

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**BEUMER CORPORATION**  
4435 Main St., Suite 600  
Kansas City, MO 64111

**Plaintiff,**

v.

**THE BLOOM LAKE IRON ORE MINE  
LIMITED PARTNERSHIP**  
1115 Rue University, Suite 508  
Montreal, Quebec H3B 3A7  
Canada

**Defendant.**

**Civil Action No.: 1:13-cv-01513**

**Judge: Lesley Wells**

**Jury Demand Endorsed Hereon**

**FIRST AMENDED COMPLAINT**

This First Amended Complaint is being filed without waiving and without prejudice to Beumer Corporation's right to arbitrate these disputes. For its First Amended Complaint against The Bloom Lake Iron Ore Mine Limited Partnership, Beumer Corporation states as follows:

**THE PARTIES**

1. Beumer Corporation ("Beumer") is a corporation organized under the laws of Delaware and having its principal place of business in Somerset, New Jersey.

2. Defendant The Bloom Lake Iron Ore Mine Limited Partnership (“Bloom Lake”) is a limited partnership organized under the laws of the Province of Ontario with a primary place of business in Quebec, Canada. Beumer and Bloom Lake will be referred to hereinafter collectively as the “Parties.”

### **JURISDICTION AND VENUE**

3. This Court has original diversity jurisdiction over this action under 28 U.S.C. § 1332(a)(2) because this action is between diverse citizens and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00), exclusive of costs and interest.

4. The Parties have contractually agreed and consented to personal jurisdiction and venue in this Court because the contracts between the Parties that are the subject of this action mandate that, unless provided otherwise in the contracts which are the subject of this action, any disputes arising out of or in conjunction with said contracts shall be adjudicated in the local, state or federal courts of Cleveland, Ohio and shall be interpreted in accordance with the laws of the State of Ohio and for all purposes will be governed by and construed and enforced in accordance with the laws of the State of Ohio.

### **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

5. On or about October 1, 2011, the Parties entered into a contract in the amount of \$29,472,985 pursuant to which Beumer was to design and supply an overland conveyor (the “**OLC**”), including an associated sacrificial conveyor (the “**OLC Contract**”) to a project known as the Bloom Lake Iron/Ore Mine Expansion-Phase II located in Quebec, Canada (the “**Project**”). A true copy of the OLC Contract is attached hereto as **Exhibit A** and incorporated herein.

6. Also on or about October 1, 2011, the Parties entered into a second contract in the amount of \$14,188,077 pursuant to which Beumer was to design and supply an ore storage structure (the “OSS”), including an associated tripper conveyor (the “OSS Contract”) for the Project. A true copy of the OSS Contract is attached hereto as **Exhibit B** and incorporated herein. The OLC and OSS Contracts will be referred to hereinafter collectively as the “Contracts.”

7. The Contracts contain provisions mandating that any disputes arising out of or in conjunction with them shall be adjudicated in the local, state or federal courts of Cleveland, Ohio and shall be interpreted in accordance with the laws of the State of Ohio and for all purposes will be governed by and construed and enforced in accordance with the laws of the State of Ohio.

8. The Contracts further contain terms and conditions requiring that if a disagreement arises concerning the interpretation of any Contract Document, the parties are to attempt to amicably settle all such disagreements. **In the event that the parties are unable to settle amicably, then either party, in lieu of litigation, “shall then refer the disagreement to arbitration to be administered by the American Arbitration Association in accordance with the provisions of the Commercial Arbitration Rules...”**

9. The Contracts also mandate that “the place of the arbitration shall be Cleveland, Ohio, United States.”

10. By virtue of the language in the Contracts that in lieu of litigation, either party shall refer the disagreement to arbitration, Beumer seeks to compel arbitration in this matter and seeks specifically to have this matter referred to arbitration. Beumer does not intend to waive its right to arbitrate its disputes by filing this action.

11. The Contracts are detailed with various provisions regarding Beumer's responsibility for designing and fabricating certain structural steel components and the furnishing certain conveyor equipment.

12. The Contracts require Bloom Lake to provide among other items, the following:

- (a) preparation of the Project site, including foundations upon which the materials and equipment provided by Beumer would be installed;
- (b) preassembly of certain fabricated steel and equipment at a preassembly site;
- (c) installation of the fabricated steel and equipment at the site;
- (d) transportation of the fabricated steel and equipment between the fabrication site, preassembly site, and project site; and
- (e) Site logistics and overall construction management.

13. To the extent not prevented from doing so by other parties beyond its control and without its fault or negligence, Beumer completed its contractual obligations in accordance with the terms of the Contracts.

#### **Early Planning, Procurement, and Preassembly Negotiations**

14. Prior to executing the Contracts, the Parties entered a letter of intent agreement pursuant to which Beumer began scheduling, planning, and engineering for the work it was to provide for the Project.

15. While the letter of intent was in effect, the Parties extensively discussed methods of accomplishing the work as quickly as possible, including the requirement that sufficient trailers and space be at the preassembly site to allow material to move through NAFCO's fabrication facility without constriction. NAFCO was Beumer's fabrication subcontractor.

16. The project consists largely of special cold weather steel which requires unusually long time for procurement prior to fabrication.

17. Bloom Lake was advised that as a result of the aggressive delivery schedule and long procurement time for cold weather steel, any re-sequencing of NAFCO's fabrication plan would result in delays and/or additional costs.

#### **Contract Delivery Dates**

18. The Contracts provide certain milestone dates for the delivery of the OSS and OLC materials and equipment.

19. Exhibit C to the Contracts specified that Beumer's delivery obligation would be fulfilled by making deliveries available for carriers provided by Bloom Lake to load at the site of Beumer's fabrication subcontractor, NAFCO (referred to as "FCA Delivery").

20. Beumer's Contract delivery obligation was to be completed on September 30, 2012, absent modification by changes in the Contracts.

21. In early October 2011, Beumer entered a contract with NAFCO and directed it to procure steel, create detailed fabrication drawings, and begin fabrication in a sequence planned specifically to align deliveries with the Contract Schedule and achieve the productivity necessary to achieve the Contract Schedule.

22. Before and after entering the Contracts, Beumer advised Bloom Lake on multiple occasions that Beumer could best ensure timely delivery to the Project site if it was given responsibility for the transportation and preassembly portion of the Project and the Parties included in Exhibit A to the Contracts an agreement to enter a change order at a later date pursuant to which Beumer would be given that responsibility.

23. Pursuant to the terms of the Contracts, on October 19, 2011, Beumer submitted a proposal to provide transportation and preassembly for the materials it would be furnishing to the Project.

24. Despite Beumer's objections, Bloom Lake chose not to follow the Contracts and entered into agreements with others ("Third Party Contractors") for the transportation and preassembly portion of the Project.

25. It was the responsibility of Bloom Lake to manage, schedule and coordinate the activities of the Third Party Contractors.

26. Throughout the Project, Beumer expressed to Bloom Lake serious concern regarding the failure of Bloom Lake to effectively and timely manage, coordinate and schedule the Third Party Contractors.

#### **Design Changes**

27. Early in the Project, Bloom Lake requested a number of design changes deviating from the Contracts.

28. Beumer advised Bloom Lake that the numerous design changes were delaying Beumer's progress resulting in additional engineering costs.

29. Changes to the Contracts that were ordered by Bloom Lake and caused impact to Beumer's performance, include but are not limited to the following:

- (a) A change in the foundation elevations at the OSS;
- (b) Delayed resolution of OSS egress requirements;
- (c) Added stacker foundations to the OSS;
- (d) Wind wall relocations;
- (e) Relocation of the Cable Tray on the OLC;
- (f) Changes in the loading requirements for the Cable Tray on the OLC;
- (g) A change in the elevation at the tail end of the OLC; and
- (h) A change in foundation heights at the OLC to the Tripper Transfer Tower.

30. In or around March 2012, Bloom Lake requested that Beumer shop weld the A-Frames for the OSS, which Beumer was entitled to bolt pursuant to the Contracts.

31. Bloom Lake acknowledged that Beumer would be entitled to additional compensation for its direction to shop weld the A frames but Bloom Lake failed to take further action on this item.

#### **December 2011 Schedule Change**

32. Bloom Lake was responsible for producing an overall construction schedule for the Project which included Beumer's scope of work. A preliminary schedule of critical dates showing start and finish dates for Beumer's deliveries was included as part of the Contracts.

33. On or about December 8, 2011, Bloom Lake provided Beumer with a construction schedule (the "December Schedule") showing the timing and sequencing of on-site construction. The December Schedule was not consistent with the schedule in the Contracts.

34. The December Schedule, issued after more than two months of procurement and fabrication, accelerated (moved up in time) certain of Beumer's contractual delivery dates by as much as six weeks.

35. As a result of this schedule change, Beumer was required to change its fabrication approach from the most efficient, controlled and balanced sequencing that was based on the contractual milestone dates.

36. Bloom Lake was advised by Beumer that NAFCO would require additional compensation to comply with the accelerated schedule produced by Bloom Lake.

### **March 2012 Schedule Changes**

37. On or about March 8, 2012, Bloom Lake issued a revised construction schedule which changed Beumer's delivery dates further, again moving up certain delivery dates by as much as six weeks.

38. On or about March 19, 2012, Bloom Lake again changed the schedule when it issued an email directive to change the previously established fabrication priorities to a new and different list, further modifying the contractual milestone sequence.

39. As a result of the March schedule change and March priority list, Beumer incurred additional fabrication costs and delays in progress toward completion of its final delivery.

40. As a result of the changes Bloom Lake ordered as detailed above, NAFCO demanded compensation for the additional costs and in order to ensure NAFCO's continued progress, Beumer provided appropriate compensation to NAFCO which it seeks to recover from Bloom Lake.

41. The changes that Bloom Lake ordered, as detailed above, impacted the ability of Beumer to complete its work as planned.

### **Shipping and Preassembly**

42. Materials produced at the NAFCO facilities that were ready for delivery to Bloom Lake were not accepted for delivery in a timely manner by Bloom Lake and/or those working on its behalf.



43. At one point in April 2012, NAFCO had 59 trailers of completed frames at its location ready for delivery and waiting for Bloom Lake to take responsibility for them as required under the Contracts.

44. As a result, NAFCO ran out of the laydown space necessary to operate efficiently and incurred significant double handling costs. Beumer advised Bloom Lake of the impact of its untimely acceptance of materials.

45. NAFCO demanded compensation for the additional costs it had incurred to accommodate the changes directed by Bloom Lake and in order to ensure NAFCO's continued progress, Beumer provided appropriate compensation to NAFCO which it seeks to recover from Bloom Lake.

**Notice of Impacts and Demand for Compensation and Schedule Extensions**

46. On November 16, 2011, in response to Bloom Lake's request to change the height of the OSS, Beumer submitted a proposal requesting additional compensation to adopt this change and noted that the change would necessitate extending the final delivery schedule to October 20, 2012.

47. Bloom Lake thereafter responded by directing Beumer to proceed and verbally assured Beumer that its claims would be fairly considered later.

48. By letter dated December 28, 2011, Beumer responded to more of Bloom Lake's design change requests and Bloom Lake's request to adapt to the December Schedule, and requested that the amount of the Contract, deadlines, and delivery schedule be revised to account for such changes, specifically requesting an extension of the final delivery date to October 28,

2012. A copy of the December 28, 2011 letter is attached hereto as **Exhibit C** and incorporated herein.

49. In the same letter, Beumer noted that further design changes and continued disruption and sequence changes in the fabrication process would result in further need to adjust the schedule and/or additional cost.

50. Bloom Lake responded by directing Beumer to proceed and verbally assuring Beumer that its claims would be fairly considered later.

51. During the period from January 2012 through June 2012, Beumer repeatedly communicated in meetings and through correspondence its concerns regarding cost and schedule impact of Bloom Lake's schedule changes and failure to provide timely freight from NAFCO's Alabama facility.

52. Bloom Lake failed to address Beumer's concerns in a responsive manner.

53. Bloom Lake responded to Beumer's notices of impact by directing Beumer to proceed and verbally assuring Beumer that its claims would be fairly considered later.

54. On or about July 5, 2012, the Parties held a meeting at the project site during which Bloom Lake requested that Beumer accelerate the current October 28, 2012 schedule to late September 2012.

55. By correspondence dated July 14, 2012, Beumer comprehensively addressed the cost and schedule impact of Bloom Lake's schedule changes and failure to provide timely freight, and requested that the amount of the Contract, deadlines, and delivery schedule be revised to account for such changes. A copy of the July 14, 2012 correspondence is attached hereto as **Exhibit D** and incorporated herein.

56. In that correspondence, Beumer noted that it had been further delayed so as to justify an extension of the final delivery date to November 30, 2012 absent additional compensation, while providing a proposal for the cost necessary to meet the requested September delivery date.

57. On or about September 4, 2012, the Parties held a meeting during which Bloom Lake directed Beumer to accelerate the current November 30, 2012 schedule to October 31, 2012, again assuring Beumer that compensation would be addressed appropriately at a later time.

58. Beumer substantially completed its deliveries for the Project on or before October 31, 2012, with only miscellaneous non-critical items being delivered shortly thereafter.

59. By letter dated January 4, 2013, Beumer requested resolution of all outstanding claims and provided supporting data for the cost incurred as a result of accelerating from the November 30, 2012 schedule completion date to the October 31, 2012 completion date as requested. A copy of Beumer's January 4, 2013 letter is attached hereto as **Exhibit E** and incorporated herein.

60. On February 28, 2013, more than a year after Beumer first provided notice of its claims, Bloom Lake issued its first formal response, denying all of Beumer's claims for acceleration and disclaiming any responsibility for delay.

**Misrepresentation and Concealment Regarding Payment of Claims and Contract Balance**

61. Early in the Project, Bloom Lake appointed Robert E. Allard to manage certain aspects of Beumer's contract, including delivery and logistics, and directed Beumer to accept his instructions.

62. By correspondence dated August 1, 2012, Mr. Allard accepted Bloom Lake's responsibility for overtime costs related to the issue of insufficient delivery trailers. A copy of the August 1, 2012 correspondence is attached hereto as **Exhibit F** and incorporated herein.

63. In the first week of August 2012, Robert Allard and Frank Warmoth met face to face for a dinner meeting in Kansas City, Missouri during which they discussed NAFCO and Beumer's claims. At that meeting, Mr. Allard represented the following:

- (a) He was speaking on behalf of Bloom Lake project manager, Amelie Dorian, with whom he had discussed the claims;
- (b) Bloom Lake, although it disagreed with certain aspects of the claims, acknowledged that it had delayed Beumer and had approximately \$450,000.00 of responsibility for Beumer's previously submitted claims for \$627,500.00 in additional compensation;
- (c) Bloom Lake was considering its own claims against Beumer that would be roughly equal to Beumer's claims;
- (d) Bloom Lake would resolve the claims fairly at a later date.

64. During the same dinner meeting, Mr. Warmoth told Mr. Allard that Beumer would continue performing the contract and would attempt to meet the schedule despite having been delayed based on Bloom Lake's acknowledgement of liability and verbal assurances of fair resolution.

65. On August 16-17, 2012, Mr. Allard and Mr. Warmoth exchanged emails in which Mr. Warmoth reiterated that Beumer and NAFCO were proceeding on the basis of the assurances of a fair resolution that Mr. Allard provided at the meeting in Kansas City. A copy of the August 16-17, 2012 email exchange is attached hereto as **Exhibit G** and incorporated herein.

66. During a telephone call a few days after the meeting in Kansas City, Mr. Allard again acknowledged Bloom Lake's liability in the approximate amount of \$450,000.00 and represented that Bloom Lake's claims would be roughly equal to Beumer's claims and the parties

would likely end up with a walk away settlement in which Beumer was paid the contract balance but neither party was paid for claims.

67. On or about August 17, 2012, Mr. Allard verbally offered \$100,000.00 as a good faith advancement and acknowledgment of Bloom Lake's responsibility for at least a portion of Beumer and NAFCO's claims.

68. By correspondence dated August 17, 2012, Beumer, through its President Frank Warmoth, accepted the offer as an advance but not full satisfaction of the claims. A copy of the August 17, 2012 correspondence is attached hereto as **Exhibit H** and incorporated herein. Despite Mr. Allard's representations that a good faith advancement of \$100,000 would be made toward the settlement of Beumer's claims, no payment has ever been forthcoming.

69. In late December 2012, Mr. Allard informed Mr. Warmoth that he had been dismissed from the project after Ms. Dorian asked him to put together very large claims against Beumer and he responded that he was not aware of support for such claims.

70. In February 2013, Bloom Lake reversed its earlier assurances and formally denied liability for each of Beumer's claims, and in June 2013, Bloom Lake submitted a claim against Beumer totaling \$12,354,929.50, for the first time providing the magnitude and basis of the claim even though Beumer's allegedly defective performance occurred more than six months earlier in 2012.

71. Bloom Lake's claim for \$12,354,929.50 was not timely, is not supported by facts and is interposed solely for the purpose to avoid paying Beumer its contract balance plus its claims.

### **Equipment Start-up and Non Payment**

72. Startup of Beumer's equipment was originally scheduled to occur in late 2012.

73. To date, Bloom Lake has delayed startup of Beumer's equipment, which is, upon information and belief, a result of events beyond the control of Beumer and without its fault or negligence.

74. Bloom Lake has notified Beumer that the startup is currently scheduled to occur in September 2013.

75. The delay by Bloom Lake in startup of the Beumer equipment has extended the period of performance by Beumer for its startup services.

76. The Contracts, particularly Exhibits C thereto, contain the following payment terms:

- 10% down payment
- 5% with submitted engineering documents (conveyor route drawings and NTE loads information)
- 25% against purchase and procurement commencement
- 50% through delivery phase (Monthly invoicing)
- 5% at equipment start up, payment date not to exceed Dec 31st 2012
- 5% Acceptance test passed, payment date not to exceed April 30th 2013
- 10% of each invoice will be retained

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Retained amount will be placed in interest bearing joint escrow account with dual signatory rights. Upon successful Acceptance test and operation of the plant or by June 30th 2013, whichever is sooner retained amount will be released. Interest amount will be split evenly between supplier and owner.

77. The Parties agreed to the "not to exceed" payment dates in recognition that Beumer would be entitled to payment within a reasonable time after delivering its equipment and

that Beumer would have no control over potential delays to the installation and startup milestones that would otherwise trigger Bloom Lake's remaining payment obligations.

78. Beumer has made repeated formal demand for payment of the five percent (5%) payment in the amount of \$2,183,053.10 that was due on or before April 30, 2013.

79. Beumer has made repeated formal demand for payment of the ten percent (10%) retention payment in the amount of \$4,147,600.49 due on or before June 30, 2013.

80. By letter dated April 5, 2013, Beumer once again requested resolution of all outstanding claims, requested payment of the contract balances and provided further additional supporting data for the costs incurred. A copy of Beumer's April 5, 2013 letter is attached hereto as **Exhibit I** and incorporated herein.

81. The grand total of the unpaid contract balance that has not been paid plus the claims previously submitted and as described in the April 5, 2013 letter amount to \$7,362,438.71. Beumer has also incurred additional engineering costs and expects to incur future costs once Bloom Lake begins the startup that is currently scheduled to occur in September 2013.

82. Bloom Lake has failed and refused pay any portion of the remaining contract balance of \$6,330,653.59 and has failed or refused to pay for the additional costs Beumer and NAFCO have incurred, in the amount of \$1,031,785.12 to accommodate Bloom Lake's contract modifications, delays and impacts.

83. As a result of the delay in installation and startup from late 2012 until at least September 2013, Beumer has incurred extended overhead and supervision costs.

84. Further, Exhibit C of the Contracts obligated Bloom Lake to establish and place retained amounts in an “interest bearing joint escrow account with dual signatory rights.”

85. On or about January 30, 2013, Beumer demanded evidence that the escrow account had been established and access to its dual signatory rights.

86. The escrow account required by the Contracts was not established by Bloom Lake as of January 30, 2013.

87. On June 28, 2013, after extensive negotiations, the Parties entered an escrow agreement pursuant to which Bloom Lake would deposit \$6,330,854.00 in an escrow account to be distributed upon resolution of the Parties’ dispute. A copy of that escrow agreement is attached hereto as **Exhibit J** and incorporated herein.

88. The escrow agreement of June 28, 2013 was untimely and part of the cost to set up the escrow account was paid by Beumer under a reservation of rights.

89. Bloom Lake did not fund the escrow account until July 5, 2013, excluding the interest that would have accrued in an account established and funded from the beginning of the project as required in the Contracts.

90. Beumer has offered to meet with Bloom Lake on more than one occasion in an attempt to amicably settle its disagreements with Bloom Lake but those requests, and any meetings that were held, have not been successful.

**COUNT ONE**  
**Referral to Arbitration**

91. Beumer incorporates the preceding paragraphs of this Complaint as if fully re-written herein.



92. The Contracts explicitly provide that, in lieu of litigation, any party, after a disagreement is not amicably settled, “shall then refer the disagreement to arbitration to be administered by the American Arbitration Association in accordance with the provisions of the Commercial Arbitration Rules...”

93. Beumer desires to arbitrate its disagreements with Bloom Lake in lieu of litigation, as mandated by the Contracts and therefore seeks an Order from this Court staying these proceedings pending arbitration and referring this matter to arbitration as set forth in the Contracts.

**COUNT TWO**  
**Breach of Contract**

94. Beumer incorporates the preceding paragraphs of this Complaint as if fully re-written herein.

95. Beumer’s obligations under the contract were to design, fabricate and supply materials and equipment for certain conveyor systems and an ore storage structure (OSS).

96. Beumer fully and timely complied with all of its requirements to design, fabricate and supply materials and equipment FCA its subcontractor NAFCO’s facility in Alabama.

97. Bloom Lake failed to perform its obligations under the contract, including but not limited to:

- Causing and or creating delays in releasing work for Beumer and its subcontractor NAFCO;
- Making late and/or untimely decisions and/or changes that were schedule critical for deliveries thereby impacting Beumer’s and NAFCO’s ability to properly manage its workflow;
- Failing to provide trailers at NAFCO’s place of business in order to free up yard and fabrication space, thereby delaying and impacting NAFCO’s ability to produce fabricated steel parts and forcing NAFCO to double handle materials;

- Failing to timely build foundations at the job site to accept Beumer's fabricated steel pieces, thereby delaying and impacting the planned progress for fabrication;
- Building foundations that were structurally insufficient, thereby delaying and impacting the planned progress for fabrication and delivery;
- Allowing its pre-assembly contractor to fall behind schedule and failing to select a pre-assembly site with sufficient space for storage of fabricated materials, thereby delaying and impacting the planned progress for fabrication;
- Permitting unqualified erectors to erect Beumer's conveyor system and creating field erection problems that were not Beumer's responsibility but instead required additional effort by Beumer to investigate and determine the cause of the issues experienced in the field;
- Interfering with Beumer's and NAFCO's ability to progress its work in a timely and efficient fashion;
- Failing to permit Beumer an opportunity to investigate allegations of unacceptable material and/or equipment;
- Failing to provide Beumer an opportunity to cure alleged deficiencies in the materials and/or equipment supplied to Bloom Lake;
- Failing to timely notify Beumer of alleged issues, concerns, defects or impacts caused by Beumer;
- Failing to timely establish a joint, interest bearing escrow account and depositing retained contract funds in said account;

98. Bloom Lake's actions and/or non-actions, as described above constitute material breaches of the Contracts.

99. Prior to, during and after Bloom Lake's breaches, Beumer substantially performed all of its duties and obligations under the Contracts.

100. As a direct and proximate cause of these material breaches of the contract, Beumer has suffered damages, in an amount at least equal to \$7,362,438.71 and Beumer hereby asserts its claim for such damages as will be proven at trial, together with interest, costs, and attorneys' fees.

**COUNT THREE**

**Fraud in the Inducement/Fraudulent Misrepresentation/Promissory Estoppel**

101. Beumer incorporates the preceding paragraphs of this Complaint as if fully re-written herein.

102. During the course of its performance under the Contracts, Beumer repeatedly requested additional compensation and time extensions from Bloom Lake.

103. Bloom Lake owed a duty to Beumer to disclose and avoid concealing facts regarding Bloom Lake's intention to pay Beumer.

104. As alleged in detail in Paragraphs 61-71 herein above, Bloom Lake repeatedly and knowingly made promises, material misrepresentations and concealed material facts regarding its intent to deny Beumer's claims for additional compensation and withhold payment of the contract balance to Beumer.

105. At the time when Bloom Lake made these representations, it had the full information and knowledge necessary to fully evaluate Beumer's claims and formulate any of its own claims or backcharges and knew that it had no intention of paying Beumer the contract balance, much less for Beumer's claims.

106. Bloom Lake made these misrepresentations to Beumer with knowledge of their falsity or with such utter disregard and recklessness as to whether they were true or false such that knowledge may be inferred, with the intent of inducing Beumer's reliance, Beumer informed Bloom Lake that it would rely on such representations, and Beumer relied upon those misrepresentations and continued to supply materials and equipment for the Project with the understanding that it would be paid in full for its work.

107. Beumer justifiably relied on Bloom Lake's representations about being paid, about being treated fairly and that its claims had some value and merit.

108. As a direct and proximate result of Bloom Lake's misrepresentations as outlined above, Beumer was induced to continue supplying materials and equipment to the Project at significant expense with the reasonable expectation of payment.

109. As a direct and proximate result of Bloom Lake's misrepresentations, Beumer has been damaged in an amount at least equal to \$7,362,438.71, and Beumer hereby asserts its claim for such damages as will be proven at trial, together with interest, costs, and attorneys' fees.

110. As a direct and proximate result of Bloom Lake's misrepresentations, Beumer is entitled to recover punitive damages..

**COUNT FOUR**  
**Unjust Enrichment/Quantum Meruit**

111. Beumer incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

112. In the alternative and to the extent it is determined that some or all of the materials, equipment and services Beumer provided to Bloom Lake are outside the Contracts, Beumer conferred a benefit upon Bloom Lake by rendering services and providing materials in furtherance of improvements as described herein.

113. Bloom Lake solicited, accepted and benefitted from, and has been unjustly enriched by the equipment and services provided to it by Beumer as described above, for which Beumer has not been compensated.

114. Bloom Lake knowingly retained its ill-gotten benefit, and it would be unjust for it to retain the same without full compensation of Beumer.

115. As a direct and proximate result of Bloom Lake being unjustly enriched, Beumer incurred damages in excess of \$7,362,438.71 plus interest, costs, and attorney's fees. Beumer hereby asserts its claim for such damages as are proven at trial, together with interest, costs and attorney's fees.

WHEREFORE, Beumer respectfully demands judgment in its favor as follows:

- On Count One, for an Order staying these proceedings and referring this matter to arbitration;
- On Count Two, for judgment against the Defendant Bloom Lake Ore Mine Limited Partnership for breach of contract in an amount which at trial will be shown to be in an amount of at least \$7,362,438.71, plus pre-judgment and post-judgment interest at the statutory rate from the date due until the date said judgment is paid;
- On Count Three, for judgment against Defendant Bloom Lake Ore Mine Limited Partnership for misrepresentation in an amount which at trial will be shown to be in an amount of at least \$7,362,438.71, plus pre-judgment and post-judgment interest at the statutory rate from the date due until the date said judgment is paid, plus punitive damages as may be proven at trial;
- On Count Four for judgment against the Defendant Bloom Lake Ore Mine Limited Partnership for unjust enrichment/quantum meruit in an amount which at trial will be shown to be in an amount of at least \$7,362,438.71, plus pre-judgment and post-judgment interest at the statutory rate from the date due until the date said judgment is paid;
- A judgment awarding Beumer all of its attorneys' fees and costs herein expended in the prosecution of this action; and
- Any and all other such relief to which Beumer may be entitled.

Respectfully submitted,

/s/ Peter D. Welin  
Peter D. Welin (0040762)  
Michael D. Tarullo (0042296 )  
Welin, O'Shaughnessy + Scheaf LLC  
240 N. Fifth St., Suite 300  
Columbus, OH 43215  
Peter.Welin@wos-law.com  
Mike.Tarullo@wos-law.com  
(T) 614-484-0700; (F) 888-671-1828  
*Attorneys for Beumer Corporation*

**JURY DEMAND**

Beumer Corporation demands a trial by jury on all issues so triable.

/s/ Peter D. Welin  
*Attorney for Beumer Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of October 2013, a copy of the foregoing *First Amended Complaint*, and all other supporting documents, were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Peter D. Welin  
*One of the Attorneys for Plaintiff*  
*Beumer Corporation*

