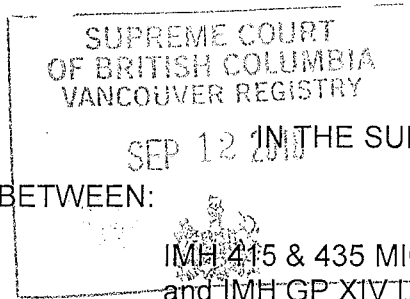


S-189965



NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:

IMH 415 & 435 MICHIGAN APARTMENTS LTD., IMH POOL XIV LP,
and IMH GP XIV LTD.

PLAINTIFFS

AND

UNIQUE RESTORATION LTD., WYNSPEC MANAGEMENT INC.,
ZGEMI INC and HARCONBRIDGE CONSTRUCTION LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or,

- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

A. The Parties

1. The Plaintiff IMH 415 & 435 Michigan Apartments Ltd. ("Michigan Apartments") is a company incorporated pursuant to the laws of the Province of British Columbia. Michigan Apartments is the registered owner of residential apartment buildings located at 415 Michigan Avenue and 435 Michigan Avenue, in the City of Victoria, in the Province of British Columbia ("the Michigan Properties").
2. The Plaintiff IMH Pool XIV LP is a corporation incorporated pursuant to the laws of Province of Ontario and is the beneficial owner of the Michigan Properties. IMH Pool XIV LP and Michigan Apartments are collectively the owners of the Michigan Properties (the "Michigan Owners").
3. The Plaintiff IMH GP XIV Ltd. is a corporation incorporated under the laws of the Province of Ontario and is a general partner of IMH Pool XIV LP.
4. The Defendant Unique Restoration Ltd. ("Unique") is a company incorporated pursuant to the laws of Canada and is extra-provincially registered in British Columbia with an address for delivery at 634 Derment Way, Delta, British Columbia.
5. The Defendant, Wynspec Management Inc. ("Wynspec") is a corporation incorporated pursuant to the laws of the Province of Ontario and is extra-provincially registered in British Columbia, with an address for delivery at Roxwal Lawyers LLP, 5455 152nd Street, Suite 212, Surrey, British Columbia.
6. The Defendant, ZGEMI Inc. ("ZGEMI") is a corporation incorporated pursuant to the laws of the Province of Ontario with a registered office at 39 Benton Street, Brampton, Ontario.
7. The Defendant, Harconbridge Construction Ltd. ("Harconbridge") is a company incorporated pursuant to the laws of the Province of British Columbia with a registered and records office at 22717 - 119th Avenue, Maple Ridge, British Columbia.

B. Renovation of the Michigan Properties

8. On or about November 27, 2015 the Michigan Owners purchased the Michigan Properties.
9. Starlight Group Property Holding Inc. ("Starlight"), is a company incorporated pursuant to the laws of the Province of British Columbia and is an amalgamation of P Kanco Benco Ltd., PD Kanco ALB Holdings Ltd., Starlight Apartments Ltd., Starlight Group Property Holdings Inc., and Starlight Investment (B.C.) Ltd. Starlight Investment (B.C.) Ltd. is a company incorporated pursuant to the laws of British Columbia and is a continuation of Starlight Investments Ltd., which is a corporation,

incorporated pursuant to the laws of the Province of Ontario. Starlight is the asset manager for the Michigan Owners, acting on authority delegated by IMH GP XIV LP.

10. The Plaintiffs planned to renovate the building envelopes and interiors of the Michigan Properties (the "Michigan Project").
11. In or about February 2016, the Plaintiffs retained AREC Environmental Group ("AREC") to conduct asbestos inventory surveys at the Michigan Properties (the "AREC Reports").
12. In or about March 2016, Starlight, on behalf of the Michigan Owners, retained Wynspec to provide specification and tendering services for the building envelope work on the Michigan Project. On or about June 13, 2016 Starlight, acting on behalf of the Michigan, entered into a further contract with Wynspec under which Wynspec agreed to provide contract administration, monitoring and supervision of the building envelope work at the Michigan Project (collectively the "Building Envelope Consulting Contract").
13. On or about March 25, 2016 the Plaintiffs engaged Harconbridge to provide construction services for the Michigan Project, and in particular, the renovation within individual suites at the Michigan Properties (the "Harconbridge Suite Renovation Contract").
14. In or about April 2016 Wynspec provided specifications for the building envelope work for the Michigan Project which included the AREC Reports (the "Building Envelope Specifications").
15. On or about May 19, 2016 Unique entered into a contract with Starlight, acting as the representative of the Michigan Owners, to perform the building envelope work at the Michigan Project. The contract was in the form authored by the Canadian Construction Documents Committee, version 2, 1998 ("CCDC 2"), as modified by the parties (the "Building Envelope Contract").
16. On or about June 6, 2016 ZGEMI entered into a contract with the Michigan Owners to provide construction services on the Michigan Project, specifically the renovation of individual suites at the Michigan Properties (the "ZGEMI Suite Renovation Contract").
17. On or about July 14, 2016 ZGEMI entered into a contract with the Michigan Owners, using the CCDC 2 form as modified by the parties for work on the Michigan Project, specifically, the corridors, entrances and lobbies (the "Common Spaces Contract").
18. In or about August 2016 Starlight, on behalf of the Michigan Owners, retained Wynspec to provide project management services for the Michigan Project (the "Project Management Contract").

C. Unique's Contractual Obligations and Common Law Duties of Care

19. In entering into the Building Envelope Contract, the Michigan Owners relied upon Unique's representation that it was knowledgeable and experienced in the completion and management of the type of work required in the Building Envelope

Contract, including the proper construction, means, methods, techniques, sequences and procedures for the renovation of buildings containing asbestos.

20. Pursuant to the express and implied terms of the Building Envelope Contract, Unique agreed, among other things, to:
- (a) Perform the building envelope work required under the Building Envelope Contract, including interior abatement for window replacement and exterior abatement on all surfaces, as per the AREC Reports;
 - (b) Be responsible for taking all necessary steps in accordance with applicable legislation to dispose of, store or otherwise render harmless the asbestos contained in the existing exterior finishes and other materials as identified in the AREC Reports;
 - (c) Assume total control of and responsibility for all work necessary or appropriate for the completion of the building envelope work in a good and workmanlike manner;
 - (d) Be responsible for construction means, methods, techniques, sequences and procedures employed for the building envelope work, irrespective of whether such work was being completed by Unique or its subcontractors;
 - (e) Be responsible to the Michigan Owners for the acts and omissions of the subcontractors, suppliers and persons directly or indirectly employed by Unique;
 - (f) Complete, direct, coordinate and supervise the building envelope work, irrespective of whether such work was being completed by Unique or its subcontractors;
 - (g) Advise the Michigan Owners on the quality, appropriateness and suitability of all work, materials, equipment, building systems, and labour proposed, utilized or undertaken with respect to the building envelope work;
 - (h) Prepare or review all shop drawings, specifications and work proposals required for the building envelope work to ensure that they conformed with the Building Envelope Specifications and were otherwise prepared in a good and workmanlike manner;
 - (i) Ensure that all work completed, materials installed, and equipment utilized for the building envelope work complied with good and workmanlike standards;
 - (j) Periodically inspect all work completed, materials installed, and equipment utilized for the building envelope work for compliance with good and workmanlike standards and the absence of defects and deficiencies;
 - (k) Maintain the work site in a safe and tidy condition and free from the accumulation of waste products and debris;
 - (l) Independently and competently perform all of its obligations under the Building Envelope Contract in a good and workmanlike manner;

- (m) Independently perform from time to time such additional work as was reasonably required to complete the building envelope work in a good and workmanlike manner;
 - (n) When making applications for payment, submit a schedule of values for the parts of the work performed and products delivered as of the last day of the relevant payment period;
 - (o) Provide a statement based on the schedule of values, together with a statutory declaration providing that all accounts and monies due for, *inter alia*, subcontracts and other indebtedness incurred by Unique in performing the work have been paid in full, except for holdback monies properly retained;
 - (p) Cause any construction lien registered by one of its subcontractors against the Michigan Properties to be forthwith removed and released from the title, and in any event, prior to the next payment due to Unique under the Building Envelope Contract;
 - (q) In applying to Wynspec to establish substantial completion of the work, provide to the Michigan Owners and Wynspec a comprehensive list of items to be completed or corrected;
 - (r) Immediately following the issuance of the certificate of substantial performance of the work, establish a reasonable date for finishing the work;
 - (s) Proceed diligently to finally complete the work; and
 - (t) At all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by Unique with respect to the building envelope work would exercise in comparable circumstances.
21. The Building Envelope Contract contains an indemnification provision as follows:
- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:
 - .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

- .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

22. Additionally, as a result of, among other things, Unique's representations to the Michigan Owners and Starlight regarding its knowledge and expertise in the completion and management of the type of work required to complete the building envelope work on the Michigan Project, its proximity to the Michigan Project, and its express or implied knowledge of the Plaintiffs' interest in successfully completing the Michigan Project, Unique owed to the Michigan Owners a duty of care to at all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by Unique with respect to the Michigan Project would exercise in comparable circumstances.

D. Wynspec's Contractual Obligations and Common Law Duties of Care

23. In entering into the Building Envelope Consulting Contract, the Michigan Owners relied upon Wynspec's express or implied representation that it was knowledgeable and experienced in the provision of the type of specification, contract administration, consulting and project management services required for the building envelope work on the Michigan Project.
24. Pursuant to the express and implied terms of the Building Envelope Consulting Contract, Wynspec agreed, among other things, to provide the Michigan Owners with complete and competent specification and contract administrative and project management services for the building envelope work performed by Unique, including agreeing to:
 - (a) Prepare the Building Envelope Specifications;
 - (b) Carry out the tendering process for the building envelope work, including obtaining bids, carrying out a pre-tender meeting, analyzing bids, and making recommendations to the Michigan Owners;
 - (c) Prepare and administer the Building Envelope Contract;
 - (d) Attend a pre-construction meeting;
 - (e) Conduct periodic site visits to review the work performed under the Building Envelope Contract, including the interior and exterior abatement work;
 - (f) Submit site review reports;

- (g) Review reports from independent inspections and testing firms regarding construction;
 - (h) Carry out general reviews of the work performed by Unique and its subcontractors, including the interior and exterior abatement work, on an "as required" basis to monitor for compliance with the requirements detailed in the Building Envelope Specifications including the AREC Reports, and with all the relevant requirements of the regulatory authorities, including WorkSafe BC.;
 - (i) Evaluate Unique's applications for progress payments and determine the amount owing to Unique and issue certificates for payment; and
 - (j) On receipt of a written application from Unique in accordance with the terms of the Building Envelope Contract, review the work to establish substantial performance of the work, review the work to verify validity of the application and either advise Unique that the work is not substantially performed or issue a certificate stating the date of substantial performance of the work to each of Starlight, on behalf of the Michigan Owners, and Unique.
25. In entering into the Project Management Contract, the Michigan Owners relied on Wynspec's expressed or implied representation that it was knowledgeable and experienced in the provisions of the type of project management services required for the Michigan Project.
26. Pursuant to the express and implied terms of the Project Management Contract, Wynspec agreed, among other things, to provide the Michigan with complete and competent project management services for the Michigan Project including agreeing to:
- (a) Chair site meetings with the Owners and contractors working on the Project at agreed upon intervals;
 - (b) Prepare and coordinate required documentation for building permit applications;
 - (c) Manage the Project's budget cash flow;
 - (d) Obtain required documentation from the contractors working on the Project regarding Liability, Insurance, Workplace Safety and Insurance Board Certificates, Materials Data, and Scheduling;
 - (e) Provide periodic evaluation of the Project's impact on facility operations by creating solutions and giving advice for minimizing problems;
 - (f) Prepare periodic summary reports for distribution to the Owners, the contractors working on the Project and Building Officials if required;
 - (g) Provide updates on Project budgets, scope, scheduling and other issues keeping the Owners informed and providing a record of the work;
 - (h) Review samples of work in progress for compliance with the technical requirements of the specifications during periodic visits;

- (i) Provide written reports to the contractors working on the Project highlighting non-compliant aspects of their work and recommended corrective actions;
 - (j) Check that deviations from the contract requirements are being addressed by the contractors;
 - (k) Perform a final review of the work with the Owners and the contractors working on the Project at the completion of the Project; and
 - (l) Obtain closeout documentation, including warranties, for the Owners.
27. Additionally, as a result of, among other things, Wynspec's representations to the Michigan Owners and Starlight regarding its knowledge and expertise in the provision of the specification, contract and administration, consulting and project management services required on the Michigan Project, its proximity to the Michigan Project and its express or implied knowledge of the Plaintiffs' interest in successfully completing the Michigan Project, Wynspec owed to the Michigan Owners a duty of care to at all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified consultant and project manager engaged in the provision of services similar to those being performed by Wynspec with respect to the Michigan Project would exercise in comparable circumstances.

E. ZGEMI's Contractual Obligations and Common Law Duties of Care

28. Prior to ZGEMI entering into the Common Spaces Contract, ZGEMI was provided with a copy of the AREC Reports identifying the presence of asbestos in the building envelope, suites and common spaces of the Michigan Properties.
29. Pursuant to the express and implied terms of the Common Spaces Contract, ZGEMI agreed, among other things, to:
- (a) Assume total control of the work and responsibility to direct and supervise the work to ensure conformity with the terms of the Common Spaces Contract;
 - (b) Be responsible for construction means, methods, techniques, sequences, and procedures employed on the work, irrespective of whether such work was being completed by ZGEMI or its sub-contractors and suppliers;
 - (c) Complete, direct, coordinate and supervise the work, irrespective of whether such work was being completed by ZGEMI or its sub-contractors and suppliers;
 - (d) Be responsible to the Owners for the acts and omissions of the subcontractors, suppliers and persons directly or indirectly employed by ZGEMI;
 - (e) Advise the Owners on the quality, appropriateness and suitability of all work, materials, equipment, building systems, and labour proposed, utilized or undertaken with respect to the work;
 - (f) Prepare or review all shop drawings specifications and work proposal required for the work to ensure that they conformed with the Interior Specifications and were otherwise prepared in a good and workmanlike manner;

- (g) Ensure that all work completed, materials installed, and equipment utilized for the work complied with good and workmanlike standards;
- (h) Periodically inspect all work completed, materials installed, and equipment utilized for the work for compliance with good and workmanlike standards and the absence of defects and deficiencies;
- (i) Maintain the work site in a safe and tidy condition and free from the accumulation of waste products and debris;
- (j) Independently and competently perform all of its obligations under the Common Spaces Contracts in a good and workmanlike manner;
- (k) Independently perform from time to time such additional work as was reasonably required to complete the work in a good and workmanlike manner; and
- (l) At all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by ZGEMI with respect to the work would exercise in comparable circumstances.

30. The Common Spaces Contract contains an indemnification provision as follows:

12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

.1 caused by:

- (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
- (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

31. Prior to commencing work under the ZGEMI Suite Renovation Contract, ZGEMI was aware of the presence of asbestos in the existing construction and finishing materials in the suites to be renovated.
32. The terms of the ZGEMI Suite Renovation Contract required ZGEMI to conduct both moderate risk and high risk abatement of hazardous materials, including asbestos, used in the existing construction and finishing materials in the suites.
33. In entering into the ZGEMI Suite Renovation Contract, the Michigan Owners relied on ZGEMI's express or implied representation that it was knowledgeable and experienced in the provision of those services, and in particular, in providing those services in buildings where there was asbestos in the existing construction and finishing materials.
34. Additionally, as a result of, among other things, ZGEMI's representations to the Michigan Owners and Starlight regarding its knowledge and expertise in the completion and management of the type of work required to complete the work on the Michigan Project, its proximity to the Michigan Project, and its express or implied knowledge of the Plaintiffs' interest in successfully completing the Michigan Project, ZGEMI owed to the Michigan Owners a duty of care to at all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by ZGEMI with respect to the Michigan Project would exercise in comparable circumstances.

F. Harconbridge's Contractual Obligations and Common Law Duties of Care

35. Prior to Harconbridge commencing work on the Michigan Project, Starlight provided Harconbridge with a copy of the AREC Reports, identifying the presence of asbestos in the construction materials used in the interior of the Michigan Properties.
36. The terms of the Harconbridge Suite Renovation Contract required Harconbridge to conduct both moderate risk and high risk abatement of hazardous materials, including asbestos, used in the existing construction and finishing materials in the suites.
37. In entering into the Harconbridge Suite Renovation Contract, the Michigan Owners relied on Harconbridge's express or implied representation that it was knowledgeable and experienced in the provision of those services, and in particular, in providing those services in buildings where there was asbestos in the existing construction and finishing materials.
38. Additionally, as a result of, among other things, Harconbridge's representations to the Michigan Owners and Starlight regarding its knowledge and expertise in the completion and management of the type of work required to complete the work on the Michigan Project, its proximity to the Michigan Project, and its express or implied knowledge of the Plaintiffs' interest in successfully completing the Michigan Project, Harconbridge owed to the Michigan Owners a duty of care to at all times exercise

the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by Harconbridge with respect to the Michigan Project would exercise in comparable circumstances.

G. Discovery of Asbestos during the renovation of the Michigan Properties

39. On December 14, 2016 WorkSafe BC issued a stop work order on all work on the interior of 415 Michigan due to the failure of the contractor performing interior renovations to use appropriate safe work procedures in performing work that disturbed asbestos containing materials.
40. Following the issuance of the stop work order, Starlight retained North West Environmental Group Ltd. ("North West") to conduct an analysis of bulk materials used in the common spaces at 415 Michigan and to conduct air quality tests.
41. On or about December 30, 2016, VIHA issued a Public Health Order ordering the Michigan Owners to provide information and records relevant to the health hazard at 415 Michigan in the form of potentially exposed asbestos fibres.
42. On or about January 3, 2017 North West advised Starlight of the interim results of its further testing of bulk materials at 415 Michigan, which showed levels of asbestos exceeding WorkSafe limits in materials used in some of the common spaces and suites at 415 Michigan. Starlight, on behalf of the Michigan Owners, immediately stopped the Interior Work at 435 Michigan and notified Worksafe BC of the voluntary work stoppage at 435 Michigan.
43. On or about January 12, 2017 the property manager at 435 Michigan received reports from two residents of suspected asbestos fibres in construction dust inside their suites.
44. On January 13, 2017 Starlight retained North West to inspect and test the two affected suites plus additional suites and selected common areas at 435 Michigan for the presence of asbestos. On the advice of North West, Starlight placed a stop work order on the Building Envelope Work to minimize any further migration of construction dust created by the work into the interior spaces of 435 Michigan.
45. On or about January 19, 2017, North West reported levels of asbestos over the exposure limits in representative samples of dust in the suites and hallways tested at 435 Michigan.
46. On or about January 26, 2017 Starlight gave notice to the tenants at 435 Michigan of a temporary relocation to allow for the cleaning of the suites and common spaces and further post-cleaning testing.
47. On or about January 30, 2017 Starlight retained Pinchin to conduct hazardous materials remediation at 435 Michigan (the "Remediation Work").
48. On or about February 1, 2017 the Medical Health Officer for the Vancouver Island Health Authority ("VIHA") issued an order pursuant to section 31(1)(a) of the *Public Health Act* requiring Starlight to conduct air sampling at 435 Michigan in accordance with the protocol attached to the order (the "Public Health Order").

49. On or about March 3, 2017 the Remediation Work and air testing in compliance with the Public Health Order was completed. On or about March 8, 2018 VIHA approved the re-occupancy of the suites at 435 Michigan.

H. Notice to the Defendants

50. On or about January 27, 2017, Starlight, on behalf of the Michigan Owners, provided notice in writing to Unique in accordance with the Building Envelope Contract of the claim of the Michigan Owners against Unique arising from the migration of asbestos into the interior of 435 Michigan during the work performed by Unique and/or its subcontractor under the Building Envelope Contract.
51. On or about January 27, 2017 Starlight, on behalf of the Michigan Owners, provided notice in writing to Wynspec of the claim of the Michigan Owners against Wynspec arising from the migration of asbestos into the interior of 435 Michigan during the work performed by Unique and/or its subcontractors.
52. On or about January 27, 2017 Starlight, on behalf of the Michigan Owners, provided notice in writing to ZGEMI in accordance with the Common Spaces Contract of the claim of the Michigan Owners against ZGEMI arising from the presence of asbestos in the interior of 435 Michigan.
53. On or about May 9, 2017, Starlight, on behalf of the Michigan Owners, provided notice to Harconbridge of the claim of the Michigan Owners arising from the presence of asbestos in suites renovated by Harconbridge pursuant to the Harconbridge Suite Renovation Contract.
54. On or about October 2, 2017, Starlight advised ZGEMI that ZGEMI would not be continuing with a number of projects in Victoria, British Columbia, including the Michigan and Douglas Project.
55. On or about December 20, 2017 Starlight, on behalf of the Michigan Owners, provided written notice to ZGEMI of the termination of the Common Spaces Contract.

I. Default by Unique

56. Unique failed to remit proper progress payments owing to its subcontractors from the payments made to it by the Michigan Owners despite providing statutory declarations to Starlight that all accounts and monies due to its subcontractors had been paid in full.
57. On or after May 30, 2018 three subcontractors of Unique, Starline Windows Ltd., K & S Railings Ltd., and Prime Coatings Ltd., filed lien claims against the Michigan Properties.
58. Unique has failed to cause the liens filed by its subcontractors against the Michigan Properties to be removed and released from title.
59. On or about June 15, 2018 Unique left the Michigan Project worksite without completing the work under the Building Envelope Contract, in particular, completion

of the window flashings and caulking, the renovation of the storefront, and the landscaping.

60. On or about August 28, 2018 Wynspec provided written notice to Unique that it was in default of its obligations to complete the scope of work under the Building Envelope Contract and advised Unique that, if it did not correct the default within five working days, the Michigan Owners may exercise their right to terminate the Building Envelope Contract ("Default Notice").
61. Despite receipt of the Default Notice, Unique failed to correct the default within the five days specified.
62. On or about September 6, 2018, the Michigan Owners terminated the Building Envelope Contract in accordance with Part 7.

J. Resulting Loss and Damage

63. As a result of the presence of asbestos fibres in the interior spaces of the Michigan Properties, including individual suites, corridors, entrances and lobbies, the Plaintiffs suffered loss, damage and expense including:
 - (a) Costs of conducting testing of the interior spaces of the Michigan Properties, including testing performed in compliance with the stop work orders issued by WorkSafe BC and the Public Health Orders issued by VIHA;
 - (b) Costs incurred to relocate tenants of 435 Michigan to alternate accommodation during the testing and abatement procedures;
 - (c) Loss of rental income due to relocation of the 435 Michigan tenants;
 - (d) Lost rental income due to delay in the completion of the Michigan Project;
 - (e) Costs of abatement of the asbestos;
 - (f) Costs incurred for standby charges due to contractor stop work order and tenant relocation; and
 - (g) Costs incurred due to tenant relocation and vacancy of suites, including additional hydro costs and security costs.
64. As a result of Unique's default under the Building Envelope Contract, the Plaintiffs have incurred or will incur loss, cost and expense, including:
 - (a) The cost of completing the work under the Building Envelope Contract; and
 - (b) Costs, expenses and legal fees in connection with the liens filed against the Michigan Properties by Unique's subcontractors.

K. Unique's breaches of contract and negligence

65. Unique breached its contractual obligations to the Michigan Owners under the Building Envelope Contract by, among other things:

- (a) Failure to ensure that the building envelope work was carried out in a good and workmanlike manner;
 - (b) Failing to direct and coordinate and supervise the building envelope work completed by Unique or its subcontractor;
 - (c) Failing to ensure the building envelope work complied with the Building Envelope Specifications, and in particular the AREC Report;
 - (d) Failing to ensure that any dust and debris produced in the course of performing the work did not migrate into the interior of the buildings;
 - (e) Failing to exercise the degree of care, diligence and skill required in the work to avoid the migration of asbestos fibers into the interior spaces of the building;
 - (f) Failing to satisfy the accounts of its subcontractors;
 - (g) Failing to take steps to have the liens filed by its subcontractors against the Michigan Properties removed and released from title;
 - (h) Failing to prosecute the work properly and completely and in a timely manner; and
 - (i) Failing to correct its default in compliance with the Default Notice delivered to Unique by Wynspec in accordance with Part 7 of the Building Envelope Contract.
66. Further, and in the alternative, Unique breached its duty of care owed to the Michigan Owners and was negligent by failing to at all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by Unique with respect to the Michigan Project would exercise in comparable circumstances. Particulars of Unique's negligence include:
- (a) Failing to take any, or any reasonable steps, to prevent the migration of dust debris, asbestos fibers and other hazardous substance during the building envelope work into the interior of the Michigan Properties;
 - (b) Failing to properly abate the accumulation of dust and debris containing asbestos fibers and other hazardous substances created by the building envelope work in the interior of the Michigan Properties;
 - (c) Failing to implement the asbestos abatement procedures required under the Building Envelope Contract;
 - (d) Failing to advise Starlight of the discovery of accumulated dust and debris containing asbestos fibers in one or more suites at 435 Michigan; and
 - (e) Failing to properly assess the risk of further migration of dust and debris containing asbestos fibers and other hazardous substances into suites in the Michigan Properties and failing to take necessary steps to prevent the further migration of such dust and debris into 435 Michigan during its work.

67. Unique's breaches of contract and negligence caused, aggravated or contributed to the migration of construction dust and debris containing asbestos fibers and other hazardous materials into the interior of the Michigan Properties including the common areas and individual suites, and the resulting loss and damage suffered by the Plaintiffs.
68. Unique's breach of contract and negligence resulted in unsafe levels of asbestos fibers and other hazardous substances within the Michigan Properties that posed a substantial danger to the health and safety of the tenants at the Michigan Properties.
69. At all material times Unique could have reasonably foreseen that, by failing to undertake the necessary and contractually required steps to abate the disturbance of material known to contain asbestos and other hazardous substance during the work on the building envelope of the Michigan Properties:
 - (a) Asbestos fibers and other hazardous substances would migrate into the interior of the Michigan Properties and present a serious health risk to the tenants;
 - (b) The Plaintiffs would incur costs and expense in conducting testing to assess the levels of asbestos fibers and other hazardous substances in the Michigan Properties, performing the necessary abatement and clean-up of the asbestos fibers and other hazardous substances and conducting post clean-up testing to ensure the Michigan Properties were safe for occupation by the tenants;
 - (c) The Plaintiffs would suffer losses caused by the delay in the completion of the Michigan Project, due to the stoppage of work during the necessary testing and clean-up time required to obtain the necessary permission from WorkSafe to recommence work in the Michigan Properties; and
 - (d) The Plaintiff would incur losses and costs due to the displacement of tenants during the testing and clean-up of the Michigan Properties.
70. Unique's default under the Building Envelope Contract has caused the Michigan Owners to incur cost and expense in arranging for the work under the Building Envelope Contract to be completed.
71. Unique's breach of its obligation under the Building Envelope Contract to properly remit progress payments to its subcontractors has caused the Michigan Owners to incur cost and expense in addressing lien claims filed by the unpaid subcontractors.
72. As a result of Unique's breach of the Building Envelope Contract and its negligence, as particularized above, the Plaintiffs say that the indemnity obligations of Unique under clause 12.1 of the Building Envelope Contract have been triggered.
73. Unique has failed to indemnify the Michigan Owners with respect to the losses suffered by the Michigan Owners that are within the scope of clause 12.1 of the Building Envelope Contract.
74. The Plaintiffs claim against Unique pursuant to the indemnity provisions in the Building Envelope Contract, for all losses, costs and damages, including interest and all legal costs suffered by the Michigan Owners, caused by the negligent acts or

omissions of Unique and/or its subcontractors, supplier and any other persons directly or indirectly employed by Unique in carrying out the work and/or the failure of Unique to fulfill the terms and conditions of the Building Envelope Contract.

L. Wynspec's breaches of contract and negligence

75. Wynspec breached the Building Envelope Consulting Contract by, among other things:
 - (a) Failing to properly review the work performed by Unique and its subcontractors;
 - (b) Failing to monitor the steps taken by Unique and its subcontractors regarding the abatement of any hazardous materials, including asbestos, disturbed during the work;
 - (c) Failing to ensure that Unique and its subcontractors took the necessary steps to prevent material containing asbestos from migrating into the interior spaces of the Michigan Properties during the work; and
 - (d) Failing to ensure that Unique and its subcontractors properly contained and removed all dust and debris created during the work to prevent accumulations of dust from migrating into the interior of the Michigan Properties.
76. Wynspec breached the Project Management Contract by, among other things:
 - (a) Failing to properly review the work performed on the Michigan Project for compliance with the Building Envelope Specifications, and the AREC Report;
 - (b) Failing to monitor the steps taken by the contractors working on the Michigan Project regarding the abatement of any hazardous materials, including asbestos, disturbed during the Michigan Project; and
 - (c) Failing to ensure that the contractors working on the Michigan Project properly contained and removed all dust and debris created during the work to prevent accumulation of and migration of dust and debris within the Michigan Properties.
77. Further, and in the alternative, Wynspec breached its duty of care owed to the Michigan Owners and was negligent by failing to at all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified consultant and project manager engaged in the provision of services similar to those being performed by Wynspec on the Michigan Project would exercise in comparable circumstances.
78. Wynspec's breaches of contract and negligence caused, aggravated or contributed to the defects and deficiencies responsible for the accumulation of and migration of construction dust containing asbestos into the interior of the Michigan Properties, including the common spaces and individual suites, and the resulting damages suffered by the Plaintiffs.

M. ZGEMI'S breaches of contract and negligence

79. ZGEMI breached its contractual obligations to the Michigan Owners under the Common Spaces Contract by, among other things:
- (a) Failing to ensure that the work was carried out in a good and workmanlike manner;
 - (b) Failing to direct and coordinate and supervise the work completed by ZGEMI or its subcontractor;
 - (c) Failing to ensure the work complied with the Interior Specifications, and in particular the AREC Reports;
 - (d) Failing to ensure that any dust and debris produced in the performance of the work was properly removed and contained; and
 - (e) Failing to exercise the degree of care, diligence and skill required in the work under the Common Spaces Contract to the disturbance and spread of asbestos fibers in the interior spaces of the Michigan Properties.
80. As a result of ZGEMI's breach of the Common Spaces Contract and its negligence, as particularized above, the Plaintiffs say that the indemnity obligations of ZGEMI under clause 12.1 of the Common Spaces Contract have been triggered.
81. ZGEMI has failed to indemnify the Michigan Owners with respect to the losses suffered by the Michigan Owners that are within the scope of clause 12.1 of the Common Spaces Contract.
82. The Plaintiffs claim against ZGEMI pursuant to the indemnity provisions in the Common Spaces Contract for all losses, costs and damages, including interest and all legal costs suffered by the Michigan Owners, caused by the negligent acts or omissions of ZGEMI and/or its subcontractors, supplier and any other persons directly or indirectly employed by ZGEMI in carrying out the work under the Common Spaces Contract and/or the failure of ZGEMI to fulfill the terms and conditions of the Common Spaces Contract.
83. ZGEMI breached the terms of the ZGEMI Suite Renovation Contract by, among other things:
- (a) Failing to properly conduct the abatement procedures required under the ZGEMI Suite Renovation Contract;
 - (b) Failing to properly contain and remove dust and debris containing or potentially containing asbestos fibers during the renovation work under the ZGEMI Suite Renovation Contract; and
 - (c) Failing to exercise the degree of care, diligence and skill required in the work under the ZGEMI Suite Renovation Contract to avoid the dispersal of asbestos fibers within the suites being renovated and in the other interior spaces of the Michigan Properties.

84. Further, and in the alternative, ZGEMI breached its duty of care owed to the Michigan Owners and was negligent by failing to at all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by ZGEMI with respect to the Michigan Project would exercise in comparable circumstances. Particulars of ZGEMI's negligence include:
- (a) Failing to take any, or any reasonable steps, to prevent the accumulation of dust and debris containing asbestos fibers and other hazardous substances during its work on the Michigan Project; and
 - (b) Failing to properly abate the accumulation of dust and debris containing asbestos fibers and other hazardous substances created by its work on the Michigan Project.
85. ZGEMI's breaches of contract and negligence caused, aggravated or contributed to the accumulation of construction dust and debris containing asbestos fibers and other hazardous materials in the interior of the Michigan Properties including the common areas and individual suites, and the resulting loss and damage suffered by the Plaintiffs.
86. ZGEMI's breach of contract and negligence resulted in unsafe levels of asbestos fibers and other hazardous substances within the Michigan Properties that posed a substantial danger to the health and safety of the tenants at the Michigan Properties.
87. At all material times ZGEMI could have reasonably foreseen that, by failing to undertake the necessary steps to abate the disturbance of material known to contain asbestos and other hazardous substance during its work on the Michigan Project:
- (a) Asbestos fibers and other hazardous substances would accumulate in the Michigan Properties and present a serious health risk to the tenants;
 - (b) The Plaintiffs would incur costs and expense in conducting testing to assess the levels of asbestos fibers and other hazardous substances in the Michigan Properties, performing the necessary abatement and clean-up of the asbestos fibers and other hazardous substances and conducting post clean-up testing to ensure the Michigan Properties were safe for occupation by the tenants;
 - (c) The Plaintiffs would suffer losses caused by the delay in the completion of the Michigan Project, due to the stoppage of work during the necessary testing and clean-up time required to obtain the necessary permission from WorkSafe to recommence work in the Michigan Properties; and
 - (d) The Plaintiff would incur losses and costs due to the displacement of tenants during the testing and clean-up of the Michigan Properties.
88. ZGEMI's breaches of contract and negligence caused, aggravated or contributed to the defects and deficiencies in the Michigan Properties and, in particular, the presence of asbestos fibers on surfaces and in the air inside the Michigan Properties and the resulting damages suffered by the Plaintiffs.

N. Harconbridge breaches of contract and negligence

89. Harconbridge breached the terms of the Harconbridge Suite Renovation Contract by, among other things:
- (a) Failing to properly conduct the abatement procedures required under the Harconbridge Suite Renovation Contract to address the asbestos in the existing construction and finishing materials in the suites;
 - (b) Failing to properly contain and remove dust and debris containing or potentially containing asbestos fibers during the renovation work under the Harconbridge Suite Renovation Contract; and
 - (c) Failing to exercise the degree of care, diligence and skill required in the work under the Harconbridge Suite Renovation Contract to avoid the dispersal of asbestos fibers within the suites being renovated and in the other interior spaces of the Michigan Properties.
90. Further, and in the alternative, Harconbridge breached its duty of care owed to the Michigan Owners and was negligent by failing to at all times exercise the degree of care, diligence, skill and efficiency that a prudent, experienced and qualified contractor engaged in the provision of services similar to those being performed by Unique with respect to the Michigan Project would exercise in comparable circumstances. Particulars of Harconbridge's negligence include:
- (a) Failing to take any, or any reasonable steps, to prevent the accumulation of dust and debris containing asbestos fibers and other hazardous substances during its work on the Michigan Project; and
 - (b) Failing to properly abate the accumulation of dust and debris containing asbestos fibers and other hazardous substances created by its work on the Michigan Project.
91. Harconbridge's breach of contract and negligence caused, aggravated or contributed to the migration of construction dust and debris containing asbestos fibers and other hazardous materials into the interior of the Michigan Properties including the common areas and individual suites, and the resulting loss and damage suffered by the Plaintiffs.
92. Harconbridge's breach of contract and negligence resulted in unsafe levels of asbestos fibers and other hazardous substances within the Michigan Properties that posed a substantial danger to the health and safety of the tenants at the Michigan Properties.
93. At all material times Harconbridge could have reasonably foreseen that, by failing to undertake the necessary steps to abate the disturbance of material known to contain asbestos and other hazardous substance during its work on the Michigan Project:
- (a) Asbestos fibers and other hazardous substances would accumulate in the interior of the Michigan Properties and present a serious health risk to the tenants;

- (b) The Plaintiffs would incur costs and expense in conducting testing to assess the levels of asbestos fibers and other hazardous substances in the Michigan Properties, performing the necessary abatement and clean-up of the asbestos fibers and other hazardous substances and conducting post clean-up testing to ensure the Michigan Properties were safe for occupation by the tenants;
 - (c) The Plaintiffs would suffer losses caused by the delay in the completion of the Michigan Project, due to the stoppage of work during the necessary testing and clean-up time required to obtain the necessary permission from WorkSafe to recommence work in the Michigan Properties; and
 - (d) The Plaintiff would incur losses and costs due to the displacement of tenants during the testing and clean-up of the Michigan Properties.
94. Harconbridge's breach of contract and negligence caused, aggravated or contributed to the defects and deficiencies at the Michigan Properties, and, in particular, the presence of asbestos fibers on surfaces and in the air inside 435 Michigan, and the resulting damages suffered by the Plaintiffs.

Part 2: RELIEF SOUGHT

1. The Plaintiffs claim against Unique as follows:
- (a) General damages and special damages for breach of the Building Envelope Contract;
 - (b) General and special damages in tort for negligence;
 - (c) A declaration that the Michigan Owners are entitled to indemnity from Unique under the Building Envelope Contract with respect to:
 - (i) Any amounts paid by or on behalf of the Michigan Owners as a result of Unique's failure to fulfill the terms and conditions of the Building Envelope Contract;
 - (ii) Any amounts paid by or on behalf of the Michigan Owners as a result of the negligent acts or omissions of Unique or any of its subcontractors, suppliers or other person directly or indirectly employed by Unique arising out of or attributable to the work performed under the Building Envelope Contract;
 - (iii) Any amounts paid by or on behalf of the Michigan Owners in respect of claims made by third parties arising out of or attributable to the work performed under the Building Envelope Contract;
 - (iv) All legal costs and expenses incurred by the Michigan Owners as a result of Unique's failure to fulfill the terms and conditions of the Building Envelope Contract and/or the negligent acts or omissions of Unique or any of its subcontractors, suppliers or other person directly or indirectly employed by Unique arising out of or attributable to the work performed under the Building Envelope Contract.

- (d) A declaration that Unique is in default of its obligations under the Building Envelope Contract;
 - (e) The costs and expense incurred by the Michigan Owners to complete the work under the Building Envelope Contract as a result of the default by Unique;
 - (f) The costs, expenses and legal fees incurred by the Michigan Owners in connection with the liens filed by Unique's subcontractors against the Michigan Properties;
 - (g) Judgment in favour of the Michigan Owners for all amounts due to the Michigan Owners as set out above.
 - (h) Interest on all damages awarded at the rate provided in the Building Envelope Contract or, in the alternative, a commercially reasonable rate of interest pursuant to the *Court Order Interest Act*, RSBC 1996 c.79;
 - (i) Costs of this action on a solicitor and own client basis pursuant to the Building Envelope Contract, or in the alternative, costs; and
 - (j) Such other relief as this Honourable Court deems to be just and equitable.
2. The Plaintiffs claim against Wynspec as follows:
- (a) General damages and special damages for breach of the Building Envelope Consulting Contract;
 - (b) General damages and special damages for breach of the Project Management Contract;
 - (c) General and special damages in tort for negligence;
 - (d) Judgment in favour of the Plaintiffs for all amounts due to the Plaintiffs as set out above;
 - (e) Interest on all damages pursuant to the *Court Order Interest Act*, RSBC 1996 c.79;
 - (f) Costs of this action; and
 - (g) Such other relief as this Honourable Court deems to be just and equitable.
3. The Plaintiffs claim against ZGEMI as follows:
- (a) General damages and special damages for breach of the Common Spaces Contract and the ZGEMI Suite Renovation Contract;
 - (b) General and special damages in tort for negligence;
 - (c) A declaration that the Michigan Owners are entitled to indemnity from ZGEMI under the Common Spaces Contract with respect to:
 - (i) Any amounts paid by or on behalf of the Michigan Owners as a result of ZGEMI's failure to fulfill the terms and conditions of the Common Spaces Contract;

- (ii) Any amounts paid by or on behalf of the Michigan Owners as a result of the negligent acts or omissions of ZGEMI or any of its subcontractors, suppliers or other person directly or indirectly employed by ZGEMI arising out of or attributable to the work performed under the Common Spaces Contract;
 - (iii) Any amounts paid by or on behalf of the Michigan Owners in respect of claims made by third parties arising out of or attributable to the work performed under the Common Spaces Contract;
 - (iv) All legal costs and expenses incurred by or on behalf of the Michigan Owners as a result of ZGEMI's failure to fulfill the terms and conditions of the Common Spaces Contract and/or the negligent acts or omissions of ZGEMI or any of its subcontractors, suppliers or other person directly or indirectly employed by ZGEMI arising out of or attributable to the work performed under the Common Spaces Contract.
- (d) Judgment in favour of the Plaintiffs for all amounts due to the Plaintiffs as set out above;
 - (e) Interest on all damages awarded at the rate provided for in the Common Space Contract or, in the alternative, a commercially reasonable rate of interest pursuant to the *Court Order Interest Act*, RSBC 1996 c.79;
 - (f) Costs of this action on a solicitor and own client basis pursuant to the Common Spaces Contract, or in the alternative, costs; and
 - (g) Such other relief as this Honourable Court deems to be just and equitable.
4. The Plaintiffs claim against Harconbridge as follows:
- (a) General damages and special damages for breach of the Harconbridge Suite Renovation Contract;
 - (b) General and special damages in tort for negligence;
 - (c) Judgment in favour of the Plaintiffs for all amounts due to the Plaintiffs as set out above;
 - (d) Interest on all damages awarded pursuant to the *Court Order Interest Act*, RSBC 1996 c.79;
 - (e) Costs of this action; and
 - (f) Such other relief as this Honourable Court deems to be just and equitable.

Part 3: LEGAL BASIS

1. The Plaintiffs, and each of them, plead, repeat and rely on paragraphs 1 to 94 of Part 1 of the Notice of Civil Claim.
2. The Plaintiffs, and each of them, plead and rely on:

- (a) *Court Order Interest Act*, RSBC 1996, c. 79; and
- (b) *Negligence Act*, RSBC 1996, c. 333.

3. The Plaintiffs further plead and rely on:

- (a) the Building Envelope Contract;
- (b) the Building Envelope Consulting Contract;
- (c) the Project Management Contract;
- (d) the Commons Spaces Contract;
- (e) the ZGEMI Suite Renovation Contract; and
- (f) the Harconbridge Suite Renovation Contract.

Plaintiffs' address for service: 2700-700 West Georgia Street, Vancouver, BC V7Y 1B8

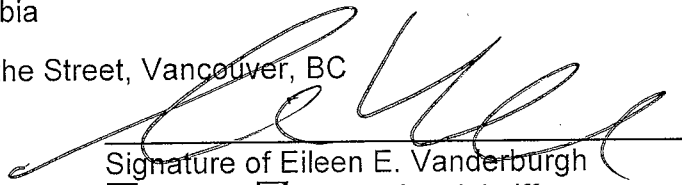
Fax number address for service (if any): 604-484-9700

E-mail address for service (if any): n/a

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, BC

Dated: September 12th, 2018.


Signature of Eileen E. Vanderburgh
 plaintiff lawyer for plaintiffs

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for breach of contract and negligence arising from asbestos contamination during a renovation at apartment buildings owned by the Plaintiffs.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods and services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case.]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]