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Committee of Westinghouse Electric Company LLC, et al.*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re
**Westinghouse Electric Company LLC, et al.,
Debtors.¹**

Chapter 11
Case No. 17-10751 (MEW)
(Jointly Administered)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (N/A), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.



**ELTON MASSEY, KIRT HURLBURT,
PATRICIA ADAMS, JOHN JENNINGS,
JOHNNIE HOGLL, AND KATRINA BAKER,
on behalf of himself and all others similarly
situated,**

Plaintiffs,

v.

**Westinghouse Electric Company, LLC,
WECTEC LLC, WECTEC Staffing Services,
LLC, and WECTEC Global Services, Inc.,**

Defendants,

v.

**The Statutory Unsecured Claimholders'
Committee,**

Intervenor.

Adversary Proceeding No. 1:17-
ap-1215

**ANSWER TO CLASS
ACTION ADVERSARY
PROCEEDING COMPLAINT**

**INTERVENOR'S, THE STATUTORY UNSECURED CLAIMHOLDERS'
COMMITTEE OF WESTINGHOUSE ELECTRIC COMPANY LLC'S,
ANSWER TO CLASS ACTION ADVERSARY PROCEEDING COMPLAINT
FOR VIOLATION OF THE WARN ACT 29 U.S.C. § 2101, ET SEQ.,
SOUTH CAROLINA PAYMENT OF WAGES LAW AND BREACH OF CONTRACT**

Intervenor, the statutory unsecured claimholders' committee (the "UCC" or the "Committee") of Westinghouse Electric Company LLC, *et al.* (the "Debtors"), by and through their attorneys, Proskauer Rose LLP, for their answer and affirmative defenses to the Class Action Adversary Proceeding Complaint For Violation of the Warn Act 29 U.S.C. § 2101, *et seq.*, South Carolina Payment of Wages Law and Breach of Contract (the "Massey Complaint") filed by Named Plaintiffs Elton Massey, Kirt Hurlburt, Patricia Adams, John Jennings, Johnnie Hogll, and Katrina Baker (the "Massey Plaintiffs") on behalf of themselves and all others similarly situated, state as follows:²

² The UCC is responding on behalf of itself only and not on behalf of any of the named Defendants.

AS TO THE NATURE OF THE ACTION³

1. The allegations set forth in Paragraph 1 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies the allegations set forth in Paragraph 1 of the Massey Complaint, except admit that the Massey Plaintiffs purport to bring this action on behalf of themselves and other similarly situated former employees who worked for Defendants Westinghouse Electric Company, LLC, WECTEC LLC, WECTEC Staffing Services, LLC, and WECTEC Global Services, Inc. (the “Debtor Defendants”) under the Worker Adjustment and Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 *et seq.*, Rules 23(a), (b)(1) and (b)(3) of the Federal Rules of Civil Procedure and Rule 7023 of the Federal Rules of Bankruptcy.

2. The allegations set forth in Paragraph 2 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Massey Complaint.

AS TO JURISDICTION AND VENUE

3. The allegations set forth in Paragraph 3 of the Massey Complaint constitute legal conclusions that do not require a response. Notwithstanding the foregoing, the UCC admits this Court has jurisdiction.

4. The allegations set forth in Paragraph 4 of the Massey Complaint constitute legal conclusions that do not require a response.

³ The headings used in this Answer are the headings created by Plaintiff and used in the Massey Complaint. The UCC submits a general denial with respect to the characterizations in the headings of the Massey Complaint.

5. The allegations set forth in Paragraph 5 of the Massey Complaint constitute legal conclusions that do not require a response. Notwithstanding the foregoing, the UCC admits that venue is proper in this District.

AS TO THE PARTIES

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Massey Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Massey Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Massey Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Massey Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Massey Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Massey Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Massey Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Massey Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Massey Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Massey Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Massey Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Massey Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 of the Massey Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Massey Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20 of the Massey Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Massey Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Massey Complaint.

AS TO FACTS: BACKGROUND ON THE VC SUMMER PROJECT

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 of the Massey Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Massey Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 of the Massey Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Massey Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27 of the Massey Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Massey Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Massey Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30 of the Massey Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 31 of the Massey Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 of the Massey Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 of the Massey Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 of the Massey Complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 of the Massey Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 36 of the Massey Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37 of the Massey Complaint.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 38 of the Massey Complaint.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 39 of the Massey Complaint.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 40 of the Massey Complaint.

**AS TO FACTS: THE SINGLE EMPLOYER RELATIONSHIP
BETWEEN WEC, THE OTHER WEC DEFENDANTS, FLUOR, AND SCANA**

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Massey Complaint.

42. The allegations set forth in Paragraphs 42 and 42(a)-(e) of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 42 and 42(a)-(e) of the Massey Complaint.

43. The allegations set forth in Paragraphs 43 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 43 of the Massey Complaint.

44. The allegations set forth in Paragraphs 44 and 44(a)-(e) of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 44 and 44(a)-(e) of the Massey Complaint.

45. The allegations set forth in Paragraphs 45 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC

denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 45 of the Massey Complaint.

46. The allegations set forth in Paragraphs 46 and 46(a)-(i) of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 46 and 46(a)-(i) of the Massey Complaint.

47. The allegations set forth in Paragraphs 47 and 47(a)-(f) of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 47 and 47(a)-(f) of the Massey Complaint.

48. The allegations set forth in Paragraphs 48 and 48(a)-(e) of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 48 and 48(a)-(e) of the Massey Complaint.

49. The allegations set forth in Paragraph 49 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 49 of the Massey Complaint.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 50 of the Massey Complaint.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 51 of the Massey Complaint.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 52 of the Massey Complaint.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 53 of the Massey Complaint.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 54 of the Massey Complaint.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55 of the Massey Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 56 of the Massey Complaint.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 57 of the Massey Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 58 of the Massey Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 59 of the Massey Complaint.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 60 of the Massey Complaint.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 61 of the Massey Complaint.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 62 of the Massey Complaint.

AS TO WARN CLASS ALLEGATIONS

63. The allegations set forth in Paragraph 63 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 63 of the Massey Complaint, except admit that the Massey Plaintiffs purport to bring this action on behalf of himself and other similarly situated former employees who worked for the Debtor Defendants under Fed. R. Civ. P. 23(a) and the WARN Act.

64. The allegations set forth in Paragraph 64 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 64 of the Massey Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 of the Massey Complaint.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 66 of the Massey Complaint.

67. The allegations set forth in Paragraphs 67 and 67(a)-(c) of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 67 and 67(a)-(c) of the Massey Complaint.

68. The allegations set forth in Paragraph 68 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 68 of the Massey Complaint.

69. The allegations set forth in Paragraph 69 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 69 of the Massey Complaint.

70. The allegations set forth in Paragraph 70 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 70 of the Massey Complaint.

71. The allegations set forth in Paragraph 71 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 71 of the Massey Complaint.

72. The allegations set forth in Paragraph 72 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 72 of the Massey Complaint.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 73 of the Massey Complaint.

AS TO THE CLAIMS FOR RELIEF:
COUNT I: VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101, ET. SEQ.

74. Repeat and reallege the UCC's responses to Paragraphs 1-73 of the Massey Complaint as its response to Paragraph 74 of the Massey Complaint.

75. The allegations set forth in Paragraph 75 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies

knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 75 of the Massey Complaint.

76. The allegations set forth in Paragraph 76 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 76 of the Massey Complaint.

77. The allegations set forth in Paragraph 77 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 77 of the Massey Complaint.

78. The allegations set forth in Paragraph 78 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 78 of the Massey Complaint.

79. The allegations set forth in Paragraph 79 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 79 of the Massey Complaint.

80. The allegations set forth in Paragraph 80 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 80 of the Massey Complaint.

81. The allegations set forth in Paragraph 81 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 81 of the Massey Complaint.

82. The allegations set forth in Paragraph 82 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 82 of the Massey Complaint.

83. The allegations set forth in Paragraph 83 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 83 of the Massey Complaint.

84. The allegations set forth in Paragraph 84 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 84 of the Massey Complaint.

85. The allegations set forth in Paragraph 85 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies that the Massey Plaintiffs' and putative class members' claims against the Debtor Defendants are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503(b)(1)(A) and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 85 of the Massey Complaint.

86. The allegations set forth in Paragraph 86 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 86 of the Massey Complaint.

AS TO THE CLAIMS FOR RELIEF:
COUNT II: VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101, ET. SEQ.

87. Repeat and reallege the UCC's responses to Paragraphs 1-86 of the Massey Complaint as its response to Paragraph 87 of the Massey Complaint.

88. The allegations set forth in Paragraph 88 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 88 of the Massey Complaint.

89. The allegations set forth in Paragraph 89 of the Massey Complaint constitute legal conclusions that do not require a response. To the extent a response is required, the UCC denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 89 of the Massey Complaint.

90. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 90 of the Massey Complaint.

91. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 91 of the Massey Complaint.

AS TO THE CLAIMS FOR RELIEF:
COUNT III: BREACH OF CONTRACT

92. Repeat and reallege the UCC's responses to Paragraphs 1-91 of the Massey Complaint as its response to Paragraph 92 of the Massey Complaint.

93. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 93 of the Massey Complaint.

94. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 94 of the Massey Complaint.

AS TO THE PRAYER FOR RELIEF

95. The paragraph of the Massey Complaint entitled “WHEREFORE” and its subsections (A) through (G), following Paragraph 94 of the Massey Complaint, is a prayer for relief as to which no response is required. To the extent a response is required, upon information and belief, the UCC denies that the Massey Plaintiffs or any putative class members are entitled to any relief, whether requested in this section of the Massey Complaint or otherwise.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

96. Upon information and belief, the Massey Complaint fails, in whole or in part, to state a claim upon which relief can be granted or for which the damages sought may be awarded.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

97. Upon information and belief, the Massey Plaintiffs’ claims are barred, in whole or in part, as to any matters for which the Massey Plaintiffs failed to satisfy the statutory prerequisites to commencing and maintaining this action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

98. Upon information and belief, to the extent the Debtor Defendants were required to give notice of termination to the Massey Plaintiffs and/or the putative class members under the WARN Act, which the Massey Plaintiffs allege but the Debtor Defendants deny, the Debtor Defendants were unable to give such notice because, pursuant to 29 U.S.C. § 2102(b)(2)(A), the terminations were caused by business circumstances that were not reasonably foreseeable at the time that notice would have been required, and the WARN Act claim is therefore barred.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

99. Upon information and belief, any liability or penalty assessed against the Debtor Defendants under the WARN Act must be reduced pursuant to 29 U.S.C. § 2104(a)(4) because any act or omission by the Debtor Defendants in purported violation of the WARN Act were made in good faith and the Debtor Defendants had reasonable grounds for believing any or all such acts or omissions did not violate the WARN Act.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

100. Upon information and belief, to the extent the Massey Plaintiffs or any individual the Massey Plaintiffs seek to represent are entitled to damages, the Debtor Defendants are entitled to a credit or set-off against amounts overpaid to them in the course of their employment.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

101. Upon information and belief, the Massey Plaintiffs' claims and the claims of any individual the Massey Plaintiffs seek to represent are barred to the extent covered by a prior compromise or release of claims.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

102. In the event that the Court certifies a class in this matter, the UCC incorporates by reference and realleges all of its defenses to the Massey Plaintiffs' individual claims in response to the claims of each class member.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

103. Upon information and belief, any recovery should be limited to the extent the Massey Plaintiffs or the putative class members have failed to mitigate any of the damages alleged in the Massey Complaint.

WHEREFORE, the UCC reserves its right to modify this Answer and/or to assert additional affirmative defenses should it become aware of additional defenses during the course

of discovery, as set forth in Rule 8 of the Federal Rules of Civil Procedure. In addition, the UCC demands judgment against the Massey Plaintiffs dismissing the Massey Complaint in its entirety with prejudice, together with an award of reasonable attorneys' fees, the costs and disbursements of this action, and such other and further relief as this Court deems just, proper and equitable.

Dated: February 15, 2018
New York, New York

Respectfully submitted,

/s/ Timothy Q. Karcher
Martin J. Bienenstock
Timothy Q. Karcher
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New York, New York 10036
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*Counsel to the Statutory Unsecured
Claimholders'
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