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 12 Attorneys for Defendant Allegheny Casualty Company

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COUNSEL/PARTIES OF RECORD	
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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA**

12 TRUSTEES of the NORTHERN NEVADA
 13 LABORERS HEALTH & WELFARE TRUST
 14 FUND, CRAIG MADOLE, DAVE BACKMAN,
 15 CRAIG HOLT, DAN RUSNAK, ELOY JARA,
 16 RICHARD DALY; TRUSTEES of the
 17 LABORERS PENSION TRUST FUND FOR
 18 NOETHER NEVADA, CRAIG MADOLE,
 19 DAVE BACKMAN, CRAIG HOLT, DAN
 20 RUSNAK, ELOY JARA, RICHARD DALY;
 21 TRUSTEES of the CONSTRUCTION
 22 WORKERS VACATION SAVINGS TRUST
 23 PLAN, CRAIG MADOLE, DAVE BACKMAN,
 24 CRAIG HOLT, DAN RUSNAK, ELOY JARA,
 25 RICHARD DALY; TRUSTEES of the
 26 LABORERS TRAINING TRUST FOR
 27 NORTHERN NEVADA, CRAIG MADOLE,
 28 DAVE ELIZONDO, FRED REEDER, DAN
 RUSNAK, ELOY JARA, RICHARD DALY;
 TRUSTEES of the CEMENT MASONS
 ANNUITY TRUST FUND FOR NORTHERN
 NEVADA, CRAIG MADOLE, SHANE GLENN,
 KEVIN LINDERMAN, MARC LEAVITT,
 THOMAS NORTHRUP, JESSE BARAJAS;
 TRUSTEES of the CEMENT MASONS JOINT
 APPRENTICESHIP AND TRAINING TRUST
 FUND, CRAIG MADOLE, KEVIN
 LINDERMAN, SHANE GLENN, MARC

Case No.: 3:17-CV-00577-RJC-VPC

**STIPULATION AND ORDER TO ALLOW
 ALLEGHENY CASUALTY COMPANY TO
 FILE AMENDED ANSWER**

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1 LEAVITT, THOMAS NORTHRUP, JAMES
2 OBREGON; TRUSTEES of the NORTHERN
3 NEVADA OPERATING ENGINEERS HEALTH
4 AND WELFARE TRUST FUND, CRAIG
5 MADOLE, FRED REEDER, LANCE
6 SEMENKO, STEVE INIGERSOLL, DYLAN
7 GALLAGHER, SCOTT FULLERTON;
8 TRUSTEES of the OPERATING ENGINEERS
9 AND PARTICIPATING EMPLOYERS
10 PREAPPRENTICE, APPRENTICE, AND
11 JOURNEYMAN AFFIRMATIVE ACTION
12 TRAINING FUND FOR NOTHER NEVADA,
13 CRAIG MADOLE, FRED REEDER, LANCE
14 SEMENKO, STEVE INIGERSOLL, DYLAN
15 GALLAGHER, SCOTT FULLERTON;
16 TRUSTEES of the OPERATING ENGINEERS
17 PENSION TRUST FUND, JAMES MURRAY,
18 KEVIN ALBANESE, STEVE CLARK, F.G.
19 CROSTHWAITE, BRYAN FLAKE, THOMAS
20 HOLSMAN, LANCE INOUE, RICHARD
21 PIOMBO, TOM SQUERI, DAVID STANTON,
22 RUSSELL BURNS, MIKE CROLL, JUSTIN
23 DISTON, DAVID HARRISON, STEVE
24 INIGERSOLL, PANE MEATOOGA, JR., BRUCE
25 NOEL, DAN REDING, JAMES SULLIVAN,
26 NATE TUCKER; TRUSTEES of the
27 OPERATING ENGINEERS VACATION
28 HOLIDAY AND SICK PAY TRUST FUND,
JAMES MURRAY, BRYAN FLAKE, LANCE
INOUE, TOM SQUERI, RUSSELL BURNS,
JUSTIN DISTON, STEVE INIGERSOLL, DAN
REDING, JAMES SULLIVAN; and TRUSTEES
OF THE OPERATING ENGINEERS
PENSIONED HEALTH & WELFARE TRUST
FUND, JAMES MURRAY, KEVIN ALBANESE,
STEVE CLARK, F.G. CROSTHWAITE, BRYAN
FLAKE, THOMAS HOLSMAN, LANCE
INOUE, RICHARD PIOMBO, TOM SQUERI,
DAVID STANTON, RUSSELL BURNS, MIKE
CROLL, JUSTIN DISTON, DAVID HARRISON,
STEVE INIGERSOLL, PANE MEATOOGA, JR.,
BRUCE NOEL, DAN REDING, JAMES
SULLIVAN, NATE TUCKER;

Plaintiffs,

vs.

1 DIVERSIFIED CONCRETE CUTTING, INC., a
2 Nevada corporation; SPECIALTY
3 CONTRACTING COMPANY, a Nevada
4 corporation doing business as DIVERSIFIED
5 DEMOLITION CO; ALLEGHENY CASUALTY
6 COMPANY, a Pennsylvania corporation; and
7 DOES 1-10,
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9

10 The parties on record herein, Plaintiff Trust Funds, Defendant, Allegheny Casualty Company
11 (“Allegheny”), and Diversified Concrete Cutting, Inc. (“Diversified”), by and through their respective
12 attorneys of record, stipulate and agree that, pursuant to FRCP Rule 15(a), Defendant Allegheny be
13 granted leave to file the First Amended Answer attached hereto as Exhibit “A”. The filing of the
14 proposed First Amended Answer is necessary to allow Allegheny to assert several affirmative defenses
15 omitted from its initial answer. The filing of the First Amended Answer will not cause any undue
16 delays herein, as a stipulated discovery plan and scheduling order was filed only recently.
17

18 **JENKINS LAW FIRM**

19
20 /s/ Nathan M Jenkins (with permission)
21 NATHAN M. JENKINS, ESQ.
22 Nevada Bar No.
23 1895 Plumas Street, Suite 2
24 Reno, Nevada 89509
25 Telephone: (775)829-7800
26 Attorney for Plaintiff

27 DATED: March 1, 2018
28

THE FAUX LAW GROUP

20 /s/ Kurt C. Faux
21 KURT C. FAUX, ESQ.
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23 JORDAN F. FAUX, ESQ.
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Attorney for Defendant, Allegheny Casualty
Company

DATED: March 1, 2018

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MOORE LAW GROUP, PC

/s/ John D. Moore (with permission)

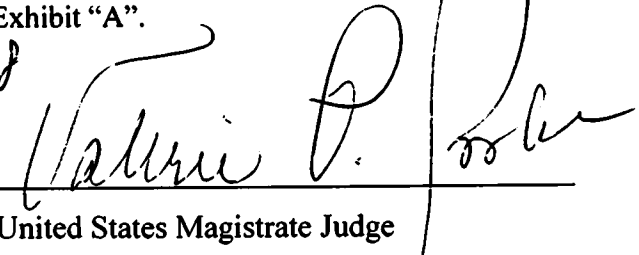
John D. Moore, ESQ.
Nevada Bar No. 8581
3715 Lakeside Drive, Suite A
Reno, Nevada 89509612 South Tenth Street
Attorney for Defendant, Diversified Concrete
Cutting, Inc.

DATED: March 1, 2018

ORDER

The court having reviewed the above stipulation and good cause therefore appearing, it is hereby ordered and decreed that Defendant, Allegheny Casualty Company may file the First Amended Answer, attached to this stipulation and order as Exhibit "A".

DATED: March 2, 2018



United States Magistrate Judge

Submitted by:

THE FAUX LAW GROUP

/s/ Kurt C. Faux

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Exhibit A

Exhibit A: Allegheny Casualty Company's Amended Answer to Plaintiff's Complaint

Exhibit A

1 KURT C. FAUX, ESQ.
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 Attorneys for Defendant Allegheny Casualty Company

7
 8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE DISTRICT OF NEVADA**

10 TRUSTEES of the NORTHERN NEVADA
 LABORERS HEALTH & WELFARE TRUST FUND,
 11 CRAIG MADOLE, DAVE BACKMAN, CRAIG
 HOLT, DAN RUSNAK, ELOY JARA, RICHARD
 DALY; TRUSTEES of the LABORERS PENSION
 12 TRUST FUND FOR NOETHER NEVADA, CRAIG
 MADOLE, DAVE BACKMAN, CRAIG HOLT, DAN
 13 RUSNAK, ELOY JARA, RICHARD DALY;
 TRUSTEES of the CONSTRUCTION WORKERS
 14 VACATION SAVINGS TRUST PLAN, CRAIG
 MADOLE, DAVE BACKMAN, CRAIG HOLT, DAN
 15 RUSNAK, ELOY JARA, RICHARD DALY;
 TRUSTEES of the LABORERS TRAINING TRUST
 16 FOR NORTHERN NEVADA, CRAIG MADOLE,
 DAVE ELIZONDO, FRED REEDER, DAN
 17 RUSNAK, ELOY JARA, RICHARD DALY;
 TRUSTEES of the CEMENT MASONS ANNUITY
 18 TRUST FUND FOR NORTHERN NEVADA, CRAIG
 MADOLE, SHANE GLENN, KEVIN LINDERMAN,
 19 MARC LEAVITT, THOMAS NORTHRUP, JESSE
 BARAJAS; TRUSTEES of the CEMENT MASONS
 20 JOINT APPRENTICESHIP AND TRAIING TRUST
 FUND, CRAIG MADOLE, KEVIN LINDERMAN,
 21 SHANE GLENN, MARC LEAVITT, THOMAS
 NORTHRUP, JAMES OBREGON; TRUSTEES of the
 22 NORTHERN NEVADA OPERATING ENGINEERS
 HEALTH AND WELFARE TRUST FUND, CRAIG
 23 MADOLE, FRED REEDER, LANCE SEMENKO,
 STEVE INIGERSOLL, DYLAN GALLAGHER,
 24 SCOTT FULLERTON; TRUSTEES of the
 OPERATING ENGINEERS AND PARTICIPATING

Case No.: 3:17-CV-00577-RJC-VPC

**ALLEGHENY CASUALTY
 COMPANY'S AMENDED ANSWER
 TO PLAINTIFFS' COMPLAINT**

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1 EMPLOYERS PREAPPRENTICE, APPRENTICE,
2 AND JOURNEYMAN AFFIRMATIVE ACTION
3 TRAINING FUND FOR NOTHER NEVADA, CRAIG
4 MADOLE, FRED REEDER, LANCE SEMENKO,
5 STEVE INGERSOLL, DYLAN GALLAGHER,
6 SCOTT FULLERTON; TRUSTEES of the
7 OPERATING ENGINEERS PENSION TRUST
8 FUND, JAMES MURRAY, KEVIN ALBANESE,
9 STEVE CLARK, F.G. CROSTHWAITE, BRYAN
10 FLAKE, THOMAS HOLSMAN, LANCE INOUYE,
11 RICHARD PIOMBO, TOM SQUERI, DAVID
12 STANTON, RUSSELL BURNS, MIKE CROLL,
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14 INGERSOLL, PANE MEATOGA, JR., BRUCE
15 NOEL, DAN REDING, JAMES SULLIVAN, NATE
16 TUCKER; TRUSTEES of the OPERATING
17 ENGINEERS VACATION HOLIDAY AND SICK
18 PAY TRUST FUND, JAMES MURRAY, BRYAN
19 FLAKE, LANCE INOUYE, TOM SQUERI,
20 RUSSELL BURNS, JUSTIN DISTON, STEVE
21 INGERSOLL, DAN REDING, JAMES SULLIVAN;
22 and TRUSTEES OF THE OPERATING ENGINEERS
23 PENSIONED HEALTH & WELFARE TRUST
24 FUND, JAMES MURRAY, KEVIN ALBANESE,
STEVE CLARK, F.G. CROSTHWAITE, BRYAN
FLAKE, THOMAS HOLSMAN, LANCE INOUYE,
RICHARD PIOMBO, TOM SQUERI, DAVID
STANTON, RUSSELL BURNS, MIKE CROLL,
JUSTIN DISTON, DAVID HARRISON, STEVE
INGERSOLL, PANE MEATOGA, JR., BRUCE
NOEL, DAN REDING, JAMES SULLIVAN, NATE
TUCKER;

Plaintiffs,

vs.

DIVERSIFIED CONCRETE CUTTING, INC., a
Nevada corporation; SPECIALTY CONTRACTING
COMPANY, a Nevada corporation doing business as
DIVERSIFIED DEMOLITION CO; ALLEGHENY
CASUALTY COMPANY, a Pennsylvania corporation;
and DOES 1-10,

Defendants.

1 Defendant Allegheny Casualty Company (“Allegheny”) by and through its attorneys of
2 record, The Faux Law Group, hereby amends its answer Plaintiff s’ Complaint and admits, denies,
3 and alleges as follows:

4 **JURIDICTION AND VENUE**

5 1. In answering Paragraphs 1, 2 and 3 of Plaintiffs’ Complaint, Allegheny is without
6 sufficient knowledge or information necessary to form a belief as to the truth or falsity of such
7 allegations contained therein, and accordingly, denies the same.

8 **THE PARTIES**

9 2. In answering Paragraphs 4, 5, 6, 8 and 9 of Plaintiffs’ Complaint, Allegheny is
10 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
11 such allegations contained therein, and accordingly, denies the same.

12 3. In answering Paragraph 7 of Plaintiffs’ Complaint, Allegheny admits the allegations
13 contained therein.

14 **FIRST CAUSE OF ACTION**

(Payment of Unpaid Contributions under ERISA §§ 502 and 515)

15 4. In answering Paragraph 10 of Plaintiffs’ Complaint, Allegheny repeats, realleges and
16 incorporates each preceding answer as though fully set forth herein.

17 5. In answering Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
18 27 and 28 of Plaintiffs’ Complaint, Allegheny is without sufficient knowledge or information
19 necessary to form a belief as to the truth or falsity of such allegations contained therein, and
20 accordingly, denies the same.

21 **SECOND CAUSE OF ACTION**

(Failure to Timely File Accurate Monthly Reports under ERISA §§ 502 and 515)

22 6. In answering Paragraph 29 of Plaintiffs’ Complaint, Allegheny repeats, realleges and
23 incorporates each preceding answer as though fully set forth herein.
24

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1 7. In answering Paragraphs 30, 31, 32 and 33 of Plaintiffs' Complaint, Allegheny is
2 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
3 such allegations contained therein, and accordingly, denies the same.

4 **THIRD CAUSE OF ACTION**
5 **(To Compel an Audit and Timely Filing of Accurate**
6 **Monthly Reports under ERISA §§ 502 and 515)**

7 8. In answering Paragraph 34 of Plaintiffs' Complaint, Allegheny repeats, realleges and
8 incorporates each preceding answer as though fully set forth herein.

9 9. In answering Paragraphs 35, 36, 37, 38, 39 and 40 of Plaintiffs' Complaint,
10 Allegheny is without sufficient knowledge or information necessary to form a belief as to the truth
11 or falsity of such allegations contained therein, and accordingly, denies the same.

12 **FOURTH CAUSE OF ACTION**
13 **(For Collection of Unpaid Fringe Benefit Contributions Pursuant to License Bond)**

14 10. In answering Paragraph 41 of Plaintiffs' Complaint, Allegheny repeats, realleges and
15 incorporates each preceding answer as though fully set forth herein.

16 11. In answering Paragraphs 42 of Plaintiffs' Complaint, Allegheny admits the bond
17 speaks for itself; otherwise, denied.

18 12. In answering Paragraph 43 of Plaintiffs' Complaint, Allegheny admits the bond
19 speaks for itself; otherwise, denied.

20 13. In answering Paragraph 44 of Plaintiffs' Complaint, Allegheny admits the bond
21 speaks for itself; otherwise, denied.

22 14. In answering Paragraph 45 of Plaintiffs' Complaint, Allegheny admits the bond
23 speaks for itself; otherwise, denied.

24 15. In answering Paragraphs 46, 47, 49 and 50 of Plaintiffs' Complaint, Allegheny
denies the allegations contained therein.

1 16. In answering Paragraph 48 of Plaintiffs' Complaint, Allegheny admits that a demand
2 was made and that no payments to Plaintiffs have been made by Allegheny. Allegheny denies the
3 remainder of the paragraph.

4 **AFFIRMATIVE DEFENSES**

5 Allegheny asserts the following affirmative defenses.

- 6 1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
- 7 2. Allegheny's liability for payment pursuant to the bond(s) is limited and specifically
8 confined to the penal sum(s) of the bond(s).
- 9 3. No claim may be made on the bond(s) for any obligation which arose against the
10 principal prior to the date of the execution of the surety bond(s).
- 11 4. There are other claims on the bonds, and Allegheny may decide to file an interpleader
12 for one or both of the bonds in the future.
- 13 5. No claim may be made on the bond(s) for any obligation incurred by an entity not
14 named as the principal on the surety bond(s).
- 15 6. The Plaintiffs are not a persons or entities for whose benefit the bonds were posted.
- 16 7. The Plaintiffs' claims are beyond the scope of coverage under the bond.
- 17 8. In the event the Plaintiffs are persons or entities entitled to recover pursuant to the
18 surety bond, Plaintiffs' right to recover on the bond is limited to the penal sum and pro rata
19 distribution and order of priority of payments.
- 20 9. Allegheny is entitled to assert all the affirmative defenses and claims of the principal.
- 21 10. The bond principal was excused from performing on the alleged contract based on
22 anticipatory breach by the Plaintiffs.
- 23 11. The principal fulfilled its duties under Nevada law.
- 24 12. Plaintiffs have failed to mitigate their damages, if any.

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- 1 13. Plaintiffs' claims are precluded by the applicable statute of limitations.
- 2 14. Plaintiffs' claims are precluded by the doctrine of laches.
- 3 15. Plaintiff's claims are barred by the Doctrine of Unclean Hands.
- 4 16. The Plaintiffs have failed to satisfy the burden of proof as to damages.
- 5 17. The attorney's fees and costs claimed by the Plaintiffs were unreasonably incurred and
- 6 are not recoverable from the bonds..

7 18. Allegheny denies each and every allegation not specifically admitted in its Amended
8 Answer to Plaintiffs' Complaint.

9 19. The Plaintiffs' claims are not within the license classification bonded by Allegheny.

10 20. Pursuant to FRCP 11, Allegheny reserves the right to amend this amended answer to
11 assert additional affirmative defenses should the facts so warrant.

12 **WHEREFORE, ALLEGHENY prays as follows:**

13 1. That Plaintiffs' Complaint be dismissed and that Allegheny be awarded its costs and
14 fees for responding to Plaintiffs' Complaint;

15 2. For an award of attorneys' fees and costs incurred;

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24 3. For Court costs and expenses to be expended herein; and

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1 4. For such other and further relief as may be deemed just and reasonable by this court
2 as shown by the evidence to be offered herein.

3 DATED this ____ day of March, 2018.

4 THE FAUX LAW GROUP

6 By: _____

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15 Attorneys for Defendant Allegheny Casualty
16 Company

12 **CERTIFICATE OF SERVICE**

13 The undersigned, an employee of The Faux Law Group, hereby certifies that on the ____ day
14 of March, 2018, I served a copy of the foregoing document, **ALLEGHENY CASUALTY**
15 **COMPANY'S AMENDED ANSWER TO PLAINTIFFS' COMPLAINT** by the Nevada's
16 electronic filing system addressed to all parties on the e-service list:

17 Nathan M. Jenkins, Esq.
18 Jenkins Law Firm
19 1895 Plumas Street, Suite 2
20 Reno, NV 89509
21 Telephone: (775) 829-7800
22 Email: nathan@njenkinslaw.com
23 Attorneys for Plaintiffs

John D. Moore, Esq.
Moore Law Group, P.C.
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Telephone: (775) 336-1600
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Email: john@moore-lawgroup.com
Attorneys for Diversified Concrete Cutting,
Inc.

23 By: _____

24 An employee of THE FAUX LAW GROUP

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