

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 06-CV-00865-LTB-BNB

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,
LAURA HERSHEY, CARRIE ANN LUCAS, HEATHER REBEKAH RENEE LUCAS,
by and through her parent and next friend, CARRIE ANN LUCAS, ADRIANNE EMILY
MONIQUE LUCAS, by and through her parent and next friend, CARRIE ANN LUCAS,
ASIZA CAROLYN KOLENE LUCAS, by and through her parent and next friend,
CARRIE ANN LUCAS, and DANIEL WILSON

Plaintiffs,

v.

THE CITY AND COUNTY OF DENVER, COLORADO

Defendant and Third-Party Plaintiff

v.

SEMPLÉ BROWN DESIGN, P.C.

Third-Party Defendant.

**SEMPLÉ BROWN DESIGN, P.C.'S ANSWER AND JURY DEMAND TO THE
THIRD-PARTY COMPLAINT AND JURY DEMAND**

Third-Party Defendant, Semple Brown Design, P.C. ("Semple Brown"), by and
through its attorneys Jackson Kelly PLLC, submits its Answer and Jury Demand to the
Third-Party Complaint as follows:

ANSWER TO VENUE AND JURISDICTION

1. Semple Brown does not object to venue and jurisdiction.

ANSWER TO PARTIES

2. Semple Brown is without knowledge sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 1 and therefore denies them.

3. Admitted.

ANSWER TO GENERAL ALLEGATIONS

4. Admitted.

5. Denied.

6-11. Semple Brown admits entering into the Design Services Agreement (“Agreement”) with the City and County of Denver (the “City”) on August 12, 2002. The Agreement speaks for itself. To the extent the allegations contained in Paragraphs 6 through 11 are inconsistent with the Agreement, they are denied by Semple Brown.

12. Semple Brown admits performing services under the Agreement. Remaining allegations contained in Paragraph 12 call for legal conclusions to which no response is necessary. To the extent an answer is required by Semple Brown, the allegations are denied.

13. Denied.

14-15. Semple Brown is without knowledge sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraphs 14 and 15 and therefore denies them.

16. Admitted.

17. Semple Brown admits to responding to the City on November 18, 2005. The response speaks for itself. To the extent the remaining allegations contained in

Paragraph 17 are inconsistent with the context and nature of the response, they are denied by Semple Brown.

18-19. Semple Brown is without knowledge sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraphs 18 and 19 and therefore denies them.

20. Semple Brown admits it received a Notice of Claim on or about July 12, 2006. The Notice of Claim speaks for itself. To the extent the allegations contained in Paragraph 20 are inconsistent with the Notice of Claim, they are denied by Semple Brown.

21. Admitted.

22. Admitted.

23. Semple Brown is without knowledge sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 23 and therefore denies them.

ANSWER TO FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT

24. As answer to Paragraph 24, Semple Brown incorporates all responses as set forth above.

25. Semple Brown admits entering into the Agreement with the City. The Agreement speaks for itself. The remaining allegations contained in Paragraph 25 call for legal conclusions to which no response is necessary. To the extent an answer is required by Semple Brown, the remaining allegations are denied.

26-28. Denied.

ANSWER TO SECOND CLAIM FOR RELIEF: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

29. As answer to Paragraph 29, Semple Brown incorporates all responses as set forth above.

30. The allegations contained in Paragraph 30 call for legal conclusions to which no response is necessary. To the extent an answer is required by Semple Brown, the allegations are denied.

31-32. Denied.

ANSWER TO THIRD CLAIM FOR RELIEF: PROFESSIONAL NEGLIGENCE

33. As answer to Paragraph 33, Semple Brown incorporates all responses as set forth above.

34. Semple Brown admits its services complied with the applicable standard of care. The remaining allegations contained in Paragraph 33 call for legal conclusions to which no response is necessary. To the extent an answer is required by Semple Brown, the allegations are denied.

35-37. Denied.

ANSWER TO FOURTH CLAIM FOR RELIEF: NEGLIGENT MISREPRESENTATION

38. As answer to Paragraph 38, Semple Brown incorporates all responses as set forth above.

39-45. Denied

ANSWER TO FIFTH CLAIM FOR RELIEF: FALSE REPRESENTATION

46. As answer to Paragraph 46, Semple Brown incorporates all responses as

set forth above.

47-53. Denied

ANSWER TO SIXTH CLAIM FOR RELIEF: DECLARATORY JUDGMENT

54. As answer to Paragraph 54, Semple Brown incorporates all responses as set forth above.

55. The allegations contained in Paragraph 55 call for legal conclusions to which no response is necessary. To the extent an answer is required by Semple Brown, the allegations are denied.

ADDITIONAL ANSWER

Any and all allegations not specifically admitted herein are denied.

AFFIRMATIVE DEFENSES

1. The Third-Party Complaint fails to state claims upon which relief may be granted.

2. The damages alleged in the Third-Party Complaint were caused by other persons or parties for which Semple Brown is neither liable nor responsible. C.R.S. § 13-21-111.5.

3. The damages alleged in the Third-Party Complaint were caused by the errors and omissions, negligent or otherwise, of the Third-Party Plaintiff and its agents and employees, which bars or reduces their claims pursuant to C.R.S. §13-21-111.

4. Third-Party Plaintiff has failed to mitigate its damages, if any.

5. Third-Party Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or acquiescence.

6. Third-Party Plaintiff's claims are barred by the statute of limitations.

7. Third-Party Plaintiff's claims are barred by their assumption of known risks.

8. Third-Party Plaintiff's claims are barred by the failure of Third-Party Plaintiff or its agents and representatives to follow plans and specifications and engineering recommendations.

9. Semple Brown's liability to Third-Party Plaintiff, if any, is limited by the terms of Semple Brown's contract.

10. Third-Party Plaintiff's claims may be barred or limited by the doctrine of unjust enrichment or betterment.

11. Third-Party Plaintiff may have failed to join an indispensable party.

12. Third-Party Plaintiff's claims may be barred or limited by the economic loss rule.

13. Third-Party Plaintiff's claims are barred or reduced by operation of C.R.S. §13-21-111.5(3) as a result of the negligence or fault of certain non-parties.

14. Third-Party Plaintiff's claims are barred by the absence of justifiable reliance.

WHEREFORE, Third-Party Defendant Semple Brown, P.C. prays that the Complaint of Third-Party Plaintiff The City and County of Denver, Colorado be dismissed with prejudice, for costs of defense herein, including attorneys' fees, and for such other relief as the Court may deem proper.

DEFENDANTS REQUESTS TRIAL BY JURY

Dated this 27th day of May, 2008.

JACKSON KELLY PLLC

s/ Timothy M. Schulte

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2008, a true and correct copy of the foregoing **SEMPLE BROWN DESIGN, P.C.'S ANSWER AND JURY DEMAND TO THE THIRD-PARTY COMPLAINT AND JURY DEMAND** was e-filed via CM-ECF addressed to the following:

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s/ Virginia L. Schermerhorn