

RETURN DATE: JUNE 12, 2007

STATE OF CONNECTICUT	:	SUPERIOR COURT
<i>Plaintiff</i>	:	
	:	JUDICIAL DISTRICT
v.	:	OF HARTFORD
	:	
L.G. DEFELICE, INC.	:	
MAGUIRE GROUP, INC.	:	
STEPHEN V. HALLBERG	:	
WILLIAM H. MCGEE	:	
JOSEPH L. CUSANO	:	
JOHN LAMARK	:	
JOHN F. TREICHEL	:	
WILLIAM W. FRITZ	:	
PETER PARDEE	:	
FRANK PINTO	:	
MICHAEL MANCINI	:	
CHRISTOPHER COYLE	:	
RUSSELL TASSIE	:	
JOSEPH CARUSO	:	
STANLEY ZUNDA	:	
AZAD KAREEM	:	
JOSEPH SZARKOWICZ	:	
<i>Defendants</i>	:	APRIL 23, 2007

INTRODUCTION

This civil action is brought by Plaintiff State of Connecticut (the “State”), represented by Richard Blumenthal, Attorney General of the State of Connecticut, acting by and through its Commissioner of the Department of Transportation (“Department” or “DOT”), and as to the Counts alleging violations of the Connecticut Unfair Trade Practices Act, acting at the request of Gerald Farrell, Jr., Commissioner of Consumer Protection.

The State of Connecticut brings this action against L. G. Defelice, Inc. (“Defelice”), North Haven, and Maguire Group, Inc. (“Maguire”) of New Britain, Connecticut, for their serious and pervasive breaches of their contracts with the

Department relating to the construction of a portion of Interstate Route 84 in Waterbury and Cheshire, Connecticut (the "Project"), during the period October 2002 to December 2005.

Defelice was the low bidder on the Project and was awarded the Project Contract in August 2002. The Contract required Defelice to perform the construction work for the Project in strict compliance with the Department's plans and specifications. Defelice began work on the Project in October 2002 with completion originally scheduled to take 762 calendar days and substantial completion required by October 7, 2005. The Project was not complete when Defelice stopped work in December, 2005 and defaulted on the Project in spring of 2006. As a result of this default, the Department terminated Defelice's Contract in May, 2006.

A major component of the Project was the drainage system, which required construction of approximately three hundred twenty-nine drainage structures. The work on these drainage structures, including the installation of catch basins and under-drains, occurred primarily from April, 2003 through late 2005. In early 2006, it began to become apparent that Defelice's work on the drainage system was grossly and/or purposely defective or never performed at all. The nature and scope of the construction deficiencies indicates that they resulted from Defelice's defective installation and workmanship and use of sub-standard or unacceptable materials. This defective work has created public safety hazards and long term obstacles and inconvenience to the traveling public and will cost the State millions of dollars to repair. Defelice is responsible for all of these costs.

At about the same time that Defelice was awarded its Contract, in September 2002, Maguire was hired as the Project consultant to provide construction engineering and inspection services on the Project. Maguire was hired specifically to inspect the work performed and insure that Defelice performed the work in strict compliance with its Contract plans and specifications. The Department terminated Maguire in September 2006 after becoming aware of the magnitude of the deficiencies by Defelice and the grossly inadequate inspections by Maguire and its employees. By approving grossly defective work for payment by the State, Maguire and its employees misled the State about the adequacy of the work that Maguire and Defelice were performing. Maguire has breached its Contract with the State, and is liable to the State for the money expended for unperformed or defective work, and for the costs to repair the defective work.

The actions of all the defendants were egregious, unfair, immoral and unethical and have damaged the State and its taxpayers beyond money damages. Defelice's and Maguire's actions and misrepresentations, along with the actions and misrepresentations of other defendants acting in concert with Defelice and Maguire, constitute unfair or deceptive trade practices, in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110m(a) and -110o(b). Based on the representations of Defelice and Maguire, the Department paid Maguire and Defelice for work not performed at all or for work that was not performed in accordance with their Contracts, and Defelice and Maguire unjustly profited thereby.

The State seeks monetary damages from Defelice, Maguire and other culpable defendants on the First, Second, Ninth, Tenth, Eleventh, Twelfth, Thirteenth,

Fourteenth, Fifteenth and Sixteenth Counts, and seeks restitution, civil penalties, injunctive relief, and all other relief authorized by the Connecticut Unfair Trade Practices Act on the Third through Eighth Counts against all defendants for their illegal and immoral attempt to cheat the taxpayers of Connecticut out of millions of dollars through their actions.

COMPLAINT

THE PARTIES:

1. At all times mentioned herein, the Department was, and still is, a state agency authorized to enter into and administer, among other things, contracts for the design, construction, repair or alteration of any highway or bridge of the State. See Conn. Gen. Stat. § 4-61.
2. At all times mentioned herein, Defelice was and still is a Connecticut corporation with a principal place of business at 30 Bernhard Road, North Haven, Connecticut.
3. At all times mentioned herein, defendant Maguire was and still is a foreign corporation with a principal place of business in Connecticut at One Court Street, New Britain, Connecticut.
4. Defendant Stephen V. Hallberg, President of Defelice, is an individual residing at 17 Deerfield Avenue, Milford, Connecticut.
5. Defendant William H. McGee, the Vice Chairman and former President of Defelice, is an individual residing at 66 Juniper Drive, North Haven, Connecticut.
6. Defendant Joseph L. Cusano, Jr, Treasurer of Defelice, is an individual residing at 81 Maltby Lane, Northford, Connecticut.

7. Defendant John LaMark, the Project Superintendent for Defelice until on or about June 2004, is an individual residing at 103 Ironworks Road, Clinton, Connecticut.

8. Defendant John F. Treichel is an individual residing at 39 Court Street, Cromwell, Connecticut. Mr. Treichel is Vice President of Maguire and was the Project Manager on the Project until Maguire's termination on the Project.

9. Defendant William W. Fritz is an individual residing at 30 Sunnybrook Lane, Clinton, Connecticut. Mr. Fritz was an employee of Maguire during the period of October, 2002 through November, 2005 and was assigned to the Project as Chief Inspector.

10. Defendant Peter Pardee is an individual residing at 5 Stonehedge Way, North Granby, Connecticut. Mr. Pardee was an employee of Maguire and was assigned to the Project initially as a field supervisor and became a Principal Construction Engineer from on or about September 2003 and continuing until Maguire's termination on the Project.

11. Defendant Frank Pinto is an individual residing at 893 Farmington Avenue, West Hartford, Connecticut. Mr. Pinto was an employee of Maguire and was assigned to the Project as an inspector from on or about May 2003 until Maguire's termination on the Project.

12. Defendant Michael Mancini is an individual residing at 62 Hubbard Street, Middlefield, Connecticut. Mr. Mancini was an employee of Maguire and was assigned to the Project as an inspector from on or about March 2003 until on or about December 2005.

13. Defendant Christopher Coyle is an individual residing at 126 Burlington Road, Unionville, Connecticut. Mr. Coyle was an employee of Maguire and was assigned to the Project as an inspector from on or about December 2002 until Maguire's termination on the Project.

14. Defendant Russell Tassie is individual residing at 500 Meriden Waterbury Road, Southington, Connecticut. Mr. Tassie was an employee of Maguire and was assigned to the Project as an inspector from on or about May 2004 until Maguire's termination on the Project.

15. Defendant Joseph R. Caruso is an individual residing at 44 Cone Road, East Hampton, Connecticut. Mr. Caruso was an employee of Maguire and was assigned to the Project as an inspector from on or about March 2004 until on or about December 2005.

16. Defendant Stanley Zunda is an individual residing at 72 Upper State Street, North Haven, Connecticut. Mr. Zunda was assigned to the Project as an inspector under the Maguire Contract from on or about May 2005 until on or about December 2005.

17. Defendant Azad Kareem is an individual residing at 62 Campfield Drive, Fairfield, Connecticut. Mr. Kareem was assigned to the Project as an inspector under the Maguire Contract from on or about July 2003 until on or about January 2005.

18. Defendant Joseph Szarkowicz is an individual residing at 103 Tapnic Road, Brooklyn, Connecticut. Mr. Szarkowicz was assigned to the Project as an inspector under the Maguire Contract from on or about July, 2003 until Maguire's termination on the Project.

FIRST COUNT: BREACH OF CONTRACT AS TO DEFELICE

19. On or about August 29, 2002, the Department entered into a \$51,984,906.16 contract (the "Contract") with Defelice for construction of State Project Nos. 151-274/294 (the "Project"). The Contract price was later amended to \$65,343,090.13.

20. Specifically, the Project involved the widening of approximately 3.4 miles of I-84, various interchange improvements at the on and off ramps at I-84/Austin Road and I-84/Route 70, and various roadway improvements, including drainage work and overlay, at Austin Road and Route 70 in the vicinity of the two interchanges, which work was located in Waterbury and Cheshire.

21. The Contract for the Project allowed Defelice a maximum of 762 calendar days to complete the Project. Substantial completion was required by October 7, 2005.

22. The Contract's provisions required adherence to the State of Connecticut Department of Transportation Standard Specifications for Roads, Bridges and Incidental Construction, Form 815 (1995)("DOT Standard Specifications") and the July 2001 Supplemental Specifications.

23. Defelice began work on the Project on or about October 14, 2002.

24. Defelice generally ceased its Project work in December 2005, for the winter shutdown period. At that time, the Department understood and believed that Defelice would resume and complete its work in the spring, 2006. Defelice never returned to complete the Project work.

25. On information and belief, by letter dated March 24, 2006, Stephen Hallberg, then President of Defelice, wrote to its surety, United States Fidelity &

Guaranty Company (“USF&G”), which provided Defelice a performance bond for the Project, stating that Defelice lacked the funds necessary to continue work on the Project.

26. On May 12, 2006, the Department wrote to Mr. Hallberg, with a copy to USF&G, stating that the Department was considering terminating the Contract and offering them an opportunity to submit a comprehensive remedial plan for the purpose of showing why the Department should not terminate the Contract. Neither Defelice nor USF&G submitted any such plan.

27. Defelice defaulted on the Contract and the Department terminated the Contract on or about May 26, 2006.

28. Defelice failed to complete the work under the Project and in addition left behind extensive defective and/or incomplete work which did not comply with the Contract requirements.

29. A major component of the Project was the construction of the drainage system, which required construction of approximately three hundred twenty-nine drainage structures.

30. The work on these drainage structures, including the installation of catch basins and under-drains, occurred primarily from April, 2003 through late 2005.

31. Defelice’s construction of drainage systems was defective and not in accordance with the Contract requirements in one or more of the following respects, each of which is a serious defect and requires repair or replacement:

- a. Catch basins were severely skewed and misaligned;

- b. Catch basins were installed as much as a foot and a half from the locations indicated in the Project Plans;
- c. Openings for the catch basins were too small to allow for inspection or repair;
- d. Catch basins extended behind or below the median barrier;
- e. Catch basins were constructed without the proper mortar;
- f. Walls of the catch basins had large gaps allowing gravel to wash into the basin from the surrounding median barrier;
- g. Insufficient structural support was provided for the catch basins;
- h. Debris, including a wooden palette, large chunks of concrete and other materials, was left in the catch basins;
- i. In many cases, underdrains were not properly installed or connected; and
- j. Defelice failed to comply with the Contract specifications, including the DOT Standard Specifications.

32. In addition to repairing the defective and incomplete work, the Department will have to remove and rebuild, at substantial cost to the State, other properly constructed and completed work in order to reach and repair or replace the defects.

33. The Contract also provided for the installation of over two and one half miles of drainage pipes and over eight and one half miles of underdrain/edge pipes, in various sizes.

34. Defelice failed to install the pipe and underdrain/edge pipes in accordance with the Contract in one or more of the following ways:

- a. Pipe joints were not properly aligned;
- b. Pipe joints were improperly joined, not sealed, and separated, allowing earth to enter and clog the drainage system;
- c. Pipes were cracked;
- d. Pipe runs were not pitched properly, causing water to flow in the wrong direction and/or water and debris to pool within low areas of the pipe runs;
- e. Incorrect pipe material was installed contrary to the specifications for pipes;
- f. Numerous obstructions were placed or left in the pipes;
- g. Pipes were too short;
- h. Portions of the underdrain/edge drain system along the median of I-84 were not installed or were installed in the wrong location;
- i. Pipes which were properly identified as not acceptable by inspectors were installed anyway; and
- j. Defelice failed to comply with the Contract specifications, including the DOT Standard Specifications.

35. As a result of the defective pipes, approximately two miles of pipe must be replaced.

36. As a further result of Defelice's installation of hundreds of defective drainage structures and miles of defective pipes, new and previously paved sections must be removed in order to remove, replace or repair the defective work and materials and then repave after the repairs are made, at substantial cost to the State, resulting in a patched final product.

37. Defelice further breached the Contract by providing additional defective work, including, but not limited to, the following, each item of which is a serious defect which must be corrected at substantial cost to the State:

a. Defects in the bearings at the piers and abutments to bridges (I-84 over Route 70), requiring resetting of the bearings, sandblasting and recoating;

b. Defects in the bearings at bridges at I-84 over Pierpont Road, requiring sandblasting and recoating and correcting of sole plate problems;

c. Defects in concrete roadway along I-84 Eastbound in various areas, totaling 26.74 cubic meters of concrete; and

d. Defects in various Class S concrete for structures work at bridges, I-84 over Route 70, at piers #1 and #2 totaling 0.677 cubic meters.

38. By virtue of the foregoing, Defelice breached its Contract for the Project with the Department.

39. Defelice's breach of the Contract has caused and continues to cause the State substantial harm, including incidental and consequential damages, inconvenience and delays.

COUNT TWO: BREACH OF CONTRACT AS TO MAGUIRE

1- 39. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 39 of the Complaint.

40. On or about September 9, 2002, the Department entered a contract (the "Maguire Contract") with Maguire to act as the inspector of Defelice's work on the Project.

41. The Maguire Contract included by reference several other Department documents including the “Connecticut Department of Transportation, (Bureau of Highways) Bureau of Engineering and Highway Operations, Manual of Organization Functions and Procedures, Office of Construction, 1984, as amended” and “The Construction Engineering and Inspection Information Pamphlet for Consultants dated January 2000, as amended.”

42. The Maguire Contract provides that Maguire will perform Project construction engineering and inspection in the reconstruction of I-84 in the City of Waterbury and the Town of Cheshire.

43. The Construction Engineering and Inspection Information Pamphlet for Consultants dated January 2000, as amended, included in Maguire’s Contract , provides in part:

a. Section I Scope of Work

The Consulting Engineer shall provide sufficient qualified staff to continuously inspect each of the construction contractor’s principal operations (e.g. grading, drainage, structure, pavement, vertical construction, rail work) in accordance with the Department’s established procedures and practices. . . . The Consulting Engineer shall inspect all construction within the project limits to ensure that the work conforms with the plans and specifications.

44. The Connecticut Department of Transportation, (Bureau of Highways) Bureau of Engineering and Highway Operations, Manual of Organization Functions and Procedures, Office of Construction, 1984, as amended, included in Maguire’s Contract provided in part:

a. 6.01 GENERAL

Inspectors shall not waive specified requirements, nor permit inferior work to be done. They are expected to give instructions,

and to demand strict compliance at all times. They shall accept only such changes in plans and specifications as are authorized by the Assistant District Engineer Construction, the District Engineer or the Director of Construction.

b. 6.02 ENFORCING PROVISIONS OF THE CONTRACT

Inspectors in charge, or their assistants, shall immediately advise contractors or their representatives when work is being done in violation of contract provisions. The project engineer should be advised of the problem and also any orders given the contractor. . . . If the contractor persists in working contrary to orders, the project engineer shall intervene. If the problem cannot be resolved, . . . the Project Engineer might suspend the operation if conditions warrant such action.

45. Maguire was contractually required to inspect and keep detailed records of the work, including the drainage work, performed by Defelice on the Project, and through its inspection services to insure that Defelice met the Contract specifications.

46. Maguire's responsibilities included reporting defective work by Defelice to the Department in a timely manner. Furthermore, the Construction Manual directed Maguire to prepare periodic Construction Estimates in order for the Department to pay Defelice for properly completed work and provided that the Department would only pay Defelice for work that met the contract specifications unless Defelice provided "an equal or better product than originally planned[.]"

47. During the 2003–2005 construction seasons, Maguire was obligated under its Contract to review the drainage work of Defelice and to review Defelice's and its own paperwork regarding such drainage work, and to approve only properly completed work for payments to Defelice by the State.

48. During this period, Maguire approved defective, deficient and non-existent work by Defelice.

49. During this period Maguire approved payments to Defelice for its defective, deficient, and non-existent Project work.

50. Based on Maguire's approvals, the Department paid Defelice substantial sums of money for defective, deficient, and non-existent Project work.

51. Defelice's Contract for the Project required the videotaping of the drainage systems. Green Mountain, a subcontractor for Defelice, began videotaping the drainage systems on or about November 2005.

52. Green Mountain notified Maguire in November 2005 of problems observed with the drainage systems during part of the videotaping.

53. The partial video tapes were reviewed by Maguire and the Department. As a result of that viewing, the Department sent a letter to Defelice in January 2006 directing Defelice to complete videotaping all the pipes so it could determine the extent of the problems.

54. In February 2006, Department personnel observed a large pothole on I-84 within the Project limits. Shortly thereafter the pothole developed into a sinkhole.

55. The videotapes and the resulting sinkhole created concern by the Department as to whether the installation of the drainage facilities on the Project was done properly.

56. As a result of these concerns, the Department entered into a contract on May 15, 2006 with an additional consulting and inspecting firm, STV, Inc. ("STV") to inspect and monitor the Project activities. Regardless of the STV contract, Maguire was still obligated under its Contract with the Department to perform Project inspection work.

57. Based upon STV's field observations and investigation of Project activities, STV presented its findings in a report which delineated extensive deficiencies with the Project work.

58. By letter dated August 29, 2006, the Department requested the attendance of Maguire at a meeting to be held on August 31, 2006 regarding STV's findings of drainage deficiencies on the Project.

59. At the August 31, 2006 meeting, the Department advised Maguire that it might take disciplinary action against Maguire for its failure to notify the Department of defective work pursuant to its Contract and gave Maguire an opportunity to respond to the findings in STV's draft report by September 6, 2006.

60. On September 6, 2006, Maguire responded, but did not offer satisfactory explanations for the massive defects in Defelice's work and the failure of Maguire to observe and report the defective work to the Department during construction and prior to the payments to Defelice for the work.

61. On September 15, 2006 the Department terminated the Maguire Contract.

62. By virtue of the foregoing, Maguire breached its Contract for the Project with the Department.

63. Maguire's breach of its Contract has caused and continues to cause the State substantial harm, including substantial incidental and consequential damages, inconvenience and delays.

INTRODUCTION (PART TWO: CUTPA COUNTS)

The serious and substantial allegations set forth above form the basis for the State's claims that defendants Defelice and Maguire, as well as the individual defendants, acted individually and in concert with each other to cheat the State and its taxpayers, by means of unfair, immoral, unethical and deceptive practices in the conduct of trade or commerce in Connecticut. Connecticut has long made such practices illegal, through enactment of the Connecticut Unfair Trade Practices Act ("CUTPA"). CUTPA makes illegal the acts, misrepresentations, and intentional omissions at issue in this case. The Attorney General brings this action at the request of the Commissioner of Consumer Protection pursuant to CUTPA and more particularly, Conn. Gen. Stat. §§ 42-110m(a) and 42-110o(b).

COUNT THREE: CONNECTICUT UNFAIR TRADE PRACTICES ACT AGAINST DEFELICE AND JOHN LAMARK

1- 63. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 of the Complaint.

64. Whenever reference is made in this Complaint to any act, practice, or conduct of the defendants, such reference shall be deemed to include the act of each defendant acting individually and jointly, both through an agreement to act and through the providing of substantial assistance or encouragement to each other in accomplishing an unfair or deceptive act or practice, which substantial assistance or encouragement was either given in breach of each defendant's duties or was given with knowledge that the acts of other defendants were wrongful, or to assist other defendants in the performance of wrongful acts.

65. The development and construction of public transportation projects for the government of the State of Connecticut is governed by numerous statutes, including, but not limited to, the following: Conn. Gen. Stat. §13b-4; Conn. Gen. Stat. § 13b-15; Conn. Gen. Stat. §13b-24; Conn. Gen. Stat. §13b-26; Conn. Gen. Stat. § 13a-95 and Conn. Gen. Stat. §13b-32. These statutory provisions were applicable during all times relevant to this Complaint.

66. At all times relevant to this Complaint, defendants Defelice and John LaMark engaged in the trade or commerce of construction and development of government public works projects. They provided goods or services within the State of Connecticut to the government of the State of Connecticut.

67. As Defelice's Project Superintendent, John LaMark was responsible for daily oversight in the field for all construction on the Project and for insuring strict compliance with the State's plans and specifications. As Defelice's Project Superintendent on the Project site, defendant LaMark individually or jointly with others, directed, controlled or participated in the acts or practices of Defelice relating to the Project, including the acts or practices set forth herein.

68. The defendant Defelice represented and agreed in its Contract with the State that the Project work would be completed in strict accordance with the Project's plans and specifications and with the DOT Standard Specifications. In addition, throughout the course of the Project the defendants Defelice and John LaMark represented or caused to be represented, directly or by implication, to the Department that such work was done in compliance with the Contract plans and specifications and those of DOT's Standard Specifications.

69. Despite Defelice's representations and agreement that it would complete the Project in strict compliance with the Project's plans and specifications, and contrary to defendants' representations, the work was not done to Contract specifications in numerous instances including but not limited to the following:

- a. Catch basins were not lined up and placed in their proper location;
- b. Catch basins were constructed without the proper mortar;
- c. Structural support was not provided for many of the catch basins;
- d. Underdrains were either not installed or not connected properly;
- e. Incorrect pipe material was installed;
- f. Portions of the underdrain/edge drain system along the median of I-84 were not installed or were installed in the wrong location;
- g. Pipes which were properly identified as not acceptable by inspectors were installed anyway; and
- h. Pipes were installed and/or connected improperly and/or placed in the wrong location.

70. Defelice received and accepted payment for non-conforming and unperformed work in violation of its Contract with the Department.

71. The foregoing representations and actions of Defelice and LaMark were material, false and likely to mislead the State to conclude that the work had been done in accordance with the Contract's plans and specifications, warranting payment.

72. The acts, practices, and course of wrongful conduct by Defelice and John LaMark violated several public policies of the State of Connecticut, including the following:

- a. Well established common law public policy of good faith and fair dealing in contractual relations between and among contracting parties;
- b. The public policy that public transportation projects be completed in a manner not to impair the safety of the traveling public as embodied in Conn. Gen. Stat. § 13b-15;
- c. The public policy against larceny, as embodied in Conn. Gen. Stat. §53a-119, et seq.; and
- d. The public policy against theft, as embodied in Conn. Gen. Stat. § 52-564.

73. The aforescribed acts and omissions are immoral, unethical, unscrupulous, oppressive and have caused substantial injury to the State and its citizens.

74. The acts, practices, and course of wrongful conduct by Defelice and John LaMark acting (i) individually, (ii) jointly, as part of a conspiracy among defendants, (iii) jointly, through their aiding and abetting of each other as alleged herein, constitute unfair and/or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b(a).

75. As a direct and proximate result of the aforementioned acts, the State and its citizens have sustained monetary losses.

COUNT FOUR: AGAINST DEFELICE AND JOHN LAMARK

1. - 75. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 75 of the Complaint.

76. Defendants willfully engaged in the acts or practices alleged herein when they knew or should have known that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

**COUNT FIVE: CONNECTICUT UNFAIR TRADE PRACTICES ACT
AGAINST MAGUIRE, JOHN TREICHEL, WILLIAM FRITZ, PETER PARDEE,
STANLEY ZUNDA, FRANK PINTO, MICHAEL MANCINI, AZAD KAREEM,
CHRISTOPHER COYLE, ANTHONY CENTURELLI, JOSEPH CARUSO,
RUSSELL TASSIE, AND JOSEPH SZARKOWICZ**

1 - 76. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 76 of the Complaint.

77. Whenever reference is made in this Complaint to any act, practice, or conduct of the defendants, such reference shall include the act of each defendant acting individually and jointly, both through an agreement to act and through the providing of substantial assistance or encouragement to each other in accomplishing an unfair or deceptive act or practice, which substantial assistance or encouragement was either given in breach of their own duties or was given with knowledge that the acts of other defendants were wrongful, or to assist other defendants in the performance of wrongful acts.

78. At all times relevant to this Complaint, defendants Maguire, John Treichel, William Fritz, Peter Pardee, Stanley Zunda, Frank Pinto, Michael Mancini, Azad Kareem, Christopher Coyle, Anthony Centurelli, Joseph Caruso, Russell Tassie, and Joseph Szarkowicz, engaged in the trade or commerce of construction and inspection of government public works projects. Such goods or services were provided within the State of Connecticut to the government of the State of Connecticut.

79. The construction of public transportation projects for the government of the State of Connecticut is governed by numerous statutes, including, but not limited to, the following: Conn. Gen. Stat. §13b-4; Conn. Gen. Stat. § 13b-15; Conn. Gen. Stat. §13b-24; Conn. Gen. Stat. §13b-26; Conn. Gen. Stat. § 13a-95 and Conn. Gen. Stat. §13b-32. These statutory provisions were applicable during all times relevant to this Complaint.

80. The Maguire Contract required that its inspectors establish and maintain project daily work reports and inspector's daily reports. The inspectors were responsible for all on-site field inspection including but not limited to the drainage systems. Defendants Pardee, Fritz, Zunda, Pinto, Mancini, Kareem, Coyle, Centurelli, Caruso, Tassie, and Szarkowicz (the "Maguire Inspectors") were assigned as inspectors by Maguire to the Project.

81. In addition to personally performing some inspections at the Project site, Fritz was an Inspector Supervisor at times relevant to this Complaint and as such, individually or jointly with others, he supervised, directed and controlled the acts and practices of the Maguire Inspectors relating to the Project, including the acts or practices set forth herein.

82. Defendant Pardee, as Principal Construction Engineer, was responsible for reviewing, verifying and approving the inspector daily reports. In addition to being a principal construction engineer, Pardee was Inspector Supervisor at times relevant to this Complaint and as such, individually or jointly with others, supervised, directed and controlled the acts and practices of the Maguire Inspectors relating to the Project, including the acts or practices set forth herein.

83. The Maguire Inspectors falsely represented in their inspection reports, directly or by implication, that certain work had been completed by Defelice and that the work performed by Defelice was in strict compliance with the Project's plans and specifications, thus enabling Defelice to be paid for the work by the Department. In this capacity, the Maguire Inspectors were acting on behalf of Maguire, and their actions were also the actions of Maguire.

84. In truth and in fact, contrary to defendants' representations, the work was not done to Contract specifications in numerous instances including but not limited to the following:

- a. Catch basins were not lined up and placed in their proper location;
- b. Catch basins were constructed without the proper mortar;
- c. Structural support was not provided for many of the catch basins;
- d. Underdrains were either not installed or not connected properly;
- e. Incorrect pipe material was installed;
- f. Portions of the underdrain/edge drain system along the median of I-84 were not installed or were installed in the wrong location;
- g. Pipes which were properly identified as not acceptable by inspectors were installed anyway; and
- h. Pipes were installed and/or connected improperly and/or placed in the wrong location.

85. On information and belief, one of Defelice's employees went to defendant Fritz, as Maguire's field inspector on the Project, and advised him of Defelice's substandard work and materials. Defendant Fritz, aware of the defects and aware of

the use of substandard materials, told the worker to go away and not to advise him any further of any deficient work.

86. Defendant Pardee's approvals falsely represented, directly or by implication, in the inspection reports that certain work had been completed by Defelice and that the work performed by Defelice was in strict compliance with the Project's plans and specifications, thus enabling Defelice to be paid for the work by the Department. As Principal Construction Engineer, defendant Pardee was acting on behalf of Maguire, and his actions were also the actions of Maguire.

87. Defendant Treichel's duties as Vice President and Project Manager included supervision and control of the entire Project for Maguire. As Maguire's Vice President and Project Manager, defendant Treichel was responsible for the proper design, implementation, and staffing of Maguire's inspection protocols for the Project. Defendant Treichel represented to the State that a proper and comprehensive protocol would be established, and that this protocol would protect the State's interest in having a properly constructed Project. In addition, Defendant Treichel represented that Maguire's inspectors would be qualified and would keep proper and accurate records of Defelice's construction activities including notation of incomplete items which would permit Maguire to keep track of such incomplete work and would prevent payment approval for incomplete work. Defendant Treichel was also responsible for the assignment of the Maguire inspectors to the Project, each of whom he represented to the State, possessed the knowledge and experience to protect the State's interests.

88. Defendant Treichel as Vice President and Project Manager directly or indirectly approved the work of the Maguire Inspectors and of the defendants Pardee

and Fritz and thus, falsely represented, directly or by implication, that certain work had been completed by Defelice and that the work performed by Defelice was in strict compliance with the Project's plans and specifications, thus enabling Defelice to be paid for the work by the Department. In this capacity, defendant Treichel was acting on behalf of Maguire, and his actions were also the actions of Maguire.

89. Maguire received and accepted payments for non-conforming and unperformed work in violation of its Contract with the Department.

90. The foregoing acts and representations of the Maguire Inspectors, defendant Fritz, defendant Pardee and defendant Treichel were material, false and likely to mislead the State to conclude that the work had been done in accordance with the Contract's plans and specifications, warranting payment to Defelice.

91. The acts, practices, and course of wrongful conduct by Maguire, the Maguire Inspectors, defendant Fritz, defendant Pardee and defendant Treichel violated several public policies of the State of Connecticut, including the following:

- a. Well established common law public policy of good faith and fair dealing in contractual relations between and among contracting parties;
- b. The public policy that public transportation projects be completed in a manner not to impair the safety of the traveling public as embodied in Conn. Gen. Stat. § 13b-15;
- c. The public policy against larceny, as embodied in Conn. Gen. Stat. §53a-119, et seq.; and
- d. The public policy against theft, as embodied in Conn. Gen. Stat. § 52-564.

92. The aforescribed acts and omissions are immoral, unethical, unscrupulous, oppressive and have caused substantial injury to the State and its citizens.

93. The acts, practices, and course of wrongful conduct by the defendants acting (i) individually, (ii) jointly, as part of a conspiracy among defendants, (iii) jointly, through their aiding and abetting of each other as alleged herein, constitute unfair and/or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b(a).

94. As a direct and proximate result of the aforementioned acts, the State and its citizens have sustained monetary losses.

COUNT SIX AGAINST MAGUIRE, WILLIAM FRITZ, STANLEY ZUNDA, FRANK PINTO, MICHAEL MANCINI, AZAD KAREEM, CHRISTOPHER COYLE, ANTHONY CENTURELLI, JOSEPH CARUSO, RUSSELL TASSIE, JOSEPH SZARKOWICZ, PETER PARDEE AND JOHN TREICHEL

1. - 94. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 94 of the Complaint.

95. Defendants willfully engaged in the acts or practices alleged herein when they knew or should have known that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

COUNT SEVEN: CONNECTICUT UNFAIR TRADE PRACTICES ACT AGAINST DEFELICE, STEPHEN V. HALLBERG, JOSEPH CUSANO, AND WILLIAM MCGEE

1. - 95. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 95 of the Complaint.

96. At all times relevant to this complaint defendants Stephen Hallberg, William McGee and Joseph Cusano (“Individual Corporate Defendants”) engaged in the trade or commerce of construction and performance of government public works

projects. They provided goods or services within the State of Connecticut to the government of the State of Connecticut

97. At all times mentioned herein, the Individual Corporate Defendants were officers, directors and/or owners of Defelice, and as such they, individually or jointly with others, directed and controlled the business and affairs of Defelice.

98. The construction of public transportation projects for the government of the State of Connecticut is governed by numerous statutes, including, but not limited to, the following: Conn. Gen. Stat. §13b-4; Conn. Gen. Stat. §13b-24; Conn. Gen. Stat. §13b-26; Conn. Gen. Stat. §13b-32; and Conn. Gen. Stat. § 13a-95. These provisions were applicable during all times relevant to this Complaint.

99. The Individual Corporate Defendants are and were responsible for the preparation and submission to the DOT of Defelice's Contractor's Prequalification Statement, Form Con-16 ("Pre-Qual Statement"), including the CON-16 submitted June 25, 2005 in order to be eligible or to continue to be eligible to bid for Department contracts.

100. The Pre-Qual Statement requires the applicant to verify to the DOT its financial status, so that the DOT may determine whether the applicant has the financial strength and stability to perform any construction contracts that might be awarded.

101. Defelice submitted its June 25, 2005 Pre-Qual Statement, signed by William H. McGee, Stephen V. Hallberg, Stephen Calabro, Joseph L. Cusano, Jr., and Charles A. Parsons, and attached thereto, among other items, its audited financial statements and supplementary information for the years ended December 31, 2004 and December 31, 2003.

102. Defelice's financial statements submitted to the Department included detailed descriptions of its assets which indicated that it owned many vehicles and pieces of equipment. Subsequent investigation by the Department after Defelice's default on the Project has revealed that a significant number of those vehicles and pieces of equipment listed were not owned by Defelice at the time they were listed in the June 25, 2005 Pre-Qual Statement in that they did not appear as owned by Defelice in the records of the Department of Motor Vehicles, or the Towns where they should have been registered.

103. The listing as owned assets of vehicles not actually owned by Defelice inflated and misrepresented Defelice's financial strength to the Department. This prevented the Department from learning the true financial condition of Defelice and from contacting bonding companies or otherwise taking steps to ensure the successful completion of the Project in accordance with the Contract's plans and specifications prior to Defelice's default.

104. The misrepresentations of its purportedly owned assets are a misrepresentation of Defelice's financial strength to the Department, and to the world, including bonding companies.

105. The foregoing representations of the defendants were material, false and likely to mislead the State to believe that Defelice's financial strength was greater than it actually was.

106. The acts, practices, and course of wrongful conduct by Defelice, and the Individual Corporate defendants violated the public policy of the State of Connecticut,

including the well established common law public policy of good faith and fair dealing in contractual relations.

107. The aforescribed acts and omissions are immoral, unethical, unscrupulous, oppressive and have caused substantial injury to the State.

108. The acts, practices, and course of wrongful conduct by the defendants acting (i) individually, (ii) jointly, as part of a conspiracy among defendants, (iii) jointly, through their aiding and abetting of each other constituted unfair or deceptive trade practices, in violation of Conn. Gen Stat. Ch. 735a.

COUNT EIGHT: AGAINST DEFELICE, STEPHEN V. HALLBERG, JOSEPH CUSANO, AND WILLIAM MCGEE

1. - 108. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 108 of the Complaint.

109. Defendants willfully engaged in the acts or practices alleged herein when they knew or should have known that their conduct constituted unfair or deceptive trade practices under Conn. Gen. Stat. § 42-110b(a).

COUNT NINE: NEGLIGENCE AS TO DEFELICE

1. – 63. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 of the Complaint.

110. Defelice was engaged as the Construction Contractor for the State on the Project.

111. Defelice owed to the State a duty to perform its construction with that degree of care which a skilled contractor of ordinary prudence should exercise under comparable circumstances.

112. Defelice negligently performed the construction work on the Project in that it:

- a. Knew or should have known that certain of its employees at the Project failed to discharge their obligations pursuant to their employment yet failed to alert the State or otherwise take appropriate action;
- b. Knew or should have known that certain of the materials used at the Project were inconsistent with or unsuitable under the Contract specifications;
- c. Failed to properly or adequately inspect its work to ensure that such work was in strict compliance with the contract documents;
- d. Failed to properly or adequately inspect the materials and products used on the Project to ensure they were appropriate under the Contract specifications; and
- e. Failed to perform its obligations under the contract in a skillful and workmanlike manner.

113. Defelice's breach of its professional duty of care directly and proximately caused the State to incur the damages more specifically detailed below.

114. As a result of the negligent performance of Defelice and its employees, the State incurred and continues to incur, among others, the following losses, costs and damages:

- a. costs to correct the defects on the Project;
- b. investigation and engineering costs;
- c. loss of beneficial use of I-84 within the Project limits or portions thereof.

COUNT TEN: NEGLIGENCE AS TO MAGUIRE

1- 63. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 of the Complaint.

115. Maguire and its employees were engaged as the inspector of Defelice's work on the Project on behalf of the State.

116. Maguire owed to the State a duty to perform its inspection services with that degree of care which a skilled inspector of ordinary prudence should exercise under comparable circumstances.

117. Maguire and its employees negligently performed its inspection services on the Project in that they:

- a. knew or should have known that Defelice failed to discharge its obligations under its Contract for the Project and failed to alert the State or otherwise take appropriate action;
- b. knew or should have known that Defelice failed to discharge its obligations under its Contract for the Project, but certified said Defelice's applications for payment;
- c. knew or should have known that certain materials used at the Project were inconsistent with or unsuitable for the Project, yet failed to alert the State or take appropriate action;
- d. failed to properly or adequately inspect the work of Defelice to ensure that such work was in strict compliance with the Contract specifications;
- e. failed to properly or adequately inspect the materials and products used on the Project to ensure same were appropriate and suitable for this Project; and

f. failed to perform its obligations under the contract in a skillful and workmanlike manner.

118. Maguire's breach of its professional duty of care directly and proximately caused the State to incur the damages more specifically detailed below.

119. As a result of the negligent performance of Maguire and its employees, the State incurred and continues to incur, among others, the following losses, costs and damages:

- a. cost to correct the defects on the Project;
- b. investigation and engineering costs;
- c. loss of beneficial use of I-84 within the Project limits or portions thereof.

COUNT ELEVEN: INTENTIONAL MISREPRESENTATION AS TO DEFELICE

1. – 63. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 of the Complaint.

120. Under the terms of the Defelice Contract, Defelice and its employees represented or caused to be represented directly or indirectly by implication, to the Department that such work was done in compliance with the Contract plans and specifications.

121. Defelice and its employees intentionally made these representations knowing that they did not perform in strict compliance with the applicable contract documents.

122. Defelice intentionally made these representations for the guidance of the State in processing and disbursing interim progress payments.

123 The State justifiably relied on these representations and processed and disbursed interim progress payments to Defelice.

124. As a result of Defelice's and its employees' intentional misrepresentations, the State incurred significant and substantial losses, costs, and damages.

COUNT TWELVE: INTENTIONAL MISREPRESENTATION AS TO MAGUIRE

1.- 63. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 of the Complaint.

125. Under the terms of the Maguire Contract, Maguire and its employees represented or caused to be represented directly or indirectly by implication, to the Department that its work and Defelice's work was done in compliance with their Contracts and with the Contracts' plans and specifications.

126. Maguire and its employees intentionally made these representations knowing that they did not perform in strict compliance with its Contract and the applicable contract documents.

127. Maguire and its employees intentionally made these representations for the guidance of the State in processing and disbursing interim progress payments to Defelice.

128. The State justifiably relied on these representations and processed and disbursed interim progress payments to Defelice and paid Maguire under the terms of its Contract.

129. As a result of Maguire's and its employees' intentional misrepresentations, the State incurred significant and substantial losses, costs, and damages.

COUNT THIRTEEN: NEGLIGENT MISREPRESENTATION AS TO DEFELICE

1.- 63 and 110 -114. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 of the Complaint and paragraphs 110 through 114 of the Complaint.

130. Under the terms of the Defelice Contract, Defelice and its employees represented or caused to be represented directly or indirectly by implication, to the Department that its work was done in compliance with the Contract plans and specifications.

131. Defelice and its employees negligently made these representations though they knew or should have known that they did not perform in strict compliance with the applicable contract documents.

132. Defelice and its employees negligently made these representations for the guidance of the State in processing and disbursing interim progress payments.

133. The State justifiably relied on said representations and processed and disbursed interim progress payments to Defelice.

134. As a result of Defelice's and its employees' negligent misrepresentations, the State incurred significant and substantial losses, costs, and damages.

COUNT FOURTEEN: NEGLIGENT MISREPRESENTATION AS TO MAGUIRE

1 - 63 and 115 - 119. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 and paragraphs 115 through 119 of the Complaint.

135. Under the terms of the Maguire Contract, Maguire and its employees were obligated to establish and maintain project daily reports and inspector's daily reports

thereby certifying that all work performed by Defelice and its employees and materials used were performed and supplied in strict compliance with the applicable contract documents.

136. Maguire and its employees negligently made these certifications though they knew or should have known that Defelice did not perform in strict compliance with the applicable contract documents.

137. Maguire and its employees negligently made these certifications for the guidance of the State in processing and disbursing interim progress payments to Defelice.

138. The State justifiably relied on said certifications and processed and disbursed interim progress payments to Defelice.

139. As a result of Maguire's and its employees' negligent misrepresentations, the State incurred significant and substantial losses, costs, and damages.

COUNT FIFTEEN: INDEMNIFICATION AS TO DEFELICE

1-63 and 110 -114. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 and paragraphs 110 through 114 of the Complaint.

140. The Contract between the plaintiff and Defelice, incorporated by reference State of Connecticut Department of Transportation Standard Specifications for Roads, Bridges and Incidental Construction, form DOT Standard Specifications, 1995, Section 1.07.10 of which obligates Defelice, as "Contractor" as follows:

Contractor's Duty to Indemnify the State against Claims for Injury or Damages: The Contractor shall indemnify and save harmless the State, the Department and all of its officers, agents and employees from all suits, actions or claims of any character, name or description brought for or on

account of any injuries or damage sustained by any persons or to any property as a result of, in connection with, or pursuant to the performance of the Contract, including all costs incurred by the State in defending itself against such claims or actions to the extent that the Contractor is held liable for same in a court of law. As much of any money which may be due the Contractor under the Contract as the Commissioner considers necessary for the purpose of such indemnification or holding harmless may be retained for such use by the State; and the Contractor's surety bonds may be held until such suit or suits, action or actions, claim or claims, as aforesaid, shall have been settled and suitable evidence to that effect furnished to the Commissioner. Such indemnity shall not be limited by reason of any insurance coverage required under the Contract.

141. The plaintiff has been damaged as a result of the acts, errors, and omissions of Defelice in connection with the Contract as hereinabove alleged.

142. Defelice owes the plaintiff a contractual duty of indemnification.

COUNT SIXTEEN: INDEMNIFICATION AS TO MAGUIRE

1-63 and 115 – 119. The plaintiff realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 63 and paragraphs 115 through 119 of the Complaint.

143. The Maguire Contract on page 14 obligates Maguire, as Contracting Engineer, in relevant part as follows :

RESPONSIBILITY FOR CLAIMS AND LIABILITY:

To indemnify and save harmless the State of Connecticut, its officers, agents, and employees from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance, negligent acts, errors, or omissions in the work performed by the Contracting Engineer and/or any of its subcontractors under this Agreement, including any supplements thereto, or resulting from the nonperformance of the Contracting Engineer and/or any of its subcontractors of any of the covenants and specifications of this Agreement, including any supplements thereto, and such indemnity shall not be limited by reason of any insurance coverage.

144. The plaintiff has been damaged as a result of the negligent performance, negligent acts, errors, and omissions in the work performed by Maguire as hereinabove alleged.

145. Under this contractual term, Maguire is required to indemnify and save harmless the State of Connecticut for all damages resulting from its negligent performance, acts, errors or omissions in its work under the Contract as described herein.

PRAYER FOR RELIEF:

WHEREFORE THE PLAINTIFF CLAIMS:

1. A finding that the defendant Defelice has breached its Contract with the State;
2. A finding that the defendant Maguire has breached its Contract with the State;
3. A finding that defendant Defelice is required to hold the State harmless pursuant to its contractual requirements set forth in Count Fifteen;
4. A finding that defendant Defelice is required to hold the State harmless pursuant to its contractual requirements set forth in Count Sixteen;
5. Compensatory damages under the First, Second, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Counts;
6. Consequential damages in the First, Second, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Counts;
7. An order requiring Defelice, Maguire, and each of the individual defendants to pay restitution for any loss resulting from the acts or practices that violate the Connecticut Unfair Trade Practices Act, as alleged herein;
8. An order requiring Defelice, Maguire, and each of the individual defendants to pay a civil penalty in an amount not to exceed \$5000 per violation for each willful violation of the Connecticut Unfair Trade Practices Act;
9. Attorneys fees, pursuant to Section 42-110b of the General Statutes of Connecticut, under Counts Three, Four, Five, Six, Seven and Eight;
10. Preliminary and Permanent Injunctive Relief;

11. Attorneys fees against all defendants;
12. An accounting; and
13. Such other legal and equitable relief as the Court may deem just and proper.

Plaintiff hereby states that the amount in controversy is more than Fifteen Thousand Dollars (\$15,000.00), exclusive of interests and costs.

HEREOF FAIL NOT, BUT OF THIS WRIT, MAKE DUE SERVICE AND RETURN ACCORDING TO LAW.

Dated at Hartford, Connecticut this 23rd day of April, 2007.

STATE OF CONNECTICUT

RICHARD BLUMENTHAL
ATTORNEY GENERAL

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