

MARYELLEN O'SHAUGHNESSY

FRANKLIN COUNTY CLERK OF COURTS
GENERAL DIVISION, COURT OF COMMON PLEAS

CASE TITLE: OHIO STATE DEPARTMENT TRANSPORTATION ET AL - CASE NUMBER: 14CV001354
VS- EJ WARD INC A NEVADA CORP

TO THE CLERK OF COURTS, YOU ARE INSTRUCTED TO MAKE:
CERTIFIED MAIL

DOCUMENTS TO BE SERVED:
COMPLAINT

PROPOSED DOCUMENTS TO BE SERVED:

UPON:
EJ WARD INC A NEVADA CORP
C/O NV REGISTERED AGENTS
REGISTERED AGENT
4600 KIETZKE LN STE N254
RENO, NV 89502-5000

<p>JUVENILE CITATIONS ONLY:</p> <p>HEARING TYPE:</p> <p>__ Date already scheduled at : Courtroom:</p>

Electronically Requested by: JUTTA E MARTIN
Attorney for:

E2039 - Y20

FROM

MARYELLEN O'SHAUGHNESSY
FRANKLIN COUNTY CLERK OF COURTS
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215-4579

CERTIFIED
MAIL
RECEIPT

02/10/14

2014 FEB 11 PM 2:06
CLERK OF COURTS

GOVERNMENT COURT
FRANKLIN COUNTY, OHIO

EJ WARD INC A NEVADA
C/O NV REGISTERED AGE
REGISTERED AGENT
4600 KIETZKE LN STE N
RENO, NV

89502-5000

14CV-02-1354 H

OHIO STATE DEPARTMENT
VS
EJ WARD INC A NEVADA

SERVICE ITEM: 01
ORIGINAL SUMMONS

CERTIFIED
NUMBER

9171 9009 0300 1009 0302 28

CIV354

MARYELLEN O'SHAUGHNESSY
CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215
CIVIL DIVISION

OHIO STATE DEPARTMENT TRANSPORTATION
DIRECTOR JERRY WRAY
1980 WEST BROAD STREET
COLUMBUS, OH 43223-0000,

PLAINTIFF,

VS.

EJ WARD INC A NEVADA CORP
C/O NV REGISTERED AGENTS
REGISTERED AGENT
4600 KIETZKE LN STE N254
RENO, NV 89502-5000,

DEFENDANT.

14CV-02-1354

CASE NUMBER

CLERK OF COURTS
2014 FEB 12 PM 8:57

**** SUMMONS ****

02/10/14

TO THE FOLLOWING NAMED DEFENDANT:

EJ WARD INC A NEVADA CORP
C/O NV REGISTERED AGENTS
REGISTERED AGENT
4600 KIETZKE LN STE N254
RENO, NV 89502-5000

YOU HAVE BEEN NAMED DEFENDANT IN A COMPLAINT FILED IN FRANKLIN COUNTY
COURT OF COMMON PLEAS, FRANKLIN COUNTY HALL OF JUSTICE, COLUMBUS, OHIO,
BY: OHIO STATE DEPARTMENT TRANSPORTATION
DIRECTOR JERRY WRAY
1980 WEST BROAD STREET
COLUMBUS, OH 43223-0000,

PLAINTIFF(S).

A COPY OF THE COMPLAINT IS ATTACHED HERETO. THE NAME AND ADDRESS OF
THE PLAINTIFF'S ATTORNEY IS:

MARC A. SIGAL
ASST ATTORNEY GENERAL
150 EAST GAY STREET
17TH FLOOR
COLUMBUS, OH 43215-6001

YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE UPON THE PLAINTIFF'S
ATTORNEY, OR UPON THE PLAINTIFF, IF HE HAS NO ATTORNEY OF RECORD, A COPY
OF AN ANSWER TO THE COMPLAINT WITHIN TWENTY-EIGHT DAYS AFTER THE SERVICE
OF THIS SUMMONS ON YOU, EXCLUSIVE OF THE DAY OF SERVICE. YOUR ANSWER
MUST BE FILED WITH THE COURT WITHIN THREE DAYS AFTER THE SERVICE OF A
COPY OF THE ANSWER ON THE PLAINTIFF'S ATTORNEY.

IF YOU FAIL TO APPEAR AND DEFEND, JUDGMENT BY DEFAULT WILL BE RENDERED
AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

MARYELLEN O'SHAUGHNESSY
CLERK OF THE COMMON PLEAS
FRANKLIN COUNTY, OHIO

BY: JOYCE A. BRAUNMAN, DEPUTY CLERK



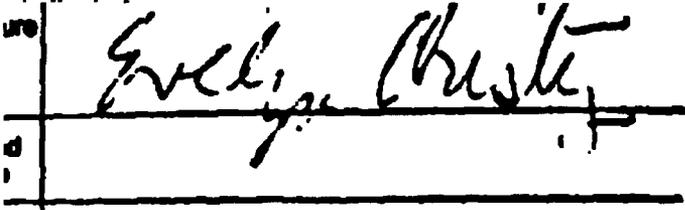
FILED
FRANKLIN PLEAS COURT
FRANKLIN CO. OHIO

2014 FEB 26 AM 8:26
CLERK OF COURTS

Date Produced: 02/24/2014

FRANKLIN COUNTY CLERK OF COURTS:

The following is the delivery information for Certified Mail™ item number 7190 0903 0010 0903 0228. Our records indicate that this item was delivered on 02/18/2014 at 02:25 p.m. in RENO, NV 89502. The scanned image of the recipient information is provided below.

Signature of Recipient : 

Address of Recipient : 

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 4282070 1138545714CV001354OHIO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Stipulation of Consent to Move or Plead was served via electronic mail and U.S. First Class mail upon the following counsel this 17th day of March, 2014:

Jutta E. Martin, Esq.
Marc A. Sigal, Esq.
Ohio Assistant Attorneys General
Transportation Section
150 E. Gay Street, 22nd Floor
Columbus, Ohio 43215

*Attorney for Plaintiff Ohio Department of
Transportation*

/s/ Hansel H. Rhee

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

OHIO DEPARTMENT OF	:	
TRANSPORTATION,	:	
	:	
Plaintiff,	:	
	:	Case No. 14CV-02-1354
v.	:	
	:	Judge David Fais
E.J. WARD, INC.,	:	
	:	
Defendant.	:	

ANSWER AND COUNTERCLAIM OF DEFENDANT E.J. WARD, INC.

For its Answer to the Complaint of the Ohio Department of Transportation (“ODOT”), Defendant E.J. Ward, Inc. (“E.J. Ward”) states as follows:

1. In response to Paragraph 1, E.J. Ward states that the documents attached to the Complaint speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the documents. E.J. Ward denies all remaining allegations in Paragraph 1.
2. E.J. Ward denies the allegations of Paragraph 2.
3. In response to Paragraph 3, E.J. Ward admits that ODOT paid E.J. Ward \$2,130,243.84 of the \$6,048,809.00 contract price in connection with E.J. Ward’s work on the system. E.J. Ward denies all remaining allegations of Paragraph 3.
4. E.J. Ward denies the allegations of Paragraph 4.

THE PARTIES

5. Upon information and belief, E.J. Ward admits the allegations of Paragraph 5.
6. E.J. Ward admits the allegations of Paragraph 6.

JURISDICTION AND VENUE

7. The Complaint does not contain any paragraphs numbered 7 through 9.

8. E.J. Ward admits the allegations of Paragraph 10 as it relates to the Complaint.

9. In response to Paragraph 11, E.J. Ward states that Exhibit B speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit B. E.J. Ward admits the remaining allegations of Paragraph 11.

10. E.J. Ward admits the allegations of Paragraph 12 as it relates to the Complaint.

COUNT I. BREACH OF CONTRACT

11. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

12. In response to Paragraph 14, E.J. Ward states that Exhibit A speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit A. Answering further, E.J. Ward is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding ODOT's intent, and therefore denies same. E.J. Ward denies all remaining allegations of Paragraph 14.

13. In response to Paragraph 15, E.J. Ward states that Exhibit C speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit C. E.J. Ward admits the remaining allegations of Paragraph 15.

14. In response to Paragraph 16, E.J. Ward states that Exhibit A speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit A. E.J. Ward admits the remaining allegations of Paragraph 16.

15. In response to Paragraph 17, E.J. Ward states that Exhibits D and E speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the Exhibits. E.J. Ward admits the remaining allegations of Paragraph 17.

16. In response to Paragraph 18, E.J. Ward admits that the installation of the system started sometime in the fall of 2012. E.J. Ward denies the remaining allegations of Paragraph 18.

17. E.J. Ward denies the allegations of Paragraph 19.

18. In response to Paragraph 20, E.J. Ward admits that ODOT improperly terminated the contract with E.J. Ward. E.J. Ward denies the remaining allegations of Paragraph 20.

19. E.J. Ward denies the allegations of Paragraph 21.

20. E.J. Ward denies the allegations of Paragraph 22.

21. E.J. Ward denies the allegations of Paragraph 23.

COUNT II. BREACH OF EXPRESS WARRANTY

22. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

23. In response to Paragraph 25, E.J. Ward states that the terms of the applicable contracts and RFP speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the contract and/or RFP. E.J. Ward denies all remaining allegations of Paragraph 25.

24. In response to Paragraph 26, E.J. Ward states that the terms of the applicable contract speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the contract or any of its terms.

25. E.J. Ward denies the allegations of Paragraph 27.

26. E.J. Ward denies the allegations of Paragraph 28.

27. E.J. Ward denies the allegations of Paragraph 29.

28. E.J. Ward denies the allegations of Paragraph 30.

COUNT III. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

29. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

30. Paragraph 32 contains legal conclusions and therefore no responsive pleading is required. To the extent such is required, E.J. Ward denies same and leaves ODOT to its proof.

31. E.J. Ward denies the allegations of Paragraph 33.

32. E.J. Ward denies the allegations of Paragraph 34.

33. E.J. Ward denies the allegations of Paragraph 35.

34. E.J. Ward denies the allegations of Paragraph 36.

COUNT IV. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

35. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

36. E.J. Ward denies the allegations of Paragraph 38.

37. E.J. Ward denies the allegations of Paragraph 39.

38. E.J. Ward denies the allegations of Paragraph 40.

39. E.J. Ward denies the allegations of Paragraph 41.

COUNT V. UNJUST ENRICHMENT

40. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

41. E.J. Ward denies the allegations of Paragraph 43.

42. E.J. Ward denies the allegations of Paragraph 44.

43. E.J. Ward denies the allegations of Paragraph 45.

44. E.J. Ward denies the allegations of Paragraph 46.

PRAYER FOR RELIEF

45. In response to the un-numbered “WHEREFORE” Paragraph and its subsections, E.J. Ward denies same.

46. E.J. Ward denies each and every allegation contained in ODOT’s Complaint not specifically admitted herein as true.

AFFIRMATIVE AND OTHER DEFENSES

FIRST AFFIRMATIVE DEFENSE

47. The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

48. The Complaint is barred, in whole or in part, by the doctrines of estoppel, waiver, and laches.

THIRD AFFIRMATIVE DEFENSE

49. The Complaint is barred by the applicable statutes of limitation.

FOURTH AFFIRMATIVE DEFENSE

50. The Complaint is barred, in whole or in part, by ODOT’s failure to mitigate damages.

FIFTH AFFIRMATIVE DEFENSE

51. The Complaint is barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

52. The Complaint is barred, in whole in in part, by ODOT’s breach of the contract.

SEVENTH AFFIRMATIVE DEFENSE

53. ODOT’s damages, if any, are subject to the doctrine of set-off due to ODOT’s improper termination of the applicable contract(s).

EIGHTH AFFIRMATIVE DEFENSE

54. The Complaint is barred, in whole or in part, because allowing ODOT to recover damages would unjustly enrich ODOT by permitting it to knowingly and unjustly retain a benefit that E.J. Ward conferred on ODOT through performance of the gap analysis and fuel management system design, installation, and delivery.

NINTH AFFIRMATIVE DEFENSE

55. The Complaint is barred, in whole or in part, by warranty limitations and/or disclaimers.

TENTH AFFIRMATIVE DEFENSE

56. The Complaint is barred, in whole or in part, by ODOT's own conduct and/or inaction.

ELEVENTH AFFIRMATIVE DEFENSE

57. ODOT's claims are barred, in whole or in part, by ODOT's failure to exhaust all contractual remedies.

TWELFTH AFFIRMATIVE DEFENSE

58. ODOT's claims are barred, in whole or in part, by ODOT's failure to exhaust all administrative remedies.

THIRTEENTH AFFIRMATIVE DEFENSE

59. ODOT's claims are barred, in whole or in part, for failure to satisfy conditions precedent.

FOURTEENTH AFFIRMATIVE DEFENSE

60. E.J. Ward reserves and asserts all affirmative defenses available under any applicable federal or state law, including the Ohio Rules of Civil Procedure.

FIFTEENTH AFFIRMATIVE DEFENSE

61. E.J. Ward reserves the right to supplement and amend its Answer and affirmative defenses with additional defenses that become available or apparent during the course of investigation, preparation, or discovery.

WHEREFORE, E.J. Ward demands that ODOT's Complaint be dismissed with prejudice and that E.J. Ward recover all of its attorneys' fees, expenses, and costs, and for such other relief as the Court may deem just and proper.

COUNTERCLAIM

For its Counterclaim against Plaintiff The Ohio Department of Transportation ("ODOT"), Defendant E.J. Ward, Inc. ("E.J. Ward") states as follows:

62. ODOT is a Department of the State of Ohio as defined by R.C. 121.02(D), with its headquarters located in Franklin County at 1980 West Broad Street, Columbus, Ohio.

63. E.J. Ward is a Nevada Corporation that has been in business since 1974.

64. E.J. Ward specializes in automated fuel management and vehicle telematics products for vehicle fleets throughout the United States.

65. At no time during E.J. Ward's forty-year history has it ever been terminated for default on any of its projects.

66. On or about June 25, 2012, ODOT issued Request for Proposal #509-12 for Automated Fuel Management System (the "RFP") in order to obtain proposals for the implementation of an automated fuel management system for ODOT's vehicle fleet and fueling stations. [A copy of the RFP was attached to ODOT's Complaint as Exhibit B.]

67. The purpose of this fuel management system was to increase the efficiency and effectiveness of ODOT's business functions related to:

- ODOT's vehicle fleet lifecycle and performance management;
- Monitoring and management of ODOT's vehicle fleets' fuel consumption;
- Audit/compliance monitoring; and
- Inventory tracking.

68. This fuel management system included the installation of various electronic hardware and software at ODOT's approximately 147 fueling locations throughout the State of Ohio.

69. Section 5.4.4 of the RFP required any submitted bid proposal to contain a work plan. The work plan was required to include a gap analysis.

70. The gap analysis consisted of a detailed site assessment conducted by the contractor for all of ODOT's approximate 147 fueling stations in order to determine the extent of civil work required to install the necessary hardware and software for the fuel management system. These civil work items include, but are not limited to: ensuring the availability of power sources; installing proper conduit and electrical wiring to support hardware and software; and excavation and re-paving of concrete/asphalt to bury electrical cables and/or wiring.

71. Section 12 of the RFP provided the Project Tasks to be addressed by the proposals, which specified that the gap analysis must be completed within 30 days of the contract award. Pursuant to the terms of the RFP, the cost for the gap analysis was set at 10% of the bidder's final contract price.

72. Because ODOT was unaware of the amount of work needed to support a fuel management system at each of the approximate 147 fueling sites, ODOT reserved the right to

cancel the RFP if the gap analysis findings indicated a scope of work that exceeded ODOT's budget for this project.

73. Due to the independent value of a detailed assessment showing the work necessary to support a fuel management system, ODOT agreed to pay the successful contractor for the gap analysis, regardless of whether the RFP was canceled or not.

74. E.J. Ward submitted a bid in response to the RFP on or about July 20, 2012.

75. On August 10, 2012, E.J. Ward submitted its Best and Final Offer to the RFP in the total amount of \$7,563,160.00. Per the terms of the RFP, 10% of that total bid, or \$756,316.00, was for completion of the gap analysis. ODOT accepted E.J. Ward's Best and Final Offer.

76. On August 27, 2012, E.J. Ward entered into a written agreement with ODOT to design, install, and deliver the Automated Fuel Management System at numerous ODOT fueling stations throughout Ohio (the "Contract"). [A copy of the applicable Contract was attached to ODOT's Complaint as Exhibit A.]

77. Immediately thereafter, E.J. Ward commenced with the gap analysis to ensure completion of same within the 30-day requirement imposed by ODOT.

78. On September 28, 2012, after E.J. Ward completed its gap analysis and provided same to ODOT, E.J. Ward calculated the final Contract price to be \$6,666,754.00.

79. E.J. Ward began the design, installation, and delivery of the Automated Fuel Management System in October 2012 pursuant to the terms of the Contract.

80. E.J. Ward entered into contracts with three different subcontractors in order to complete the work identified in the gap analysis that was needed to support the Automated Fuel Management System.

81. E.J. Ward's subcontractors performed the work necessary to support the Automated Fuel Management System at over 60 of ODOT's fueling stations.

82. E.J. Ward paid its subcontractors in full for all of this completed work.

83. During the next few months, E.J. Ward completed installation of the Automated Fuel Management System at over 45 of ODOT's fueling sites.

84. Of these 45 completed sites, ODOT inspected and accepted E.J. Ward's installation at approximately 9 of those fueling sites.

85. During the course of this project, E.J. Ward submitted invoices to ODOT based on the milestone schedule contained in the original RFP, as directed by ODOT.

86. The milestone schedule, however, was comprised of only four project tasks: (1) "Project Plan & System Design"; (2) "System Testing"; (3) "Statewide Implementation"; and (4) "Completion of Warranty."

87. Because of the broad and general nature of these project tasks, preparing invoices that accurately reflected the exact services performed, or the percentage complete of each of these project tasks, was very difficult.

88. As a result, E.J. Ward and ODOT had extensive discussions related to each submitted invoice to ensure that both parties understood and agreed to the amount of work that had been completed and accepted by ODOT.

89. Based on this collaborative process, E.J. Ward was paid a total of \$2,130,244.27 on three separate invoices that were reviewed and approved by ODOT.

90. In or around March 2013, ODOT changed and/or re-assigned its project management team for this RFP.

91. Shortly thereafter, ODOT's new project management team requested that E.J. Ward amend its billing model due to the difficulty ODOT's Team had in determining what specific work items were included in E.J. Ward's invoices. However, ODOT's previous project management team had conducted an extensive review of each of E.J. Ward's invoices to confirm what work had been completed.

92. In an effort to appease ODOT's new project management team, in March 2013 E.J. Ward and ODOT entered into an amendment to their agreement that incorporated a new billing model. The new billing model amendment memorialized that as of the date of the amendment, ODOT had paid E.J. Ward \$2,130,244.27 of the Contract price. The billing model also provided that the payment of \$756,316 previously made by ODOT for the completed gap analysis would be divided by 8 and applied to the next eight future invoices.

93. Neither the Contract amendment nor the billing model made any mention of alleged contractual deficiencies or defective work on the part of E.J. Ward.

94. E.J. Ward continued installing the Automated Fuel Management System at various fueling stations.

95. On April 10, 2013, less than a month after the Contract amendment and billing model change, ODOT sent E.J. Ward a Declaration of Default and Termination of Contract (the "Termination Letter"). [A copy of the Termination Letter was attached to ODOT's Complaint as Exhibit F.]

96. The Termination Letter purported to terminate the Contract pursuant to Paragraph 28 of the Contract for "non-compliance with the contract deliverable or terms."

97. Although the Termination Letter provided a “non-exhaustive list of factors” that ODOT considered when making the determination to terminate the Contract, ODOT provided no chance for E.J. Ward to cure or address any of the purported deficiencies.

98. ODOT has halted all work on the Contract, denied any additional payments to E.J. Ward for work already performed and work due, and refused E.J. Ward access to any fueling station so that E.J. Ward is prevented from carrying out its duties and obligations under the Contract.

COUNT I: DECLARATORY JUDGMENT

99. E.J. Ward incorporates the preceding paragraphs of this Counterclaim as if fully rewritten herein.

100. The Contract was a valid and binding contract at all relevant times of the Counterclaim.

101. E.J. Ward performed all of its duties and obligations under the Contract.

102. Through its April 10, 2013 Termination Letter, ODOT attempted to terminate the Contract, even though E.J. Ward had complied with all contract deliverables and terms and none of the bases for termination required by the Contract exist.

103. ODOT has breached the terms of the Contract by improperly terminating the Contract and by failing to fully compensate E.J. Ward.

104. A real, genuine, and justiciable controversy exists between E.J. Ward and ODOT involving a legal right or interest, and speedy relief is necessary to preserve the parties’ rights.

105. E.J. Ward is entitled to a declaratory judgment finding that ODOT improperly terminated the Contract and owes E.J. Ward its attorneys’ fees and costs incurred to seek this relief.

COUNT II: BREACH OF CONTRACT FOR IMPROPER TERMINATION

106. On or about August 27, 2012, E.J. Ward and ODOT entered in the Contract.

107. Pursuant to the terms of the Contract, E.J. Ward agreed to provide the design, installation, and delivery of the fuel management system for ODOT's vehicle fleet fueling stations. As part of the design of the system, E.J. Ward was required to, and did, perform a gap analysis of ODOT's fueling station.

108. E.J. Ward performed all of its duties and obligations under the Contract.

109. Through its April 10, 2013 Termination Letter, ODOT attempted to terminate the Contract, even though E.J. Ward had complied with all contract deliverables and terms and none of the bases for termination required by the Contract exist.

110. ODOT has materially breached its Contract with E.J. Ward by attempting to improperly terminate E.J. Ward when there were no valid grounds for termination.

111. As a direct and proximate result of the foregoing, E.J. Ward has suffered actual damages, including lost profits, overhead, damage to reputation, and all such other amounts to be proven at trial.

COUNT III: BREACH OF CONTRACT

112. E.J. Ward incorporates the preceding paragraphs of this Counterclaim as if fully rewritten herein.

113. E.J. Ward completed its duties and obligations pursuant to the Contract.

114. Pursuant to the amended Contract and revised billing model, E.J. Ward submitted an invoice to ODOT in the amount of \$169,818.43.

115. ODOT, however, has breached the Contract by refusing to pay the invoice.

116. Additionally, ODOT has breached the terms of the Contract by improperly terminating the Contract.

117. As a direct and proximate result of the foregoing, E.J. Ward has suffered actual damages in an amount to be proven at trial.

COUNT IV: UNJUST ENRICHMENT

118. E.J. Ward incorporates the preceding paragraphs of this Counterclaim as if fully rewritten herein.

119. E.J. Ward performed design, installation, and delivery of fuel management systems for ODOT's vehicle fleet fueling stations.

120. E.J. Ward conferred a benefit upon ODOT by performing the design, installation, and delivery of fuel management systems for various fueling stations, and ODOT knowingly accepted that benefit.

121. ODOT knew or should have known that E.J. Ward expected payment equal to the fuel management system work performed by E.J. Ward.

122. The retention of the benefit under these circumstances would be unjust.

123. As a direct and proximate result of the unjust enrichment by ODOT, E.J. Ward has been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, E.J. Ward requests that judgment be entered in its favor against ODO, and that E.J. Ward be granted the following relief:

A. As to Count I: a declaratory judgment in favor of E.J. Ward that ODOT improperly terminated the Contract;

B. As to Counts II through IV: a judgment for compensatory damages in an amount to be proven at trial, prejudgment and post judgment interest, attorneys' fees, costs, and expenses; and

C. Such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Hansel H. Rhee

Hansel H. Rhee (0076093)

John P. Gilligan (0024542)

Nicole R. Woods (0084865)

Ice Miller LLP

250 West Street, Suite 700

Columbus, OH 43215

Phone: 614.462.2700

Fax: 614.462.5135

Hansel.Rhee@icemiller.com

John.Gilligan@icemiller.com

Nicole.Woods@icemiller.com

Attorneys for Defendant E.J. Ward, Inc.

JURY DEMAND

Defendant/Counterclaim-Plaintiff, E.J. Ward, Inc., demands a trial by jury on all issues so triable.

/s/ Hansel H. Rhee
Hansel H. Rhee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ANSWER AND COUNTERCLAIM was served upon all parties of record via the Court's electronic filing system this 15th day of April, 2014.

/s/ Hansel H. Rhee
Hansel H. Rhee

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

OHIO DEPARTMENT OF	:	
TRANSPORTATION,	:	
	:	
Plaintiff/Counterclaim Defendant,	:	Case No. 14CV-02-1354
	:	
v.	:	Judge David Fais
	:	
E.J. WARD, INC.,	:	
	:	
Defendant/Counterclaim Plaintiff.	:	

**DEFENDANT/COUNTERCLAIM-PLAINTIFF E.J. WARD, INC.'S
NOTICE OF FILING PETITION FOR REMOVAL**

Defendant/Counterclaim-Plaintiff E.J. Ward, Inc. ("E.J. Ward"), by and through its counsel, hereby provides notice to this Court and to Plaintiff/Counterclaim-Defendant Ohio Department of Transportation ("ODOT") of the filing of E.J. Ward's Petition for Removal with the Court of Claims of Ohio. The Petition for Removal is based upon the Counterclaim against ODOT for damages in this action. A copy of the Petition for Removal is attached.

Respectfully submitted,

/s/ Nicole R. Woods
Hansel H. Rhee (0076093)
John P. Gilligan (0024542)
Nicole R. Woods (0084865)
Ice Miller LLP
250 West Street, Suite 700
Columbus, OH 43215
Phone: 614.462.2700
Fax: 614.462.5135
Hansel.Rhee@icemiller.com
John.Gilligan@icemiller.com
Nicole.Woods@icemiller.com

Attorneys for Defendant/Counterclaim Plaintiff E.J. Ward, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF FILING PETITION FOR REMOVAL was served upon all parties of record via the Court's electronic filing system this 23rd day of April, 2014.

/s/ Nicole R. Woods
Nicole R. Woods

FILED
COURT OF CLAIMS
OF OHIO

2014 APR 22 PM 3: 50

**IN THE STATE OF OHIO
COURT OF CLAIMS**

OHIO DEPARTMENT OF
TRANSPORTATION,

Plaintiff/Counterclaim-Defendant,

v.

E.J. WARD, INC.,

Defendant/Counterclaim-Plaintiff.

2014-00405

Case No. _____

PETITION FOR REMOVAL

Pursuant to R.C. 2743.03(E) and Court of Claims Rule 4, Defendant/Counterclaim-Plaintiff E.J. Ward, Inc. ("E.J. Ward") hereby files this Petition for Removal, and states as follows:

JURISDICTION

1. On February 10, 2014, Plaintiff Ohio Department of Transportation ("ODOT") filed its Complaint against E.J. Ward in the Court of Common Pleas, Franklin County, captioned Ohio Department of Transportation v. EJ Ward, Inc., Case No. 14CV-02-1354, Judge D. Fais, presiding. On April 15, 2014, E.J. Ward filed a Counterclaim against ODOT seeking monetary damages. As such, E.J. Ward has timely filed this Petition for Removal under R.C. 2743.03(E) and Court of Claims Rule 4.

BASIS FOR REMOVAL

2. In its Counterclaim, E.J. Ward seeks damages from ODOT stemming from E.J. Ward's claims for Improper Termination, Breach of Contract, and Unjust Enrichment. Removal is proper pursuant to R.C. 2743.03(E) in that this Court has exclusive jurisdiction over the above-

captioned action on the basis that, under R.C. 121.02(D), ODOT is a Department of the State of Ohio.

3. Removal is proper pursuant to Court of Claims Rule 4. Rule 4 provides that “a party who serves a counterclaim against the state * * * in a court other than the court of claims shall file a petition for removal in the court of claims.”

4. Copies of all process, pleadings, and other papers served upon the parties in the Common Pleas Court proceedings are attached. See Exhibit 1 for a list of submitted documents.

5. Pursuant to Rule 4(C), a copy of this Petition for Removal will be filed with the Court of Common Pleas of Franklin County, Ohio within seven days after the filing of this Petition for Removal with this Court. This Petition for Removal is filed and served upon all parties and the Attorney General of Ohio.

Respectfully submitted,



Hansel H. Rhee (0076093)
John P. Gilligan (0024542)
Nicole R. Woods (0084865)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of April, 2014, a copy of the foregoing *Petition of Removal* was served via regular U.S. mail, postage prepaid, upon the following:

Jutta E. Martin
Marc. A. Sigal
Assistant Attorneys General
Transportation Section
150 E. Gay Street, 22nd Floor
Columbus, Ohio 43215

Office of Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215



Nicole R. Woods

EXHIBIT 1

LIST OF DOCUMENTS SUBMITTED WITH PETITION FOR REMOVAL

1. Summons (02/10/14)
2. Complaint (02/10/14)
3. Stipulation of Consent to Move, Respond, Answer, or Otherwise Plead (03/17/14)
4. Answer and Counterclaim of EJ Ward (04/15/14)

MARYELLEN O'SHAUGHNESSY

FRANKLIN COUNTY CLERK OF COURTS
GENERAL DIVISION, COURT OF COMMON PLEAS

CASE TITLE: OHIO STATE DEPARTMENT TRANSPORTATION ET AL - CASE NUMBER: 14CV001354
VS- EJ WARD INC A NEVADA CORP

TO THE CLERK OF COURTS, YOU ARE INSTRUCTED TO MAKE:
CERTIFIED MAIL

DOCUMENTS TO BE SERVED:
NOTICE OF FILING Petition for Removal

PROPOSED DOCUMENTS TO BE SERVED:

UPON:
OHIO STATE COURT CLAIMS
SUPREME COURT BUILDING
3RD FLOOR
65 S FRONT ST
COLUMBUS, OH 43215

JUVENILE CITATIONS ONLY:

HEARING TYPE:

__ Date already scheduled at : Courtroom:

Electronically Requested by:
Attorney for: