further answering, states Ohio State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10, and therefore denies the same.

11. States the CBEC Building is being constructed on Ohio State's main campus, which includes other buildings and areas utilized by students, faculty and staff, but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 11, and therefore denies the same.

12. States the CBEC Building is located on Ohio State's main campus, which includes other buildings and areas utilized by students, faculty and staff, but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 12, and therefore denies the same.

13. Admits the allegations contained in paragraph 13.

14. States it requested a Statement of Qualifications from perspective architects/engineers of record related to the design of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including related to architectural and design services, but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 14, and therefore denies the same.

15. States it requested a Statement of Qualifications from prospective architects/engineers of record related to the design of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including related to architectural and design services; that it also requested proposals related to the construction of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including as to construction services; but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 15, and therefore denies the same.

16. States it entered into a Construction Manager at Risk Contract with Gilbane Building Company and entered into an agreement with Stantec Architecture, Inc., aka Burt Hill, for architectural/engineer of record services, but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 16, and therefore denies the same.

17. States it requested proposals related to the construction of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including as to ingress and egress to the construction site, but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 17, and therefore denies the same.

18. States it requested proposals related to the construction of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including as to ingress and

egress to the construction site, motor vehicle traffic, pedestrian movement and safety, but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 18, and therefore denies the same.

19. Re-alleges, restates, and incorporates by reference paragraphs 1 through 18 of this Answer in response to paragraph 19.

20. States any duties owed are those provided by law, that it requested proposals related to the construction of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including as to ingress and egress from the construction site, motor vehicle traffic, bicycle traffic, pedestrian movement and safety, but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 20, and therefore denies the same.

21. States any duties owed are those provided by law, that the CBEC Building is located on Ohio State's main campus, which includes other buildings and areas utilized by students, faculty and staff, that it requested proposals related to the construction of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including as to pedestrian movement and safety, denies the quote as stated by plaintiff, and further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 21, and therefore denies the same.

22. Denies the allegations contained in paragraph 22.

23. Denies the allegations contained in paragraph 23, and, its subparts (a), (b), (c) and (d).

24. Denies the allegations contained in paragraph 24.

25. States any duties owed are those provided by law; that it requested a Statement of Qualifications from perspective architects/engineers of record related to the design of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including related to architectural and design services; that it also requested proposals related to the construction of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including as to construction services, ingress and egress to and from the construction site, and safety during the construction process; but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 25, and therefore denies the same.

26. States any duties owed are those provided by law; that it requested a Statement of Qualifications from prospective architects/engineers of record related to the design of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including related to architectural and design services; that it also requested proposals related to the construction of the CBEC Building, and, after completion of the process related to the same, entered into agreements and/or interacted with entities and/or persons related to the CBEC Building, including as to ingress and egress to and from the construction site, motor vehicle traffic, bicycle traffic, pedestrian movement and safety; but further answering, states it is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 26, and therefore denies the same.

27. Denies the allegations contained in paragraph 27, and, its subparts (a), (b), (c) and (d).

28. Denies the allegations contained in paragraph 28.

29. Re-alleges, restates, and incorporates by reference paragraphs 1 through 28 of this Answer in response to paragraph 29, and states plaintiffs have failed to include a Count Two or a Count Three in their Complaint.

30. Admits paragraph 30.

31. Denies the allegations contained in paragraph 31 and states damages for loss of consortium are not available to plaintiffs Joshua Michael Hughes, Kaitlyn Elizabeth Hughes and Krysten Marie Hughes as a matter of law.

32. Re-alleges, restates, and incorporates by reference paragraphs 1 through 31 of this Answer in response to paragraph 32.

33. Denies the allegations contained in paragraph 33 and states punitive damages are not recoverable against Ohio State as a matter of law.

34. Denies the allegations contained in paragraph 34 and states punitive damages are not recoverable against Ohio State as a matter of law.

35. Denies the allegations contained in paragraph 35 and states punitive damages are not recoverable against Ohio State as a matter of law.

36. Denies the allegations contained in paragraph 36.

37. Denies the allegations contained in paragraph 37.

38. Denies each and every remaining allegation in plaintiffs' Complaint not expressly admitted herein, including any allegation contained in any demand or prayer for relief, and further states plaintiffs' claims are not triable to a jury as a matter of law.

## SECOND DEFENSE

39. States plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

## THIRD DEFENSE

40. States the negligence, fault, or tortious conduct of James Daniel Hughes and/or other persons or parties may have caused or contributed to cause all, or a percentage, of the claimed damages, thereby barring recovery in whole or in part from Ohio State.

## FOURTH DEFENSE

41. States the damages allegedly suffered by plaintiffs may have been caused solely by the superseding, intervening acts and conduct of James Daniel Hughes, and/or others, which intervened between the alleged acts of Ohio State and plaintiffs' claimed damages, thereby barring recovery in whole or in part from Ohio State.

## FIFTH DEFENSE

42. States the risk of harm for which plaintiffs seek to recover damages may have been open and obvious or was a matter of common knowledge.

## SIXTH DEFENSE

43. States the damages, if any, plaintiffs seek to recover may have resulted from characteristics or risks recognized by the ordinary person with the ordinary knowledge common to the community.

## SEVENTH DEFENSE

44. States James Daniel Hughes may have assumed or incurred the risk of injury, thereby barring recovery in whole or in part from Ohio State.

## EIGHTH DEFENSE

45. States plaintiffs' claims are barred in whole or in part by the absence of any breach of any duty owed by Ohio State.

## NINTH DEFENSE

46. States plaintiffs' claims for damages are barred in whole or in part by the limitations provided by law as to the recovery of such damages, including but not limited to the right of apportionment.

## TENTH DEFENSE

47. States it is entitled to a set-off or credit in the amount of any verdict, settlement or compromise reached by plaintiffs with any other person for any of the alleged damages, including any insurance benefits received by plaintiffs.

## ELEVENTH DEFENSE

48. States punitive damages are not recoverable against Ohio State as a matter of law, and additionally, any award of punitive damages, even if proper, would be barred in whole or in part by the Constitutions of the United States and/or Ohio.

## TWELFTH DEFENSE

49. States plaintiffs' claims are not triable to a jury as a matter of law.

## THIRTEENTH DEFENSE

50. States any actions on its part were discretionary, and thus it is immune.

## FOURTEENTH DEFENSE

51. States plaintiffs' damages may have been caused in whole or in part by James Daniel Hughes' *per se* negligence in violating statutes and/or ordinances that impose specific, mandatory standards of care that were designed to protect persons like James Daniel Hughes and prevent injuries such as those alleged in plaintiffs' Complaint, including, but not limited to,

Columbus Code §§ 2173.08(A)(1), (2), (3), & (5) and 2173.10(a).

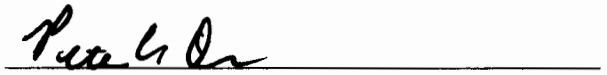
**FIFTHTEENTH DEFENSE**

52. States siblings are not entitled to recover damages for claimed loss of consortium as a matter of law.

WHEREFORE, having fully answered plaintiffs' Complaint, defendant The Ohio State University prays that the same be dismissed with prejudice and that the Court grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

MICHAEL DeWINE
Attorney General of Ohio



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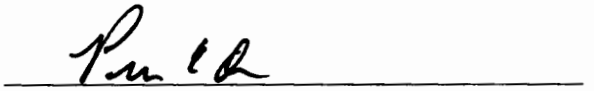
Attorneys for Defendant
The Ohio State University

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer of Defendant The Ohio State University was served this 30th day of January, 2013 by regular U.S. Mail on:

Stephen S. Crandall, Esq.
Marc G. Pera
Crandall Law, LLC
539 Washington Ave.
Chagrin Falls, Ohio 44022

*Attorney for Plaintiffs*



One of the Attorneys for Defendant The Ohio State University

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