

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION 7
CASE NO. 10-CI-3986

JAMES MELVIN HENSLEY,
DANNY LAINHART, JAMES D.
FETTERS, TONY MITCHELL
WILLIAM ABNEY, et al.

PLAINTIFFS

MAR 6 2011

v.

ANSWER OF DEFENDANT, HAYNES TRUCKING, LLC and
DEFENDANT, L-M ASPHALT PARTNERS D/b/a ATS CONSTRUCTION
TO PLAINTIFFS' FIRST AMENDED COMPLAINT

HAYNES TRUCKING, LLC,
L-M ASPHALT PARTNERS, LTD.
d/b/a ATS CONSTRUCTION,
HARTFORD FIRE INSURANCE COMPANY, and
JOHN DOE BONDING COMPANIES

DEFENDANTS

** ** *

Come Defendant, Haynes Trucking, LLC ("Haynes Trucking"), and Defendant, L-M Asphalt Partners, Ltd. d/b/a ATS Construction ("ATS"), by and through counsel, and for their Answer to the First Amended Complaint of Plaintiffs, James Melvin Hensley, Danny Lainhart, James D. Feters, Tony Mitchell, William Abney and Charles Bussell, individually and on behalf of all other persons similarly situated who were employed by Haynes and/or any other entities affiliated with or controlled by Haynes (collectively "Plaintiffs"), state as follows:

FIRST DEFENSE

1. Haynes Trucking and ATS incorporate by reference as though set forth at length their joint and several responses,

averments and affirmative defenses to the allegations of the initial Complaint herein, as though set forth at length.

SECOND DEFENSE

2. Plaintiffs' First Amended Complaint and the claims therein alleged against Haynes Trucking and ATS fail to state a claim upon which relief may be granted.

THIRD DEFENSE

3. Plaintiffs' First Amended Complaint and the claims therein alleged against Haynes Trucking and ATS are barred by the applicable statute(s) of limitations.

FOURTH DEFENSE

4. Haynes Trucking and ATS jointly and severally plead any and all applicable affirmative defenses of CR 8.03 and specifically plead the affirmative defenses of accord and satisfaction; estoppel; laches; payment; release; waiver; and Haynes Trucking and ATS's joint and several compliance with applicable laws, statutes and regulations, as a complete or partial bar to Plaintiffs' recovery from Haynes Trucking and ATS on the claims alleged against them in Plaintiffs' First Amended Complaint.

FIFTH DEFENSE

5. Plaintiffs have failed to exhaust their administrative remedies and this Court therefore lacks subject matter jurisdiction over this case.

SIXTH DEFENSE

6. Plaintiffs have failed to mitigate their damages, if any there be.

SEVENTH DEFENSE

7. The damages of which Plaintiffs complain were brought about by the acts or omissions of Plaintiffs, or of one or more third parties not under the control of Haynes Trucking and ATS, jointly or severally, and as a matter of law, Haynes Trucking and ATS, respectively, are not liable for conduct of the Plaintiffs or of such third parties.

EIGHTH DEFENSE

8. Haynes Trucking and ATS jointly and severally plead any and all defenses available under the federal Davis Bacon Act, 40 U.S.C. § 276a et seq. and the accompanying federal regulations contained in Title 29 of the Code of Federal Regulations.

NINTH DEFENSE

9. Haynes Trucking and ATS jointly and severally plead any and all defenses available under KRS Chapter 337, and Chapter 803 of the Kentucky Administrative Regulations.

TENTH DEFENSE

10. The subject matter of Plaintiffs' claims on behalf of themselves and those similarly situated does not concern work performed by the Plaintiffs, or the members of the asserted

class, for which scaled wages and scaled fringe benefits were payable as a matter of law.

ELEVENTH DEFENSE

11. This case fails to satisfy the elements of CR 23. Plaintiffs have (i) failed to adequately define the proposed class; (ii) failed to make a prime facie showing of numerosity; (iii) failed to make a prima facie showing of typicality; (iv) failed to make a prima facie showing of superiority; (v) failed to make a prima facie showing of commonality; and (vi) have failed to make a prima facie showing that they and their counsel will fairly and adequately represent the interests of the absent class members.

TWELFTH DEFENSE

12. Plaintiffs have failed to make a prima facie showing that the construction projects at issue in Plaintiffs' First Amended Complaint were geographically situated such that the same prevailing wage and fringe benefit provisions apply to each Plaintiff and/or member of the proposed class, and/or to each such project.

THIRTEENTH DEFENSE

13. Plaintiffs have not pleaded any claims under Kentucky law which allow for the recovery of attorney's fees.

FOURTEENTH DEFENSE

14. Plaintiffs and the members of the asserted class are not parties to the Public Works Contracts as that term is sought be defined in the Complaint herein and therefore lack standing to sue for any purported breach of such contracts.

FIFTEENTH DEFENSE

15. Haynes Trucking and ATS jointly and severally assert any and all defenses they may have pursuant to the bond(s) issued by Defendant, Hartford Fire Insurance Company on behalf of ATS.

SIXTEENTH DEFENSE

16. Haynes Trucking and ATS jointly and severally assert any and all defenses they may have in law or in equity pursuant to the express terms of any bond(s) issued by Defendant, Hartford Fire Insurance Company for or on behalf of ATS, which upon completion of discovery in this matter, may become available to them and which are not now presently ascertainable as a defense.

SEVENTEENTH DEFENSE

17. Haynes Trucking and ATS plead by way of affirmative defense that Plaintiffs have failed to (i) satisfy conditions precedent under the terms of any bond(s) issued by Defendant, Hartford Fire Insurance Company for or on behalf of ATS (ii) failed to provide notice as required under the terms of any

bond(s) issued by Defendant, Hartford Fire Insurance Company for or on behalf of ATS; (iii) that the notice (if any) under the terms of any bond(s) issued by Defendant, Hartford Fire Insurance Company for or on behalf of ATS was not given within the period during which such each such notice was required to be given; and/or (iv) that this action has not been commenced within the periods during which actions on any bond(s) issued by Defendant, Hartford Fire Insurance Company for or on behalf of ATS must be brought under the express terms of such bonds.

EIGHTEENTH DEFENSE

18. The claims of Plaintiffs and the members of the asserted class are discharged and/or limited by the terms of any bond(s) issued by Defendant, Hartford Fire Insurance Company for or on behalf of ATS as to coverage and/or penal sum.

NINETEENTH DEFENSE

19. Plaintiffs and members of the asserted class have failed to comply with the conditions precedent to maintaining a claim under the bond(s), if any, and Defendant, Hartford Fire Insurance Company's performance is excused by the Plaintiffs' and class members' noncompliance with said conditions precedent.

TWENTIETH DEFENSE

20. The allegations contained in numerical paragraphs 1 (preliminary statement), 6, 8, 13, 17, 18, 19, 22, 57, 61, and 62 of Plaintiffs' First Amended Complaint contain legal

assertions or conclusions of law to which no response is required. In the event a response is required, Haynes Trucking and ATS, jointly and severally, deny the same in their entirety. Haynes Trucking and ATS jointly and severally further state that the statutes cited in the referenced paragraphs speak for themselves.

21. Haynes Trucking and ATS are without knowledge or information sufficient to admit or deny the allegations contained in numerical paragraphs 1,¹ 2, 5, 16, 20, 21, 23, 24, and 26 of Plaintiffs' First Amended Complaint, and therefore jointly and severally deny the same in their entirety.

22. Haynes Trucking and ATS admit the allegations contained in numerical paragraphs 3 and 4 of Plaintiffs' First Amended Complaint.

23. The first literary sentence of numerical paragraph 7 of the Plaintiffs' First Amended Complaint contains legal assertions or conclusions of law to which no response is required. In the event a response is required, Haynes Trucking and ATS, jointly and severally, deny the same in their entirety. Haynes Trucking and ATS, jointly and severally, deny the

¹ The First Amended Complaint contains two paragraphs labeled as numerical paragraph 1. Numerical paragraph 17 of this Answer pleads (in part) in response to the second numerical paragraph 1, which is set forth on page 2 of the First Amended Complaint.

remaining allegations of numerical paragraph 7 of the First Amended Complaint.

24. Haynes Trucking and ATS deny the allegations contained in numerical paragraphs 8, 9, 10, 11, 12, 14, 15, 25, 28, 29, 31, 32, 34, 35, 37, 38, 39, 41, 42, 43, 44, 46, 47, 48, 49, 51, 52, 53, 54, 55, 58, 59, 63, and 64 of Plaintiffs' First Amended Complaint. Haynes Trucking and ATS jointly and severally further state that the statutes cited in the referenced paragraphs speak for themselves.

25. Numerical paragraphs 27, 33, 36, 40, 45, 50, 56 and 60 of Plaintiffs' First Amended Complaint incorporate by reference preceding allegations of Plaintiffs' First Amended Complaint. In response thereto, Haynes Trucking and ATS jointly and severally incorporate by reference as if set forth at length its affirmative defenses and responses to the referenced allegations.

26. In response to numerical paragraph 30 of the Plaintiffs' First Amended Complaint, Haynes Trucking and ATS jointly and severally state that the provisions of KRS 337.550 cited therein speak for themselves.

27. Haynes Trucking and ATS jointly and severally deny each and every allegation of Plaintiffs' First Amended Complaint not specifically admitted herein, and further denies that Plaintiffs are entitled to any of the relief sought in

Plaintiffs' Complaint against Haynes Trucking and ATS, jointly or severally.

WHEREFORE, Defendant, Haynes Trucking, LLC, and Defendant, L-M Asphalt Partners, Ltd. d/b/a ATS Construction, jointly and severally pray for relief from the First Amended Complaint of Plaintiffs, James Melvin Hensley, Danny Lainhart, James D. Feters, Tony Mitchell, William Abney and Charles Bussell, individually and on behalf of all other persons similarly situated who were employed by Haynes Trucking, LLC and/or any other entities affiliated with or controlled by Haynes Trucking, LLC, as follows:

1. That Plaintiffs' First Amended Complaint be dismissed and held for naught as to Defendant, Haynes Trucking, LLC, and Defendant, L-M Asphalt Partners, Ltd. d/b/a ATS Construction, jointly and severally and that Plaintiffs take nothing from Defendant, Haynes Trucking, LLC, and Defendant, L-M Asphalt Partners, Ltd. d/b/a ATS Construction, jointly and severally, thereby.

2. That class certification be denied as to the claims alleged by the Plaintiffs on behalf of themselves and all others similarly situated.

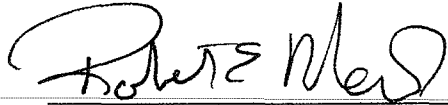
3. For a trial by jury on all issues so triable.

4. For an award of Defendant, Haynes Trucking, LLC, and Defendant, L-M Asphalt Partners, Ltd. d/b/a ATS Construction,

joint and several costs and expenses incurred in the defense of this case, including a reasonable attorney's fee.

5. For such other relief to which Defendant, Haynes Trucking, LLC, and Defendant, L-M Asphalt Partners, Ltd. d/b/a ATS Construction, jointly and severally may appear to be properly entitled.

Respectfully submitted,



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d/b/a ATS CONSTRUCTION

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Answer was served this 9th day of March, 2011, by first class US mail, postage prepaid, addressed to the following:

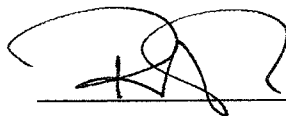
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