

**ORIGINAL**

IN THE COURT OF CLAIMS OF OHIO

FILED  
COURT OF OHIO  
2014 JUN 12 PM 2:18

GRAND VALLEY LOCAL SCHOOL )  
DISTRICT BOARD OF EDUCATION, )  
ET AL. )

Plaintiffs )

v. )

BUEHRER GROUP ARCHITECTURAL )  
ENGINEERING, INC., ET AL. )

Defendants )

And )

JACK GIBSON CONSTRUCTION )  
COMPANY )

Defendant/Third Party Plaintiff )

v. )

BOAK & SONS, INC., et al. )

Third Party Defendants )

CASE NO.: 2004-00469-PR

JUDGE PATRICK M. McGRATH

**ANSWER OF THIRD PARTY**  
**DEFENDANT BOAK & SONS, INC.**  
**TO THE THIRD PARTY COMPLAINT**

[JURY DEMAND]

Now comes Third Party Defendant Boak & Sons, Inc. ("Boak") and states as its Answer to the Third Party Complaint of Jack Gibson Construction Company ("Gibson"):

1. Boak denies for lack of knowledge the truth of the allegations of Paragraphs 1, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 20, 23, 26, and 29 of the Third Party Complaint.
2. Boak admits the allegations of Paragraphs 2 and 8 of the Third Party Complaint.

**ON COMPUTER**

3. Boak denies the allegations of Paragraphs 18, 19, 22, 25, 27, 28, 31, and 32 of the Third Party Complaint.

4. In response to Paragraphs 12, 17, 21, 24, and 30 of the Third Party Complaint, Boak states that the written terms of the subcontract set forth the rights and obligations of the parties to the subcontract. Further answering, Boak states that any obligation on the part of Boak to hold harmless, insure, or indemnify Gibson is limited by the laws of Ohio including, but not limited to, ORC §2305.31.

**FIRST DEFENSE**

5. The Third Party Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

6. The Third Party complaint fails to join necessary parties pursuant to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure.

**THIRD DEFENSE**

7. Gibson and the Plaintiffs were comparatively at fault.

**FOURTH DEFENSE**

8. Gibson and the Plaintiffs failed to mitigate their damages.

**FIFTH DEFENSE**

9. Third Party Plaintiff's damages, if any, are the result of acts or omissions of others over whom this answering defendant has no control or right of control.

**SIXTH DEFENSE**

10. The Third Party Complaint seeks unrecoverable betterment of the property, the

result of which would constitute unjust enrichment.

**SEVENTH DEFENSE**

11. The claims in the Third Party Complaint are barred by the Ohio Economic Loss Rule.

**EIGHTH DEFENSE**

12. The Third Party Complaint fails to comport with the statute of limitations applicable to the claims set forth therein.

**NINTH DEFENSE**

13. The claims set forth in the Third Party Complaint are barred by the statute of repose.

**TENTH DEFENSE**

14. Boak reserves the right to assert additional defenses as appropriate.

WHEREFORE, having fully answered, Third Party Defendant Boak prays that the Third Party Complaint filed by Gibson against Boak be dismissed with prejudice at the cost of Third Party Plaintiff Gibson.

Respectfully submitted,



PATRICK F. ROCHE (0025959)

DAVIS & YOUNG

1200 Fifth Third Center

600 Superior Avenue East

Cleveland, Ohio 44114

Phone (216) 348-1700

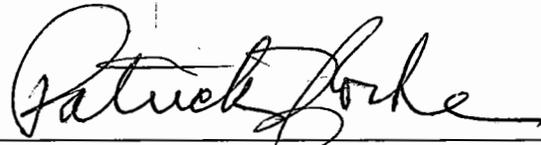
Fax (216) 621-0602

Email [proche@davisyoung.com](mailto:proche@davisyoung.com)

Attorney for Third Party Defendant Boak & Sons,  
Inc.

**JURY DEMAND**

A trial by the maximum number of jurors permitted by law is hereby demanded.

A handwritten signature in cursive script, reading "Patrick Roche". The signature is written in black ink and is positioned above a horizontal line.

PATRICK F. ROCHE (0025959)

DAVIS & YOUNG

Attorney for Third Party Defendant Boak & Sons,  
Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing has been sent this 6<sup>th</sup> day of June, 2014 to:

David A. Beals  
Jerry K. Kasat  
Assistant Attorneys General  
Court of Claims Defense  
150 E. Gay St., 18<sup>th</sup> Floor  
Columbus, OH 43215

Attorneys for Plaintiffs  
Grand Valley Local School District  
Ohio Schools Facility Commission,  
And State of Ohio

Brian C. Lee  
REMINER CO LPA  
101 West Prospect Ave W, #1400  
Cleveland, OH 44115-1093

Attorney for Buehrer Group

Brian Buzby  
PORTER WRIGHT MORRISON ARTHUR  
LLP  
41 S. High St.  
Columbus, OH 43215

Attorney for Hartford Fire Insurance Co.

Stephen P. Withee  
Ashley Olikier  
FROST BROWN TODD, LLC  
10 W. Broad St., Suite 2300  
Columbus, OH 43215-3484

Attorneys for Merchants Bonding Co.

Joseph A. Gerling  
Scott A. Fenton  
LANE ALTON & HORST, LLC  
2 Miranova Place, Suite 500  
Columbus, OH 43215

Attorneys for Jack Gibson Construction Co.

Jay William Pustelak  
Dba Pustelak, Inc.  
9070 Peach St.  
Waterford, PA 16441

Defendant

Velotta Asphalt Paving Co., Inc.  
4964 Campbell Rd  
Willoughby, OH 44094

Defendant



PATRICK F. ROCHE (0025959)  
DAVIS & YOUNG  
Attorney for Third Party Defendant Boak & Sons,  
Inc.



**D&Y**  
**DAVIS & YOUNG**  
*A Legal Professional Association*

1200 Fifth Third Center • 600 Superior Avenue, East  
 Cleveland, Ohio 44114-2654  
 T 216-348-1700 • F 216-621-0602  
 http://www.davisyoung.com

Patrick F. Roche  
 proche@davisyoung.com

FILED  
 COURT OF OHIO CLAIMS  
 2014 JUN 12 PM 2:15

June 10, 2014

The Ohio Judicial Center  
 65 South Front Street,  
 Third Floor  
 Columbus, OH 43215

**RE: Grand Valley Local School District, et al. v. Buehrer Grup, et al.**  
**Court of Claims Case No.: 2014-00469-PR**

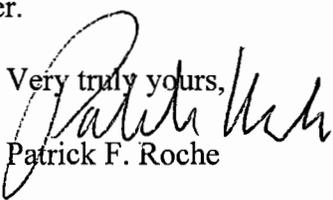
Dear Madam or Sir:

Enclosed herewith please find an original and one (1) copy of:

1. Answer of Third Party Defendant Boak & Sons, Inc. to Third Party Complaint Notice of Appearance referencing the above captioned matter.
2. Fourth Party Complaint of Boak and Sons, Inc.

Please file in your usual manner and time-stamp and return to me the copy in the self-addressed stamped envelope I have provided for your convenience.

Thank you for your cooperation in this matter.

Very truly yours,  
  
 Patrick F. Roche

Enc.  
 PFR/mtl

Cc: David Beals, Esq.  
 Jerry Kasat, Esq.  
 Brian Lee, Esq.  
 Brian Buzby, Esq.  
 Stephen P. Withee, Esq.  
 Joseph A. Gerling, Esq.  
 Scott A. Fenton, Esq.  
 Jay William Pustelak  
 Velotta Asphalt Paving Co., Inc.

**AKRON**  
 One Cascade Plaza  
 Suite 800  
 Akron, Ohio 44308  
 T 330-376-1717 • F 330-376-1797

**YOUNGSTOWN/WARREN**  
 Gibson Governor Insurance Building, Suite G  
 P.O. Box 740 • 972 Youngstown-Kingsville Road  
 Vienna, Ohio 44473  
 T 330-539-6111 • F 330-539-6303