

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY,

Plaintiff,

vs.

ROCLA CONCRETE TIE, INC.

Defendant.

CIVIL ACTION NO. 10-CA-10917-DPW

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

Pursuant to Fed. R. Civ. P. Rules 7, 8(b) and 12(a), defendant Rocla Concrete Tie, Inc. (“Rocla”), hereby responds to the the Complaint of plaintiff Massachusetts Bay Transportation Authority (“MBTA”) as set forth below.

1. The allegations set forth in paragraph 1 of the Complaint merely characterize the MBTA’s claims and do not require a response. To the extent any response is necessary, the allegations of paragraph 1 are denied.

2. Rocla denies the allegations set forth in paragraph 2 of the Complaint.

3. Rocla denies the allegations set forth in paragraph 3 of the Complaint.

4. Rocla is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint and therefore denies the same.

5. The allegations of set forth in paragraph 5 of the Complaint merely characterize the MBTA’s claims and do not require a response. To the extent any response is necessary, the allegations set forth in paragraph 5 are denied.

## **PARTIES**

6. Rocla is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Complaint and therefore denies the same.

7. Rocla admits the allegations in paragraph 7 of the Complaint.

## **JURISDICTION AND VENUE**

8. The allegations set forth in paragraph 8 state a legal conclusion to which no response is required.

9. The allegations set forth in paragraph 9 state a legal conclusion to which no response is required.

10. Rocla admits that the Old Colony Line is a branch of the commuter rail system that runs to and from Boston's South Station and various locations between Boston, Plymouth and Middelboro. Rocla admits that construction took place on the Old Colony Line between 1995 and 1997. Rocla admits that the MBTA instituted a bidding process that preceded construction of the Old Colony Line. Rocla is without knowledge or information sufficient to form a belief as to whether the MBTA owns the Old Colony Line and therefore the denies the same. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 10 of the Complaint.

11. Rocla admits that, prior to the construction of the Old Colony Line, the MBTA solicited certain bids concerning the supply of railroad ties. Rocla admits that certain of those bid solicitations specified the use of wooden railroad ties. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 11 of the Complaint.

12. Rocla admits that, on or about November 6, 1992, it met with the MBTA and thereafter transmitted a letter to the MBTA dated November 9, 1992, which letter speaks for

itself. To the extent the allegations of paragraph 12 contradict, vary from or otherwise mischaracterize the contents of said letter, they are denied. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 12 of the Complaint.

13. Rocla admits that it transmitted a letter to the MBTA dated February 15, 1993, which speaks for itself. To the extent the allegations of paragraph 13 contradict, vary from or otherwise mischaracterize the contents of said letter, they are denied. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 13 of the Complaint.

14. Rocla denies the allegations set forth in paragraph 14 of the Complaint.

15. Rocla is without knowledge or information sufficient to form a belief as to the reasons why the MBTA chose to solicit bids for concrete railroad ties instead of wooden railroad ties, and therefore it denies the first sentence of paragraph 15 of the Complaint. Rocla admits that the cost of installing concrete ties on a railroad typically exceed the costs of installing wooden ties. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 15 of the Complaint.

16. Rocla admits that, in or about January 1995, it entered into a contract to supply concrete railroad ties to the MBTA. The terms of that agreement speak for themselves. To the extent, the allegations set forth in paragraph 16 contradict, vary from or otherwise mischaracterize said terms, they are denied. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 16 of the Complaint.

17. Rocla states that the contract terms of its contract with the MBTA speak for themselves. To the extent, the allegations set forth in paragraph 17 contradict, vary from or otherwise mischaracterize said terms, they are denied.

18. Rocla is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and therefore denies these allegations.

19. Rocla is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies these allegations.

20. Rocla is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and therefore denies these allegations.

21. Rocla denies the allegations in paragraph 21 of the Complaint.

**COUNT I**  
**(Negligent Misrepresentation)**

22. Rocla hereby restates and incorporates by reference its response to the allegations set forth in paragraphs 1 through 21 of the Complaint, inclusive, as if fully set forth herein.

23. Rocla denies the allegations set forth paragraph 23 of the Complaint.

24. Rocla denies the allegations set forth in paragraph 24 of the Complaint.

25. Rocla denies the allegations set forth paragraph 25 of the Complaint.

26. The allegations of paragraph 26 merely describe the nature and extent of the damages sought by the MBTA, to which no response is required. To the extent a response is necessary, Rocla denies the allegations of paragraph 26 and hereby incorporates by reference the prayer for relief set forth in the “WHEREFORE” clause below.

**COUNT II**  
**(Unfair or Deceptive Trade Practices)**

27. Rocla hereby restates and incorporates by reference its response to the allegations set forth in paragraphs 1 through 26 of the Complaint, inclusive, as if fully set forth herein.

28. Rocla denies the allegations set forth in paragraph 28 of the Complaint.

29. Rocla admits that the MBTA transmitted a letter to Rocla in the form that is attached to the Complaint. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 29 of the Complaint. Further answering, Rocla denies that it engaged in any conduct in violation of Mass. Gen. Laws Chapter 93A.

30. Rocla denies the allegations set forth in paragraph 30. Rocla further states that it has made a written tender of settlement pursuant to Mass. Gen. Laws Chapter 93A, § 11.

31. Rocla denies the allegations set forth in paragraph 31 of the Complaint.

32. The allegations of paragraph 26 merely describe the nature and extent of the damages sought by the MBTA, to which no response is required. To the extent a response is necessary, Rocla denies the allegations of paragraph 26 and hereby incorporates by reference the prayer for relief set forth in the “WHEREFORE” clause below.

**COUNT III**  
**(Breach of Express Warranty)**

33. Rocla hereby restates and incorporates by reference its response to the allegations set forth in paragraphs 1 through 32 of the Complaint, inclusive, as if fully set forth herein.

34. Rocla admits that, under the terms of the parties’ agreement, the concrete railroad ties were subject to a fifteen year limited warranty, the terms of which speak for themselves. To the extent, the allegations set forth in paragraph 34 contradict, vary from or otherwise mischaracterize said terms, they are denied. Except as expressly admitted by the foregoing, Rocla denies the allegations of paragraph 34.

35. Rocla denies the allegations in paragraph 35 of the Complaint.

36. Rocla states that the terms of the warranty set forth in the parties’ agreement speak for themselves. To the extent, the allegations set forth in paragraph 34 contradict, vary

from or otherwise mischaracterize said terms, they are denied. Except as expressly admitted by the foregoing, Rocla denies the allegations of paragraph 36.

37. Rocla admits that it, in accordance with the terms of the express warranty set forth in the agreement between the parties, Rocla has supplied the MBTA with a certain amount of ties as replacements for ties that the MBTA claims are “defective.” Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 37 of the Complaint. Further answering, Rocla denies that it has breached any warranty Rocla owed to the MBTA.

38. Rocla admits that the MBTA has notified Rocla of its claim that certain railroad ties supplied by Rocla were “defective.” Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 38.

39. Rocla denies the allegations in paragraph 39 of the Complaint.

40. The allegations of paragraph 40 merely describe the nature and extent of the damages sought by the MBTA, to which no response is required. To the extent a response is necessary, Rocla denies the allegations of paragraph 40 and hereby incorporates by reference the prayer for relief set forth in the “WHEREFORE” clause below.

**COUNT IV**  
**(Unfair or Deceptive Trade Practices)**

41. Rocla hereby restates and incorporates by reference its response to the allegations set forth in paragraphs 1 through 40 of the Complaint, inclusive, as if fully set forth herein.

42. Rocla denies the allegations set forth in paragraph 42 of the Complaint.

43. Rocla denies the allegations set forth in paragraph 43 of the Complaint.

44. Rocla admits that the MBTA transmitted a letter to Rocla in the form that is attached to the Complaint. Except as expressly admitted by the foregoing, Rocla denies the allegations set forth in paragraph 44 of the Complaint. Further answering, Rocla denies that it engaged in any conduct in violation of Mass. Gen. Laws Chapter 93A.

45. Rocla denies the allegations set forth in paragraph 45. Rocla further states that it has made a written tender of settlement pursuant to Mass. Gen. Laws Chapter 93A, § 11.

46. Rocla denies the allegations set forth in paragraph 46 of the Complaint.

47. The allegations of paragraph 40 merely describe the nature and extent of the damages sought by the MBTA, to which no response is required. To the extent a response is necessary, Rocla denies the allegations of paragraph 47 and hereby incorporates by reference the prayer for relief set forth in the “WHEREFORE” clause below.

#### **ADDITIONAL DEFENSES**

##### **First Additional Defense**

The Complaint fails to state a claim against Rocla upon which relief can be granted.

##### **Second Additional Defense**

The MBTA’s claims may be barred, in whole or in part, by waiver.

##### **Third Additional Defense**

The MBTA’s claims may be barred, in whole or in part, by estoppel.

##### **Fourth Additional Defense**

The MBTA’s claims may be barred, in whole or in part, by laches.

##### **Fifth Additional Defense**

The MBTA’s claims may be barred by its unclean hands, and/or failure to do equity.

**Sixth Additional Defense**

The MBTA's damages, if any, may have been caused by, or were the result of, independent, intervening, and/or superseding forces and or actions or inactions of third parties, the MBTA, and/or the Massachusetts Bay Commuter Railroad Company ("MBCR"), over whom Rocla had no control or right of control.

**Seventh Additional Defense**

The MBTA's claims are equitably barred because the MBTA's failure to join all indispensable parties precludes the Court from granting complete relief to those who are parties to the action and will result in prejudice to Rocla.

**Eighth Additional Defense**

The MBTA's damages, if any, may have been caused by, or were the result of, independent, intervening, and/or superseding forces and or actions or inactions of third parties over whom Rocla had no control or right of control.

**Ninth Additional Defense**

All or part of MBTA's claims may be barred, in whole or in part, by the statute of frauds.

**Tenth Additional Defense**

All or part of MBTA's claims may be barred, in whole or in part, by the relevant statute of limitations or by the limitations set forth in the express warranty agreed to by the parties..

**Eleventh Additional Defense**

The MBTA's damages, if any, should be reduced by the amount attributable to its failure to mitigate damages.

**Twelfth Additional Defense**

The MBTA fails to plead with the particularity required by law.



**Thirteenth Additional Defense**

The MBTA's claims may be barred, in whole or in part, because Rocla complied with all applicable codes, standards and regulations.

**Fourteenth Additional Defense**

The MBTA's claims may be barred, in whole or in part, from recovery due to spoliation of evidence.

**Fifteenth Additional Defense**

The MBTA's claims may be barred, in whole or in part, by the unreasonable misuse of the railroad ties supplied to it by the MBTA.

**Sixteenth Additional Defense**

The MBTA's claims may be barred, in whole or in part, because of its failure to join all indispensable parties in a manner that precludes the Court from granting complete relief to those who are parties to the action and results in prejudice to Rocla.

**Seventeenth Additional Defense**

The MBTA's claims may be barred, in whole or in part, because the methods, standards and techniques Rocla used in designing and manufacturing the concrete railroad ties it supplied to the MBTA conformed to the generally recognized, reasonably available, and reliable state of knowledge in the field at the time that said ties were sold.

**Eighteenth Additional Defense**

Rocla reserves the right to assert additional defenses as discovery progresses.

**WHEREFORE**, Rocla respectfully requests that this Court:

- (a) Dismiss the MBTA's Complaint with prejudice;
- (b) Enter judgment in favor of Rocla be entered with respect to each count and claim asserted by MBTA in the Complaint;
- (c) Award Rocla its costs and expenses, including attorneys' fees, for defending against this Complaint; and
- (d) Grant such other and further relief as this Court deems appropriate and just.

**JURY DEMAND**

Rocla demands a trial by jury on all claims and counts asserted in the Complaint and all defenses thereto.

Respectfully submitted,

**ROCLA CONCRETE TIE, INC.**

by its Attorneys,

/s/ Matthew T. McLaughlin

Jonathan Sablone (BBO # 632998)

J. Christopher Allen, Jr. (BBO # 648381)

Matthew T. McLaughlin (BBO # 660878)

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Dated: June 24, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on June 24, 2010 a true copy of the foregoing document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”).

/s/ Matthew T. McLaughlin  
Matthew T. McLaughlin