

IN THE COURT OF CLAIMS
STATE OF OHIO

Grand Valley Local School :
District Board of Education, et al. :

Plaintiffs

-vs-

Buehrer Group Architecture &
Engineering, Inc., et al.

Defendants

Case No. 2014-00469-PR

Judge McGrath

TO: Hammond Construction, Inc.
1278 Park Avenue S.W.
Canton, Ohio 44706

YOU ARE HEREBY COMMANDED TO:

ATTEND AND GIVE TESTIMONY AT A (TRIAL)(HEARING)(DEPOSITION) ON THE DATE,
TIME AND AT THE PLACE SPECIFIED BELOW.

ATTEND AND PRODUCE DOCUMENTS LISTED ON ATTACHED EXHIBIT A ON THE
DATE, TIME AND AT THE PLACE SPECIFIED BELOW.

X

PRODUCE AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE
TIME AND PLACE SPECIFIED BELOW, OF ANY DESIGNATED DOCUMENTS THAT ARE
IN YOUR POSSESSION, CUSTODY OR CONTROL LISTED ON EXHIBIT A TO THIS
SUBPOENA

PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON
THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY TANGIBLE
THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY,
FOR THE PURPOSES DESCRIBED IN CIV. R. 34(A)(3), ON THE DATE AND AT THE
TIME SPECIFIED BELOW, DESCRIPTION OF LAND OR OTHER PREMISES:

DAY: TUESDAY DATE: MARCH 3, 2015 TIME: 5:00 PM

PLACE: Mail to Lane, Alton & Horst, Two Miranova Place, Suite 500, Columbus, OH 43215
attn: Scott Fenton

THE STATE OF OHIO
Franklin County, ss
To the Sheriff of Franklin County, Ohio Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 3rd DAY OF February 2015.
CLERK OF THE FRANKLIN COUNTY COURT OF COMMON PLEAS

BY: Scott Fenton
Signature of Scott Fenton, Attorney for Jack Gibson Construction Company

REQUESTING PARTY INFORMATION:
Scott A. Fenton (0068097)
LANE, ALTON, & HORST, LLC
Two Miranova Place, Suite 500
Columbus, Ohio 43215
Phone: (614) 228-6885 - Fax: (614) 228-0146

**NOTE: READ ALL INFORMATION ON THE ATTACHED
PAGE OF THIS SUBPOENA**

CIVIL RULE 45 (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA.

(2) (a) A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, PAPERS, DOCUMENTS, OR TANGIBLE THINGS, OR INSPECTION OF PREMISES, NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO APPEAR FOR DEPOSITION, HEARING, OR TRIAL.

(b) SUBJECT TO DIVISION (D)(2) OF THIS RULE, A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SBPOENA WRITTEN OBJECTIONS TO INSPECTION AND COPYING OF ANY OR ALL OF THE DESIGNATED MATERIALS OR OF THE PREMISES. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO INSPECT AND COPY THE MATERIALS OR INSPECT THE PREMISES EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE INSPECTION AND COPYING COMMANDED.

(3) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA, OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS, IF THE SUBPOENA DOES ANY OF THE FOLLOWING:

(a) FAILS TO ALLOW REASONABLE TIME TO COMPLY;

(b) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES;

(c) REQUIRES DISCLOSURE OF AN UNRETAINED EXPERT'S OPINION OR INFORMATION NOT DESCRIBING SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTING FROM THE EXPERT'S STUDY MADE NOT AT THE REQUEST OF ANY PARTY;

(d) SUBJECTS A PERSON TO UNDUE BURDEN.

(4) BEFORE FILING A MOTION PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE, A PERSON RESISTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY. A MOTION FILED PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE SUBPOENAED PERSON OR A CERTIFICATE OF THAT PERSON'S ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN.

(5) IN CASES UNDER DIVISION (C)(3)(c) OR (C)(3)(d) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED.

CIVIL RULE 45 (D) DUTIES IN RESPONDING TO SUBPOENA.

(1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR SHALL ORGANIZE AND LABEL THEM TO CORRESPOND WITH THE CATEGORIES IN THE DEMAND. A PERSON PRODUCING DOCUMENTS PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING.

(2) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIALS, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONSENT THE CLAIM.

CIVIL RULE 45 (E) SANCTIONS.

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA ISSUE, A SUBPOENAED PERSON OR THAT PERSON'S ATTORNEY FRIVOLOUSLY RESISTING DISCOVERY UNDER THIS RULE MAY BE REQUIRED BY THE COURT TO PAY THE REASONABLE EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF THE PARTY SEEKING THE DISCOVERY. THE COURT FORM WHICH A SUBPOENA WAS ISSUED MAY IMPOSE UPON A PARTY OR ATTORNEY IN BREACH OF DUTY IMPOSED BY DIVISION (C)(1) OF THIS RULE AN APPROPRIATE SANCTION, WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, LOST EARNINGS AND REASONABLE ATTORNEY'S FEES.

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**** RETURN OF SERVICE ****

I RECEIVED THIS SUBPOENA ON _____, AND SERVED THE PARTY NAMED ON THE
REVERSE HEREOF BY _____ ON _____

I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON: _____

(Signature of Serving Party)

Sheriff's Fees

Service _____
Mileage _____
Copy _____
Total _____

Circle One: Deputy Sheriff Attorney
 Process Server Deputy Clerk
 Other _____

EXHIBIT A

Please produce all of the following documents:

1. All documents in related to any work or services performed by you or any persons on your behalf at the Grand Valley Local School District K-12 building remediation project, located at 111 Grand Valley Avenue, Orwell, Ohio 44076 (hereinafter "Grand Valley Project").
2. All documents in your possession or control concerning any work or services, including the design, construction, repairs or remedial work, provided for the Grand Valley Project.
3. All communications or correspondence (whether written or electronic) between you and any other person or entity related to any services or design documents related to any including the design, construction, repairs or remedial work performed at the Grand Valley Project.
4. All communications or correspondence (whether written or electronic) between you and any other person or entity that related to any work or services, including the design, construction, repairs or remedial work concerning the Grand Valley Project.
5. All change orders and supporting documents or pricing executed during the Grand Valley Project.
6. Produce all documents to explain or detail the scope of work and itemized cost breakdown for the following items identified on Schedule B of your Payment Request dated July 31, 2014 submitted to Grand Valley:
 - Item #3 – Preconstruction Personnel Costs - \$25,531,
 - Item #4 – Preconstruction Reimbursements - \$7,828,
 - Item #9 – Construction Personnel Costs - \$51,791,
 - Item #10 – Construction General Conditions,
 - Item #11 - Contingency.
7. With respect to the roofing and masonry repairs performed by you at the Grand Valley Project, provide all documents that refer or relate to contractual "Allowances" which total \$44,769.23.
8. Your complete project file for any work or services, including the design, construction, repairs or remedial work, performed at the Grand Valley Project.

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true copy of the foregoing was served via regular U.S. Mail, postage prepaid, on this 3rd day of February 2015, to the following:

David A. Beals
Jerry K. Kasai
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
Counsel for Plaintiffs

Brian C. Lee
Reminger Co., LPA
101 W. Prospect Avenue, Suite 1400
Cleveland, Ohio 44115-1093
***Counsel for Buehrer Group
Architecture & Engineering***

Carl Fusco Evans
Fischer, Evans & Robbins, Ltd.
4505 Stephen Circle, N.W.- Suite 100
Canton, Ohio 44 718
***Counsel for Intervening Defendant
Westfield Insurance Company***

Patrick F. Roche
David & Young
1200 Fifth Third Center
600 Superior Avenue East
Cleveland, Ohio 44114
Counsel for Boak & Sons, Inc.

Brian Buzby
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
***Counsel for Hartford Fire
Insurance Company***



Joseph A. Gerling (0022054)
Scott A. Fenton (0068097)

Lane
Alton
Horst LLC
Attorneys at Law

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SUITE 500
COLUMBUS, OH 43215

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FAX: 614-228-0146
www.lanealton.com

Direct Dial: 614-233-4783

Email: sfenton@lanealton.com

COLLIS GUNDY LANE (1904-1987)
THEODORE L. HORST (1908-2000)
JACK R. ALTON (1925-2011)

MARY BARLEY-McBRIDE
DONALD P. BECK
JAMES H. BOWNAS
SCOTT A. FENTON
JENIFER A. FRENCH
CURTIS F. GANTZ

JOSEPH A. GERLING
CHAD K. HEMMINGER
EDWARD G. HUBBARD
JEFFREY W. HUTSON
THOMAS J. KEENER
MICHAEL J. KELLEY
RICK E. MARSH
TIMOTHY J. OWENS
CHRIS O. PAPANODIS
RICHARD A. PECK

CHRISTOPHER R. PETTIT
GREGORY D. RANKIN
CLAUDIA L. SPRIGGS
THOMAS E. SWITZER
MONICA L. WALLER
STEPHEN B. YURIK

COUNSEL TO THE FIRM
SAMIR B. DAHMAN
JAMES W. LEWIS

February 3, 2015

Clerk of Courts
Court of Claim - State of Ohio
65 South Front Street, 3rd Floor
Columbus, Ohio 43215

Re: *Grand Valley Local School District Board of Education, et al.*
v Buehrer Group Architecture & Engineering, Inc., et al.
Case No. 2014-00469-PR

Dear Clerk:

Please file the enclosed *Notice of Service of Subpoena* with your office and return a time-stamped copy in the envelope provided. *l/c*

Thank you for your attention to this matter.

Very truly yours,

LANE ALTON & HORST, LLC

/s/ Scott A. Fenton

Scott A. Fenton

SAF/msg
Enclosure

FILED
COURT OF CLAIMS
OF OHIO
2015 FEB - 6 AM 10:38