

STATE OF INDIANA) IN THE HOWARD CIRCUIT COURT
)
) SS:
COUNTY OF HOWARD) SITTING IN KOKOMO, IN

Lucina Eaton)
)
 Plaintiff,)
)
v.) Cause No: 34Co1-2002-CT-000410
)
City of Kokomo, and)
E & B Paving, LLC)
)
 Defendant.)

**DEFENDANT'S OBJECTION TO CITY OF KOKOMO'S MOTION FOR LEAVE
TO FILE CROSS-CLAIM**

The defendant, E & B Paving, LLC, by counsel, Bruce P. Clark & Associates, hereby files its Objection to City of Kokomo's Motion for Leave to File Cross-Claim, and in support thereof, states as follows:

1. On or about August 4, 2020, the co-defendant, City of Kokomo, filed its Motion for Leave to File Cross-Claim.
2. On or about August 6, 2020, defendant filed its Notice of Intent, seeking through and including August 17, 2020, to file its Response.
3. On or about August 13, 2020, this Court granted defendant's Notice of Intent.
4. The co-defendant City of Kokomo seeks leave of this Court to file a Cross-Claim, presumably for contractual indemnity, which provides:

The Contractor shall save and hold harmless the Owner and the Engineer and their officers, agents and employees from and against all suits or claims that may be based upon injury or alleged injury to any person or property that may occur or may be alleged to have occurred in the course of the performance of the Contract by the Contractor, whether such claims shall be made by an employee of the Contractor or by a third person and whether or not it shall be claimed that the injury or alleged injury was caused by a negligent act or omission of

the Contractor or its officer, agents or employees; and the Contractor shall, at his own cost and expense, pay all costs of defense of any such claims, including attorney fees and all costs and expenses arising therefrom or incurred in connections therewith; and if any judgment shall be rendered against the Owner or the Engineer, or any officer, agent or employee of theirs, the Contractor shall at his own cost and expense, satisfy and discharge the same.

5. That the co-defendant's alleged Cross-Claim is dependent on the resolution of facts and/or law, in the form of a judgment, relative to the plaintiff's Complaint, that renders the filing of said Cross-Claim premature.

WHEREFORE, defendant prays that this Court deny co-defendant City of Kokomo's Motion for Leave to File Cross-Claim and for all other just and proper relief in the premises.

Respectfully submitted,

/s/ Bruce P. Clark

Bruce P. Clark, #3751-45,
Attorneys for the Defendant,
E & B Paving, LLC.

BRUCE P. CLARK & ASSOCIATES
7880 Wicker Ave., Suite 300
St. John, IN 46373
219/365-6300

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2020, a true and accurate copy of the foregoing document was served upon:

Douglas E. Sakaguchi
PFEIFER, MORGAN & STESIAK
53600 North Ironwood Drive
South Bend, Indiana 46635

Mark A. Holloway
STEPHENSON MOROW & SEMLER
3077 East 98th Street, Suite 240
Indianapolis, IN 46280

via the Court's electronic filing system. I hereby further certify that on the 17th day of August, 2020, a true and accurate copy of the foregoing document was served upon:

Hon. Judge Timothy P. Spahr
Miami Circuit Court
25 Court St Room 310
Peru, IN 46970

via FAX, pursuant to Indiana Trial Rule 5 and Howard County Local Rule LR34-TR5-7.

/s/ Bruce P. Clark