

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI DADE-COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

**In Re: Champlain Towers South Collapse Litigation**

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**ANSWER OF DEFENDANT MORABITO CONSULTANTS, INC.  
TO CONSOLIDATED SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant Morabito Consultants, Inc. (“MCI”) answers the correspondingly numbered paragraphs of the Consolidated Second Amended Class Action Complaint and states:

**INTRODUCTION**

1. MCI admits that, on June 24, 2021, at approximately 1:38 a.m., the Champlain Towers South (“CTS”) condominium building in Surfside, Florida partially collapsed, reportedly killing 98 people and destroying 55 units. MCI further admits that the remaining structure was demolished approximately ten days later. Without knowledge as to the remaining allegations of paragraph 1.

2. Denied that any act or omission of MCI caused the collapse or any damages to plaintiffs. Without knowledge as to the remaining allegations of paragraph 2.

3. Admitted that CTS was an older building. Admitted that, as reflected in MCI’s reports (*see, e.g.*, paragraphs 225 and 239 below), the building was in need of repairs and maintenance. The remainder of this paragraph appears to be directed at “Eighty-Seven Park” and not MCI; therefore without knowledge.

4. Without knowledge.

5. The second sentence of paragraph 5 is denied. The last sentence is denied as to defendant MCI. Without knowledge as to the remaining allegations of paragraph 5.

### **PARTIES**

6. MCI recognizes and admits that numerous persons lost their loved ones, their homes and nearly all of their personal belongings in the collapse of CTS. Without knowledge as to the remaining allegations of paragraph 6.

7. Without knowledge.

#### ***Plaintiffs***

8. Without knowledge.

9. Without knowledge.

10. Without knowledge.

11. Without knowledge.

12. Without knowledge.

#### ***Defendants***

13-20. The allegations contained in Paragraphs 13-20 are not directed toward MCI and therefore do not require an answer by MCI.

21. First sentence is admitted. With respect to the second sentence, admitted that MCI was retained by the Association under the terms of specific agreements or contracts, as described further herein, which speak for themselves. The remaining allegations of paragraph 21 are denied.

22. The allegations contained in Paragraph 22 are not directed toward MCI and therefore do not require an answer by MCI.

### **JURISDICTION AND VENUE**

23. Denied that this putative class action arises from MCI's conduct. The remaining allegations of paragraph 23 are admitted.

24. Admitted that jurisdiction properly lies in this court.
25. Admitted that venue is proper in Miami-Dade County, Florida.

**GENERAL ALLEGATIONS**

26. Admitted.
27. Admitted that, on June 24, 2021, at approximately 1:38 a.m., a portion of CTS partially collapsed, reportedly killing 98 people while others escaped or were evacuated. Without knowledge as to the remaining allegations of paragraph 27.
28. First sentence admitted. Without knowledge as to the second sentence of paragraph 28.
29. Without knowledge.

**The Mechanics of the CTS Catastrophe**

30. MCI denies that it caused or contributed to the collapse or damage to plaintiffs; without knowledge as to the remaining allegations of paragraph 30.
31. Without knowledge.
32. Without knowledge.
33. Without knowledge.
34. Without knowledge.
35. Admitted that the CTS pool deck adjoined the building's south foundation wall, which abutted a beach access walkway built during the Eighty-Seven Park construction. Without knowledge as to the remaining allegations of paragraph 35.
36. Admitted.
37. Admitted that certain architectural plans associate numbers on a grid for columns in the parking garage. Without knowledge as to the remaining allegations of paragraph 37.

38. Admitted that the drawing reproduced in paragraph 38 shows the referenced columns in the same row.

39. The first sentence of paragraph 39 is denied. Without knowledge as to the last two sentences.

40. The video is the best evidence for what it shows; it is not possible to evaluate the allegations of this paragraph from the imbedded still image. Therefore, without knowledge.

41. The photograph is the best evidence for what it shows; it is not possible to evaluate the allegations of this paragraph from the imbedded image. Therefore, without knowledge.

42. Without knowledge.

43. Without knowledge.

44. Without knowledge.

45. Without knowledge.

46. Without knowledge.

47. Without knowledge.

48. Without knowledge.

49. Admitted that a condominium building known as Eighty-Seven Park is located at 8701 Collins Avenue in Miami Beach. Without knowledge as to the remaining allegations of paragraph 49.

50. Admitted that Eighty-Seven Park was adjacent to CTS, with a beach access walkway separating the properties. Without knowledge as to the remaining allegations of the first sentence of paragraph 50. Second sentence of paragraph 50 is admitted.

51. Without knowledge.

52. Without knowledge.

53. Without knowledge.

54. Without knowledge.
55. Without knowledge.
56. Without knowledge.
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63. Without knowledge.
64. Without knowledge.
65. Without knowledge.
66. Without knowledge.
67. Without knowledge.
68. Without knowledge.
69. This paragraph states a legal conclusion that requires no answer.
70. This paragraph states a legal conclusion that requires no answer.
71. Admitted that a version of Florida Building Code Section 1803.6 contains the quoted language in paragraph 71. Otherwise denied.
72. Without knowledge.
73. Without knowledge.
74. Without knowledge.
75. Without knowledge.
76. Without knowledge.
77. Without knowledge.

78. Without knowledge.
79. Without knowledge.
80. This paragraph states a legal conclusion that requires no answer.
81. This paragraph states a legal conclusion that requires no answer.
82. This paragraph states a legal conclusion that requires no answer.
83. This paragraph states a legal conclusion that requires no answer.
84. This paragraph states a legal conclusion that requires no answer.
85. Without knowledge.
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126. Without knowledge.
127. Without knowledge.

128. Without knowledge.

129. Without knowledge.

130. Without knowledge.

131. Without knowledge.

132. Admitted that Maria Popa and Mihai Radulescu were identified as individuals who perished in the collapse. Without knowledge as to the remaining allegations of paragraph 132.

133. Without knowledge.

134. Without knowledge.

135. Without knowledge.

136. Without knowledge.

137. Without knowledge.

138. Without knowledge.

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141. Without knowledge.

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150. Without knowledge.

151. Without knowledge.



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161. Without knowledge.
162. Without knowledge.
163. Without knowledge.
164. Without knowledge.
165. Without knowledge.
166. Admitted that paragraph 166 describes, in part, the process of dewatering.
167. Admitted that there are certain risks associated with dewatering. Otherwise, denied.
168. Admitted that the asymmetrical drawdown of water tables can create the potential

for differential settlement in certain circumstances. Otherwise, denied.

169. Without knowledge.
170. Without knowledge.
171. Without knowledge.
172. Without knowledge.
173. Without knowledge.
174. Without knowledge
175. Without knowledge.

176. Without knowledge.

177. Without knowledge.

178. Without knowledge.

179. Without knowledge.

180. Without knowledge.

181. Denied.

182. Denied.

183. Without knowledge.

184. Admitted that the 87th Terrace beach access walkway impacted the CTS property as described in MCI's December 29, 2020 report regarding "South Beach Access Pitch" ("December 29, 2020 report"). Without knowledge as to the remaining allegations of paragraph 184.

185. Without knowledge.

186. Without knowledge.

187. Without knowledge.

188. Without knowledge.

189. Without knowledge.

190. Without knowledge.

191. The allegations contained in Paragraph 191 are not directed toward MCI, and also state a legal conclusion, and therefore do not require an answer by MCI. Otherwise, without knowledge.

192. Without knowledge.

193. Admitted that the 87th Terrace beach access walkway impacted the CTS property as described in MCI's December 29, 2020 report. Without knowledge as to the remaining allegations of paragraph 193.

194. Without knowledge.

195. Admitted that the 87th Terrace beach access walkway impacted the CTS property as described in MCI's December 29, 2020 report. Without knowledge as to the remaining allegations of paragraph 195.

196. Admitted that the Association requested, under the terms of an August 4, 2020 Change Order, that MCI undertake certain work relating to the south wall of CTS as set forth in the August 4, 2020 Change Order, which speaks for itself. Without knowledge as to the remaining allegations of paragraph 196.

197. Admitted that MCI issued the December 29, 2020 report, only portions of which are reproduced in paragraph 197, that speaks for itself. Without knowledge as to the remaining allegations of paragraph 197.

198. Admitted that the 87th Terrace beach access walkway impacted the CTS property as described in MCI's December 29, 2020 report. Without knowledge as to the remaining allegations of paragraph 198.

199. Without knowledge.

200. Without knowledge.

201. Without knowledge.

202. Without knowledge.

203. Without knowledge.

204. Without knowledge.

205. Without knowledge.

206. Without knowledge.

207. Without knowledge.

208. Admitted that MCI took photographs of the CTS property in 2018 and 2020.

Without knowledge as to the remaining allegations of paragraph 208.

209. Admitted that MCI took photographs of the CTS property in 2018 and 2020, including some of those reproduced in paragraph 209. Without knowledge as to the remaining allegations of paragraph 209.

210. The photographs reproduced in paragraph 208 and referenced in paragraph 209 speak for themselves. Without knowledge as to the remaining allegations of paragraph 210.

211. Without knowledge

212. Without knowledge.

213. Without knowledge.

214. Admitted that MCI documented findings in reports issued in 2018 and 2020 (and identified more fully below) which speak for themselves, and the remaining allegations concerning what MCI documented are denied.

215. Without knowledge.

216. Without knowledge as to whether the quoted language appears in the Association's governing documents.

217. This paragraph states a legal conclusion that requires no answer.

218. This paragraph states a legal conclusion that requires no answer. Otherwise, admitted that, in its reports described herein, MCI identified certain conditions that the Association failed to address.

219. Admitted that MCI prepared reports in 2018 and 2020 that identified certain conditions of CTS. Without knowledge as to what the Association knew or should have known prior to that date.

220. This paragraph states a legal conclusion that requires no answer.

221. Admitted that the Association hired MCI under the terms of a contract dated July 24, 2018 (the “2018 Contract”) to perform work as set forth therein. The remaining allegations of paragraph 221 are denied.

222. Admitted that the Association hired MCI under the terms of the 2018 Contract to perform work as set forth therein. The remaining allegations of paragraph 222 are denied.

223. Admitted that MCI operated as an entity providing professional structural engineering services. The remaining allegations of paragraph 223 are denied.

224. Admitted that the 2018 Contract and the reports prepared by MCI identify the scope of MCI’s inspection and analysis. The remaining allegations of paragraph 224 are denied.

225. Admitted that, following an inspection completed on September 6, 2018, MCI reported certain conditions in a Minimum Inspection Procedural Guidelines For Buildings Structural Recertification report (“Recertification Report”), delivered on September 14, 2019, and in an October 8, 2018 Champlain Towers South Condominium Structural Field Survey Report (“October 8, 2018 Report”), which speak for themselves. The remaining allegations of paragraph 225 are denied.

226. Admitted that MCI issued the October 8, 2018 Report on or about October 8, 2018 and the report speaks for itself. The remaining allegations of paragraph 226 are denied.

227. Admitted that the quoted language appears in MCI’s October 8, 2018 Report. Any remaining allegations of paragraph 227 are denied.

228. Admitted that the quoted language appears in MCI's October 8, 2018 Report. Any remaining allegations of paragraph 228 are denied.

229. Admitted that the quoted language appears in MCI's October 8, 2018 Report. Any remaining allegations of paragraph 229 are denied.

230. Admitted that the quoted language appears in MCI's October 8, 2018 Report. Any remaining allegations of paragraph 230 are denied.

231. Denied.

232. Admitted that MCI provided to the Association the October 8, 2018 Report and MCI's Estimate of the Probable Construction Cost ("2018 Estimate"). The October 8, 2018 Report and 2018 Estimate speak for themselves and any additional allegations of paragraph 232 are denied.

233. Denied.

234. Denied.

235. Denied.

236. Admitted that, after being furnished the 2018 Report from MCI, in June of 2020, the Association engaged MCI to put out to bid construction, design, and supervision of construction as set forth in an Engineering Services Agreement dated June 10, 2020 (the "2020 Agreement"), which speaks for itself. The remaining allegations of paragraph 236 are denied.

237. Without knowledge.

238. Without knowledge.

239. Admitted that the Association hired MCI under the terms of the 2020 Agreement and that MCI reported findings in an October 13, 2020 report titled "Champlain Towers South – Phase IIA, Summary of Work Performed" ("October 2020 Report"), both of which speaks for themselves. The remaining allegations of paragraph 239 are denied.

240. Denied.

241. Denied.

242. Denied.

243. Denied.

244. Without knowledge.

245. Admitted that a portion of CTS collapsed on June 24, 2021. The remaining allegations of paragraph 245 are denied.

246. Without knowledge.

247. Without knowledge.

248. Without knowledge.

249. Without knowledge.

250. Without knowledge.

251. Without knowledge.

252. Without knowledge.

253. Without knowledge.

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255. Without knowledge.

256. Without knowledge.

257. Without knowledge.

258. Without knowledge.

**Kenneth Direktor**

259. Without knowledge.

260. Without knowledge.

261. Without knowledge.

262. Without knowledge.

263. Without knowledge.

**Steven B. Lesser**

264. Without knowledge.

265. Without knowledge.

266. Without knowledge.

267. Without knowledge.

**Donna DiMaggio Berger**

268. Without knowledge.

269. Without knowledge.

270. Without knowledge.

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304. Without knowledge.

### **CLASS REPRESENTATION ALLEGATIONS**

#### **Class Definitions**

305. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

306. This paragraph contains either legal conclusions or statements of the plaintiff's intent, neither of which requires a response.

**The Liability Class**

307. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

**The Personal Injury and Wrongful Death Subclass**

308. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

**The Non-Owner Personal Injury and Wrongful Death Subclass**

309. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

**The Economic Loss and Property Damage Subclass**

310. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

311. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

312. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

313. This paragraph states a legal conclusion that requires no answer.

**Requirements of Rule 1.22(a)**

**Numerosity**

314. This paragraph states a legal conclusion that requires no answer.

**Commonality**

315. This paragraph states a legal conclusion that requires no answer.

### **Typicality**

316. This paragraph states a legal conclusion that requires no answer. Plaintiffs' right to class certification will be determined at a later date by submissions to be made to the Court in the future.

### **Adequacy of Representation**

317. This paragraph states a legal conclusion that requires no answer. Plaintiffs' right to class certification will be determined at a later date by submissions to be made to the Court in the future.

318. The Amended Order Appointing Plaintiffs' Counsel and Addressing Certain Case Management Issues speaks for itself. The remaining allegations of this paragraph contain statements of the plaintiffs' intent, which do not require a response.

319. This paragraph contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

### **Requirements of Rule 1.220(b)(1)(b)**

320. This paragraph states a legal conclusion that requires no answer.

### **Requirements of Rule 1.220(b)(3)**

### **Predominance**

321. This paragraph states a legal conclusion that requires no answer.

322. First sentence is admitted. Denied that any act or omission of MCI caused the collapse or any damages to plaintiffs. Without knowledge as to the remaining allegations of paragraph 322.

323. Denied.

324. This paragraph state legal conclusions that require no answer.

**Superiority**

325. Denied that any act or omission of MCI caused the collapse or any damages to plaintiffs. This paragraph also contains either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response. Without knowledge as to any remaining allegations.

***Issue Certification***

326. Denied that any act or omission of MCI caused the collapse or any damages to plaintiffs. The remaining allegations of this paragraph contain either legal conclusions or statements of the plaintiffs' intent, neither of which requires a response.

**COUNT I NEGLIGENCE  
(Against the Terra Defendants)**

327-339. The remaining allegations contained in Paragraphs 327-339 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT II STRICT LIABILITY  
(Against the Terra Defendants)**

340-351. The allegations contained in Paragraphs 340-351 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT III NEGLIGENCE  
(Against JMA)**

352-368. The allegations contained in Paragraphs 352-368 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT IV STRICT LIABILITY  
(Against JMA)**

369-381. The allegations contained in Paragraphs 369-381 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT V NEGLIGENCE  
(Against NV5)**

382-402. The allegations contained in Paragraphs 382-402 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT VI STRICT LIABILITY  
(Against NV5)**

403-415. The allegations contained in Paragraphs 403-415 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT VII NEGLIGENCE  
(Against DeSimone)**

416-435. The allegations contained in Paragraphs 416-435 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT VIII STRICT LIABILITY  
(Against DeSimone)**

436-448. The allegations contained in Paragraphs 436-448 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT IX NEGLIGENCE  
(Against the Association)**

449-462. The allegations contained in Paragraphs 449-462 are not directed toward MCI and therefore do not require an answer by MCI.

**COUNT X NEGLIGENCE  
(Against Morabito)**

463. MCI re-alleges and incorporates herein its responses to all foregoing paragraphs.

464. Admitted that MCI was retained as provided for in the 2018 Contract and 2020 Agreement. The remaining allegations of paragraph 464 are denied.

465. This paragraph states a legal conclusion that requires no answer.

466. This paragraph states a legal conclusion that requires no answer. Otherwise, without knowledge.

467. Admitted that paragraph 467 purports to paraphrase portions of a document entitled Minimum Inspection Procedural Guidelines For Building's Structural Recertification referenced without date or further specificity. Any remaining allegations denied.

468. Admitted that paragraph 468 purports to paraphrase portions of a document entitled Minimum Inspection Procedural Guidelines For Building's Structural Recertification referenced without date or further specificity. Any remaining allegations denied.

469. The document entitled Minimum Inspection Procedural Guidelines For Building's Structural Recertification form reproduced in paragraph 469 (without date or further specificity) speaks for itself. The remaining allegations of paragraph 469 are denied.

470. The document entitled Minimum Inspection Procedural Guidelines For Building's Structural Recertification form, provided without date or further specificity, speaks for itself. The remaining allegations of paragraph 470 are denied.

471. Admitted that the Association hired MCI under the terms of the 2018 Contract to perform work as set forth therein. The remaining allegations of paragraph 471 are denied.

472. Admitted that MCI performed a Field Survey and provided the October 8, 2018 Report to the Association. The October 8, 2018 Report speaks for itself and the remaining allegations of paragraph 472 are denied.

473. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety. The remaining allegations of paragraph 473 are denied.

474. Denied.

475. Without knowledge.

476. The October 8, 2018 Report speaks for itself and the remaining allegations of paragraph 476 are denied.

477. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety. The remaining allegations of paragraph 477 are denied.

478. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety. The remaining allegations of paragraph 478 are denied.

479. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety.

480. Without knowledge.

481. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety. The remaining allegations of paragraph 481 are denied.

482. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety.

483. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety.

484. The October 8, 2018, Report properly identified conditions at CTS. Denied that MCI had any duty, obligation or ability to “insist or demand” that anything be done. The remaining allegations of paragraph 484 are also denied.

485. The October 8, 2018 Report speaks for itself and the remaining allegations of paragraph 485 are denied.

486. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety.

487. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety.

488. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrase but is not otherwise quoted here in its entirety. The remaining allegations of paragraph 488 are denied.

489. Admitted that the October 8, 2018 Report, which is not quoted here in its entirety, speaks for itself and, among other things, states that MCI “recommends that the Entrance/Pool deck concrete slabs that are showing distress be removed and replaced in their entirety.”

490. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrases but is not otherwise quoted here in its entirety. The remaining allegations of paragraph 490 are denied.

491. Denied.

492. Denied.

493. Admitted that the October 8, 2018 Report, which speaks for itself, includes the quoted phrases but is not otherwise quoted here in its entirety. The remaining allegations of paragraph 493 are denied.

494. This paragraph states a legal conclusion that requires no answer. Otherwise, denied.

495. Denied.



496. Without knowledge as to the first sentence of paragraph 496. Remaining allegations denied.

497. This paragraph states a legal conclusion that requires no answer. Otherwise, denied.

498. Denied.

499. MCI admits that it delivered a copy of the Recertification Report, previously provided to the Association in 2018 and 2020, directly to the Town of Surfside on June 24, 2021 at approximately 5:35 p.m. in response to an email sent to MCI by the Town of Surfside just minutes earlier concerning the Recertification Report. The remaining allegations of paragraph 499 are denied.

500. Denied.

501. The Recertification Report that MCI delivered directly to the Town of Surfside speaks for itself and the remaining allegations of paragraph 501 are denied.

502. The term “2018 inspection and report,” as used in paragraph 502, is vague and ambiguous. MCI otherwise denies the allegations of this paragraph.

503. This paragraph states a legal conclusion that requires no answer. Otherwise, denied.

504. Denied.

505. Denied.

506. Denied.

507. Denied.

508. MCI admits that its representatives visited the CTS site on other occasions after MCI delivered the October 8, 2018 Report. The remaining allegations of paragraph 508 are denied.

509. This paragraph states a legal conclusion that requires no answer. Otherwise, denied.

510. Denied.

511. This paragraph states a legal conclusion that requires no answer.

512. This paragraph states a legal conclusion that requires no answer.

513. This paragraph states a legal conclusion that requires no answer.

514. This paragraph states a legal conclusion that requires no answer.

515. This paragraph states a legal conclusion that requires no answer.

516. This paragraph states a legal conclusion that requires no answer.

517. Denied.

518. Admitted that the quoted language appears in the National Society of Professional Engineer's Code of Ethics for Engineers. Otherwise denied.

519. Denied.

520. Denied.

521 (a)-(v). Denied.

522. Denied.

523. Denied.

524. Denied.

**COUNT XI NEGLIGENCE  
(Against Becker)**

525-549. The allegations contained in Paragraphs 525-549 are not directed toward MCI and therefore do not require an answer by MCI.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

#### **Allocation of Fault**

Pursuant to Section 768.81, *Florida Statutes*, in a negligence action (including one for professional negligence), the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability. As such, MCI is entitled to an allocation of fault to the extent the jury assigns fault for plaintiffs' alleged damages to persons other than MCI, including plaintiffs, other defendants in this action and nonparties. The cause of this catastrophic collapse remains unknown and MCI therefore reserves the right to amend this pleading to provide further specificity in support of this affirmative defense as discovery proceeds, evidence is made available and further facts become known. MCI, however, denies it is liable for plaintiffs' alleged damages, and to the extent any of plaintiffs have suffered damages, MCI believes the evidence may demonstrate that other defendants, nonparties and/or plaintiffs, collectively and/or individually, are persons who may be at fault and liable for those damages.

Specifically, by way of example, Champlain Towers South Condominium Association, Inc. ("the Association") operated CTS and was responsible for maintaining the building on behalf of its owners and residents and ensuring the building remained in a safe condition. The Association may be at fault for having acted, or failed to act, negligently, as alleged in the Consolidated Second Amended Class Action Complaint ("Complaint") and otherwise. Fault may be allocated to the Association both as the Association was constituted from 2018 through 2021, as well as to the Association as constituted in earlier years to the extent that the Association, as constituted in those years, may be at fault for having acted, or failed to act, negligently. The Association may further be at fault because it failed to provide or otherwise disclose to MCI all

of the information necessary for MCI to perform the work for which the Association engaged MCI, including, but not limited to, information about the work performed by Western Waterproofing Company of America in or about 1996-97 (as described further below) and information relating to the construction of Eighty-Seven Park and its impact upon CTS, including any reports prepared by NV5 that were provided to the Association.

By way of further example, defendants 8701 Collins Development, LLC; Terra Group, LLC; and Terra World Investments, LLC (the “Terra Defendants”) are alleged to have owned, operated, constructed, managed, supervised, and/or developed the construction project known as “Eighty-Seven Park,” located at 8701 Collins Avenue, Miami Beach, Florida (“Eighty-Seven Park”); John Moriarty & Associates of Florida, Inc., is alleged to have been hired, retained and to have otherwise acted as the general contractor that constructed the Eighty-Seven Park project; NV5, Inc., is alleged to have been hired, retained and to have otherwise acted as the geotechnical engineer and inspector on the Eighty-Seven Park project; and DeSimone Consulting Engineers, LLC, is alleged to have been hired, retained and to have otherwise acted as the structural engineer on the Eighty-Seven Park project. These defendants may be at fault for having acted, or failed to act, as alleged in the Complaint.

By way of further example, defendant Becker & Poliakoff, P.A., which is alleged to have provided continuous legal services and counsel to the Association since at least February 25, 1993, until after the CTS collapse, may be at fault for having acted, or failed to act, as alleged in the Complaint.

By way of further example, pursuant to section 718.119, *Florida Statutes*, plaintiffs who were unit owners may be at fault and liable for the acts or omissions of the Association in relation to the use of the common elements, to the extent of each such plaintiff’s *pro rata* share of liability

in the same percentage as each such plaintiff's interest in the common elements. Plaintiffs who were unit owners further may be at fault, and may be liable, for such plaintiffs having failed to maintain and repair CTS as required, by section 718.119, *Florida Statutes*, and otherwise, and to act upon the recommendations of MCI for repairs and other work to be performed at CTS.

Additionally, MCI is entitled to an allocation of fault to the extent the jury assigns fault for plaintiffs' alleged damages to nonparties, including Brieterman Jurado & Associates, the engineers for the design and construction of CTS, and William M. Friedman & Associates Architects, the architects for CTS, who may be at fault for having acted, or failed to act, negligently by failing to adequately design and supervise the construction of CTS in a safe manner; and Nattel Construction, Inc., the developer of CTS; and Jorge Batievsky and Alfred Weisbrod, and any entities owned and/or operated by them, contactors for the construction of CTS, and their subcontractors, who may be at fault for having acted, or failed to act, negligently by failing to construct CTS in a safe manner and/or in accordance with the plans required for the safe construction of CTS o, otherwise, in conformance with all applicable building codes and relevant standards.

Additionally, MCI is entitled to an allocation of fault to the extent the jury assigns fault for plaintiffs' alleged damages to nonparty Western Waterproofing Company of America (last known address 1637 N. Warson Road, St. Louis, MO 63132), which performed concrete structural repair in the CTS parking garage in or about 1996-1997, and may be at fault for having acted, or failed to act, negligently, including in removing loose concrete overhead, treating steel rebar with rust inhibitive coating and patching back with repair mortar and performing urethane foam injections in ceiling cracks, and other work authorized by permits issued by the Town of Surfside in 1996 for such work, and to Tong Le, P.E., Inc.(last known address 5100 W. Copans

Road, Suite 710, Margate, FL 33063), the project engineer for that work, which may be at fault for having acted, or failed to act, negligently in its oversight of that work, including inspection of different phases of the waterproofing of the deck and the repair of spalls in the ceiling of the garage.

Additionally, MCI is entitled to an allocation of fault to the extent the jury assigns fault for plaintiffs' alleged damages to nonparties who were unit owners of CTS or CTS board members who may be at fault for having acted, or failed to act, negligently by failing to maintain and repair the CTS structures in a safe condition; by delaying and opposing necessary maintenance and repairs to CTS as recommended by MCI and others; and failing to provide to MCI all of the information necessary for MCI to perform the work for which the Association engaged MCI, including, but not limited to, information about the work performed by Western Waterproofing Company of America in or about 1996-97 and information relating to the construction of Eighty-Seven Park and its impact upon CTS, including any reports prepared by NV5 that were provided to the Association.

Additionally, MCI is entitled to an allocation of fault to the extent the jury assigns fault for plaintiffs' alleged damages to nonparties the Town of Surfside and its officials and employees, including building inspectors, who may be at fault for having acted, or failed to act, negligently, including by failing to adequately supervise and enforce building codes during the construction of CTS and repair work performed at CTS in or about 1996-97; and failing to adequately supervise and enforce building codes during the construction of Eighty-Seven Park.

**SECOND AFFIRMATIVE DEFENSE**  
**Assumption of Risk**

To the extent it is determined that the cause of the collapse was the failure of the Association and/or unit owners to (i) timely and appropriately investigate the concerns raised by the construction of Eight-Seven Park, (ii) implement the repairs recommended in MCI's 2018 Report, and/or (iii) take any other action recommended for the maintenance, repair, and/or investigation of Champlain Towers, it constitutes an assumption of risk.

**THIRD AFFIRMATIVE DEFENSE**  
**Failure to Maintain**

To the extent it is determined that the cause of the collapse was the failure of the Association and/or the unit owners to (i) timely and appropriately investigate the concerns raised by the construction of Eight-Seven Park, (ii) implement the repairs recommended in MCI's 2018 Report, and/or (iii) take any other action recommended for the maintenance, repair, and/or investigation of Champlain Towers, such failures to act constitute a failure to maintain.

**FOURTH AFFIRMATIVE DEFENSE**  
**Intervening/Superseding Acts**

Plaintiffs' claims are barred, in whole or in part, based upon the intervening and superseding actions of third parties

**FIFTH AFFIRMATIVE DEFENSE**  
**Acts of God**

Plaintiffs' claims are barred, in whole or in part, to the extent the damages resulted from acts of god or other unavoidable causes such as floods, hurricanes, and unknowable underground erosion or activity.

**SIXTH AFFIRMATIVE DEFENSE**  
**Set-Off**

To the extent Plaintiffs have or will settle with, obtain judgment against, or otherwise receive payment from any party or non-party, or otherwise receive payment from a collateral source, including but not limited to, insurance policies either paid or payable, for the same damages sought from MCI, MCI is entitled to a set-off against Plaintiffs' damages.

**RESERVATION**

Discovery has not yet commenced and the parties to this action also have yet to be provided access to material evidence in the custody of the National Institute of Standards and Technology and Miami-Dade County authorities. MCI reserves the right to assert any additional affirmative defenses that may come to light through discovery or further investigation once access to such materials has been provided.



