

**COPY**

**RECEIVED**  
JAN 10 2014  
COURT OF CLAIMS, CLERK

IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING CO., INC.	:	
	:	Case No. 2013-00349
Plaintiff,	:	
v.	:	
	:	
OHIO SCHOOL FACILITIES	:	Referee Samuel Wampler
COMMISSION	:	
	:	
Defendant.	:	

**NON-WAIVER OF PRIVILEGE, OR CLAWBACK AGREEMENT**

Plaintiff TransAmerica and Defendant Ohio School Facilities Commission, (each a “Party”, and Plaintiffs and Defendants collectively the “Parties”), agree and stipulate as follows.

The Parties shall each make reasonable efforts to withhold documents and any electronically stored information (“ESI”) that they believe to be privileged. However, given the volume of documents that are likely to be produced in this case, the Parties believe there is a risk of inadvertent disclosure of certain privileged documents and ESI.

Accordingly, pursuant to Civ.R. 26(B)(6), which is analogous to Fed. R. Civ. P. 26(b)(5)(B), the Parties agree to this non-waiver, or “clawback” agreement. The parties hereby adopt by reference the definitions of “attorney-client privilege” and “work-product protection” set forth in Fed. R. Evid. 502.

A producing Party who does not intend to waive the privilege associated with a document or ESI and yet inadvertently produces such document or information, may, after discovering inadvertent production, notify the receiving Party that such production was inadvertent and should have been withheld because of privilege, and amend its discovery response to provide for

**ON COMPUTER**

the return of said document. The receiving Party must then promptly return the document in question and any copies, both paper and electronic, to the producing Party. Both Parties hereby acknowledge that the receiving Party does not waive any right it has, or may have, to challenge the producing Party's assertion of privilege and to request discovery of said document pursuant to an order of the Court.

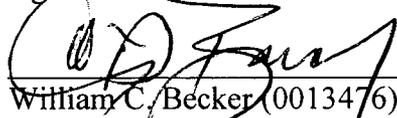
A Party who receives a document or ESI that it knows or should know is a privileged document or contains privileged content must promptly contact the producing Party and advise the producing Party of the document or content, and then promptly return the document upon request of the producing Party. Both Parties hereby acknowledge that the receiving Party does not waive any right it has, or may have, to challenge the producing Party's assertion of privilege and to request discovery of said document pursuant to an order of the Court.

IT IS SO ORDERED.

---

REFERREE SAMUEL WAMPLER

Agreed to:



William C. Becker (0013476)

Jerry K. Kasai (0067795)

Craig D. Barclay (0023041)

Assistant Attorneys General

Court of Claims Defense

150 E. Gay Street, 18th Floor

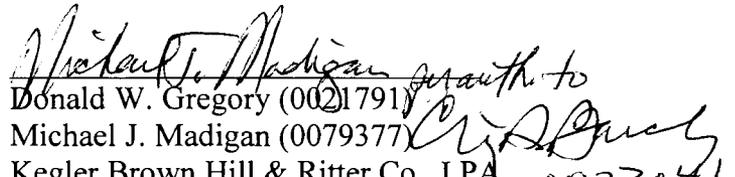
Columbus, Ohio 43215

Ph.: (614) 466-7447 / Fax: (614) 644-9185

[william.becker@ohioattorneygeneral.gov](mailto:william.becker@ohioattorneygeneral.gov)

[jerry.kasai@ohioattorneygeneral.gov](mailto:jerry.kasai@ohioattorneygeneral.gov)

[craig.barclay@ohioattorneygeneral.gov](mailto:craig.barclay@ohioattorneygeneral.gov)



Michael J. Madigan *per* to  
Donald W. Gregory (0021791)  
Michael J. Madigan (0079377)  
Kegler Brown Hill & Ritter Co., LPA 0023041  
65 East State St.  
Suite 1800  
Columbus, Ohio 43215  
Ph.: (614) 462-5400  
[dgregory@keglerbrown.com](mailto:dgregory@keglerbrown.com)  
[mmadigan@keglerbrown.com](mailto:mmadigan@keglerbrown.com)



# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Court of Claims Defense Section  
Office 614-466-7447  
Fax 614-644-9185

150 East Gay Street, Floor 18  
Columbus, Ohio 43215  
www.OhioAttorneyGeneral.gov

January 10, 2014

Court of Claims  
Clerk of Courts  
65 S. Front Street, 3rd Floor  
Columbus, OH 43215

2014 JAN 10 PM 4: 06

FILED  
COURT OF CLAIMS  
OF OHIO

*Re: Transamerica Building Co., Inc. v. Ohio School Facilities Commission  
Court of Claims Case No. 2013-00349*

Dear Clerk:

Enclosed please find an original and two a copies of a Clawback Agreement to be filed in the above referenced case. It has been executed by Plaintiff and Defendant, and requires signature of Magistrate Samuel Wampler.

Sincerely,

MICHAEL DEWINE  
Ohio Attorney General

*William C. Becker/mw*

WILLIAM C. BECKER  
Principal Assistant Attorney General  
(614) 466-7447

WCB/mw

Enclosure

cc: Mike Madigan  
Kegler Brown Hill & Ritter Co.  
65 East State Street, Suite 1800  
Columbus, Ohio 43215