

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AEP EXCLUDED ASSETCO, LLC,	§	
	§	
Plaintiff/Counter-Defendant,	§	
v.	§	
	§	
BELLANERGY, LLC,	§	
	§	
Defendant/Counter-Plaintiff/Third-	§	Civil Action No. 23-cv-03638
Party Plaintiff,	§	
v.	§	
	§	
ADVANCE ENERGY PARTNERS, LLC,	§	
	§	
Third-Party Defendant.	§	

SECOND AMENDED COMPLAINT

Plaintiff AEP Excluded AssetCo, LLC (“Plaintiff”) complains of Defendant Bellanergy, LLC (“Defendant” or “Bellanergy”), and would show as follows:

INTRODUCTION

1. This is a breach of contract, breach of warranty, indemnity, fraudulent inducement, and declaratory judgment case involving Defendant’s sale and procurement of thousands of feet of non-conforming production casing pipe to Plaintiff.

2. After Plaintiff paid Defendant almost \$11,000,000, representing a 55% deposit, to procure 490,000 feet of pipe with a specific, patented connection, Defendant procured pipe with connections that, by Defendant’s own admissions, failed to meet the contractually agreed upon specifications. After rejecting the pipe and in an attempt to mitigate its damages and avoid litigation, Plaintiff worked with Defendant to find an alternative buyer for the pipe. But that effort came to a screeching halt when Plaintiff received a letter from a patent holder alleging that the non-conforming connection procured by Bellanergy infringed on the patent holder’s intellectual property and directed Plaintiff not to sell or otherwise market the pipe. Unable to use or resell the

non-conforming pipe, Plaintiff exercised its contractual right to reject the pipe fully and finally. Plaintiff seeks a full refund of its payment for the non-conforming pipe and all other damages, attorneys' fees, interest, and costs.

PARTIES

3. Plaintiff is a Delaware limited liability company with its principal place of business in Harris County, Texas.

4. Defendant Bellanergy, LLC is a Texas limited liability company with its principal place of business in Houston, Texas. Defendant has appeared and answered herein.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action because Plaintiff properly removed this action pursuant to 28 U.S.C. § 1454, and the Court has supplemental jurisdiction under 28 U.S.C. § 1367. There is personal jurisdiction against Defendant because Defendant resides in this State.

6. Venue is proper here, pursuant to 28 U.S.C. § 1454(a).

BACKGROUND

A. The Parties

7. Advance Energy Partners, LLC ("AEP") was an exploration and production company. AEP was acquired by a third party in April 2023. As part of the acquisition, certain excluded assets and liabilities—including the claims, assets, and liabilities that are the subject of this dispute—were assigned to Plaintiff. Plaintiff is the sole owner of the assets and liabilities at issue in this dispute.

8. Defendant offers an array of services, including procurement and logistics services for the oil and gas industry. Defendant's website touts its expertise across a variety of oil and gas related disciplines, proclaiming "[Bellanergy has] a multidisciplinary team of experts with a wide expertise and experience that enables us to offer the highest level of professionalism and

services.”¹ Bellanergy also characterizes itself as a “trusted advisor[.]” with “deep technical skill” in the oil and gas industry.² Regarding its procurement and logistics services, Bellanergy advertises “comprehensive purchasing processes advice...with quality products and technologies.”³

B. The Master Services Agreement

9. Effective January 3, 2022, AEP and Defendant entered into a Master Service Agreement (“MSA”) that governed, among other things, “all work performed, services rendered and purchases of supplies, materials, tools, and/or equipment (collectively, the ‘Work’).” MSA at p. 1. The MSA proclaimed, in all capital letters, that “by executing this Master Service Agreement and/or commencing the work, contractor agrees to be bound by the terms and conditions contained herein, including the indemnification, release of liability, and allocation of risk provisions contained herein for any work whether it be by oral or written work order.” MSA at ¶ 2(b). Defendant’s business development manager, Orlando Castillo, executed the MSA on behalf of Defendant.

10. As part of the MSA, Defendant “covenant[ed], represent[ed], and warrant[ed]” that any materials Defendant provided to AEP would be furnished in a “good and workmanlike manner and in strict conformity with the specifications and requirements” of the MSA and work orders, “meet[ing] or exceed[ing] the specifications and requirements required by the work order.” MSA at ¶¶ 3, 5. Defendant further warranted that materials it provided to AEP would be “suited for [AEP’s] purposes if such purposes are made known or reasonably apparent to [Defendant],” would be “satisfactory to [AEP] in [AEP’s] sole discretion,” and would be “in full compliance with the Contract and all applicable laws, rules and regulations.” MSA at ¶ 5; *see also* ¶ 8 (“All materials,

¹ <https://bellanergy.com/services.html> (last visited April 15, 2024).

² <https://bellanergy.com/about-us.html> (last visited April 15, 2024).

³ <https://bellanergy.com/services.html> (last visited April 15, 2024).

equipment, supplies, and manufactured articles furnished by [Defendant] in the performance of the Work shall be fit for their intended use, shall be free from Defects, and shall be of the best quality for their respective purposes unless otherwise specified in writing by [AEP].”).

11. If Defendant delivered defective or otherwise non-confirming materials, Defendant had thirty (30) days to cure after receiving notice of the defect. If Defendant failed to cure the noticed defect, Plaintiff was entitled to repair or replace the defective materials at Defendant’s sole expense. MSA at ¶ 5.

12. Defendant also warranted and agreed—in conspicuous, capitalized text—that “the use or construction of any and all tools, processes, and equipment and procedures furnished by or on behalf of [Defendant] and used in the Work does not and will not infringe on any license or patent which has been issued or for which application has been made.” MSA at ¶ 26. Defendant further agreed “to indemnify and hold [AEP] harmless from any and all claims, demands, and causes of action of every kind and character in favor of or made by any patentee, licensee, or claimant of any right or priority to such tool, process, equipment, or procedure, or the use, construction, or implementation thereof, which may result or arise from furnishing or use of any such tool, equipment, or procedure by or on behalf of [Defendant] in connection with the Work.” *Id.*

13. The MSA, as well as the terms of any work orders, could not be modified or waived orally. Rather, “[n]o change, modification, amendment . . . or waiver of this Contract . . . or any representation, promise, or condition relating to this Contract,” which is defined to include work orders, “shall be binding upon [AEP] unless made in writing and signed on its behalf by the President or the Chief Operating Officer of [AEP]. MSA ¶¶ 2(a), 29. The MSA is a fully integrated agreement, with “[a]ll prior negotiations and agreements” being merged into the MSA and work orders.

14. If there is any conflict between the MSA and any work order or other oral or written agreement, the MSA controls. *Id.* ¶ 23. Finally, if any “Work Order is initially, or entirely, oral, any discrepancies or misunderstandings between [AEP] and [Defendant] regarding the work, that was not confirmed by [Defendant] in writing, shall be interpreted in favor of [AEP’s] understanding of the oral Work Order.” *Id.* ¶ 1(h).

C. AEP places a first order for pipe with a GBCD branded connection from Defendant.

15. The acronym GBCD stands for GB Casing Drilling and identifies a specific, patented connection design. The patent is held by GB Connections.⁴ GB Connections has a reputation for only licensing its patented GBCD connection for use on quality pipe and by reputable mills. Due to GB Connections’ stringent quality control practices, the patented triple-taper threading, and additional enhancements, the GBCD connection has superior torque and sealing that enhances safety and effectiveness of the connection.

16. After entering into the MSA, AEP requested a quote for production casing with the specific GBCD connection (“GBCD Pipe”).

17. AEP’s procurement representative, Farid Jaouhari, requested that Defendant submit a quote for 300,000 feet of “5 ½” 20# HCP-110 GBCD” pipe. On March 24, 2022, Defendant issued a work order for 300,000 feet of “5 ½” 20# HCP-110 GBCD” totaling \$11,400,000.00 (“March Work Order”):

ITEM	DESCRIPTION	UNIT	Qty	Unit Price, USD	Total Price, USD
1	5 1/2" 20# HCP-110 GBCD	ft	300,000	\$ 38.00	\$ 11,400,000.00

⁴ <http://www.gbconnections.com/gb-cd.html> (last visited April 15, 2024).

AEP then issued payment totaling \$6,787,275, representing a 55% advance, plus taxes, to secure the March Work Order. The MSA is “deemed to be incorporated in full in every such oral or written Work Order.” MSA at ¶ 2(a).

D. Defendant procures a non-conforming connection for the March Work Order and fraudulently induces AEP to enter into a second order.

18. Shortly after entering into the March Work Order, Defendant signed a contract with a Chinese mill, Shandong Molong Petroleum Machinery Co., Ltd. (“Molong”), to purchase pipe with an “ML-GC-2” connection to fulfill AEP’s order. The contract amount was \$4,671,000. Before entering into that contract, Defendant was informed on April 2, 2022 that the Molong mill’s “ML-GC-2” connection was “similar to GBCD,” but the mill “[couldn’t] guarantee the[y] [were] interchangeable as you can’t get their drawings.”

19. That same day, Molong sales manager Harry Zhang sent Mr. Castillo the specifications for the ML-GC-2 connection. That spec sheet presented measurements and performance properties identical to those of the GBCD connection and mirrored GB Connections’ marketing language. Despite previously being told the connections were not interchangeable, Defendant took no steps to verify that the ML-GC-2 connection possessed the identical GBCD performance properties advertised on the ML-GC-2 spec sheet.

20. Defendant did not inform AEP that Defendant was sourcing a non-GBCD connection that was not interchangeable with the GBCD connection. Instead, Defendant contends that, sometime after the March Work Order, Mr. Castillo informed Mr. Jaouhari that Defendant was not procuring a GBCD connection but an “equivalent” connection. Mr. Jaouhari understood that to mean the alternative connection was “equal” or “the same as” but from a different manufacturer.

21. Defendant never conveyed to AEP in writing that it would be providing anything other than the GBCD branded connection specified in the March Work Order.

22. Mr. Castillo did not send the ML-GC-2 spec sheet to AEP at this time—or ever. Instead, on September 8, 2022, five months after the Molong mill provided the ML-GC-2 spec sheet, Mr. Castillo sent Mr. Jaouhari a spec sheet for an “ML-GDBC-2” connection, in which the letters “GBCD” are almost imperceptibly transposed. To the untrained eye, the spec sheet provided by Mr. Castillo appears to belong to GB branded product.

23. This spec sheet was identical to the ML-GC-2 spec sheet—except for the connection name and the removal of the Molong logo and promotional language. None of Defendant’s communications with the mill, nor the contracts, mill test certificates, inspection reports, or material transfer records for the pipe, refer to an “ML-GDBC-2” connection. In addition to the nearly identical name, this spec sheet also displayed the exact same performance properties as the GBCD connection.

24. Five days later, Mr. Jaouhari placed a second order for GBCD Pipe. Prior to receiving delivery of its first order, AEP requested a quote for an additional 190,000 feet of GBCD Pipe. On September 13, 2022, Defendant issued another work order for 190,000 feet of “5 ½” 20# HCP-110 GBCD” totaling \$7,104,100.00 (“September Work Order”):

ITEM	DESCRIPTION	UNIT	Qty	Unit Price, USD	Total Price, USD
1	5 1/2" 20# HCP-110 GBCD	ft	190,000	\$ 37.39	\$ 7,104,100.00

On September 13, 2022, AEP issued payment totaling \$4,151,458.44, representing a 55% advance, plus taxes, to secure the September Work Order. Again, the MSA is “deemed to be incorporated in full in every such oral or written Work Order.” MSA at ¶ 2(a).

25. The March and September Work Orders are collectively referred to as the “GBCD Work Orders” and the MSA and the GBCD Work Orders are collectively referred to as the “Agreement.”

26. At the time Defendant entered into the September Work Order, Defendant had no intention of procuring GBCD or GBCD-equivalent connections. Instead, Defendant intended to fulfill the September Work Order with ML-GC-2 connections. On September 14, 2022—the day after entering into the September Work Order, and without attempting to procure pipe with GBCD branded connections—Defendant executed a contract with Molong for 190,000 feet of pipe with ML-GC-2 connections. The contract amount was \$2,870,900.

27. Again, Defendant did not convey to AEP in writing that it would be providing anything other than the GBCD connection specified in the GBCD Work Orders.

E. Defendant delivers non-conforming, defective pipe.

28. On October 15, 2022, AEP requested delivery of 24,000 feet of the GBCD Pipe it had ordered via the March Work Order. Upon delivery on October 18, 2022, however, it quickly became apparent that the pipe Bellanergy delivered was not what AEP ordered. Most prominently, the pipe had stenciling for an “ML-GC-2” connection rather than “GBCD” stenciling. On that same day, AEP rejected the non-conforming pipe and provided notice of its rejection to Defendant:

As discussed, the 5 ½” 20# HCP110 casing received [by AEP] presents the wrong connection. We have followed our QA/QC process on-site and calipered all dimensions of a “control” GBCD connection. What we have received from you, does not follow the GBCD guidelines. We will be sending the casing back and we will not be responsible for any of the costs associated with this shipment and standby time on location.

Defendant responded that it would “absorb the cost” and apologized for its failure to perform.

29. That same day, AEP requested from Mr. Castillo additional information and documentation regarding the tendered connection. In response, Mr. Castillo again provided the ML-GDBC-2 spec sheet, and not the ML-GC-2 spec sheet.

30. The next morning, Mr. Castillo sent AEP a comparative specification spreadsheet and the mill test certificates (documentation of the physical properties of the tendered pipe). The mill test certificates indicated that the pipe bore the ML-GC-2 connection.

31. The spreadsheet juxtaposed what appear to be the actual ML-GC-2 specs and authentic GBCD specs and disclosed to AEP, for the first time, a significant difference in the maximum operating torque. The ML-GC-2 connection is presented as having a maximum operating torque of 20,500 ft-lbs., whereas the GBCD connection has a maximum operating torque of 29,600 ft-lbs. This is a crucial performance property for production casing used when drilling deep wells, which was AEP's intended application for this pipe.

32. None of this documentation indicated that the mill or Defendant had tested or verified the performance properties of the ML-GC-2 connection. The GBCD connection, on the other hand, is subjected to rigorous testing in accordance with American Petroleum Institute standards.

33. For months, Defendant had this documentation showing the actual name and performance properties of the connection it procured to fulfill the GBCD Work Orders, but Defendant withheld that information from AEP until it had no choice due to the rejection on October 18, 2022.

34. None of this information was made available to AEP before Mr. Jaouhari placed the September Work Order, in reliance on Defendant's written representation that the order was for a GBCD connection and on Defendant's misleading references to a "GDBC" connection.

F. AEP attempts to mitigate its damages and resolve the dispute.

35. After AEP rejected Defendant's tender of non-conforming goods, Mr. Castillo told AEP that Defendant had previously sold the same pipe connections to two prominent oil and gas producers, Oxy and Marathon. But that representation was not entirely true: Defendant never sold pipe with the ML-GC-2 connection to Marathon.

36. Based on Defendant's representations that the pipe was marketable and could be easily sold to a third party, AEP agreed to work with Defendant to try to find an alternative buyer rather than demand an immediate refund and invite litigation. Over the next few months, in a good faith attempt to mitigate its damages and to avoid litigation, AEP worked with Defendant to sell the pipe. This included using marketing materials that contained information provided by Defendant, such as specification sheets, material transfer records, and mill test certificates.

37. In the interim, AEP was forced to source and buy additional pipe with the correct GBCD connections, totaling roughly \$10,098,375.22⁵ in replacement costs.

38. AEP procured 38,480 feet of this replacement pipe with authentic GBCD connections from Defendant in a December 27, 2022 work order. As with the prior GBCD Work Orders, this order was for "5 1/2" 20# HCP-110 GBCD" pipe. This time, unlike the other orders also specifying "GBCD," Defendant ultimately delivered pipe with the GBCD connection.

G. AEP learns of infringement allegations regarding the non-conforming, defective pipe and again rejects the pipe.

39. On February 14, 2023, AEP received a letter from GB Connections, the patent holder for the GBCD branded connection, advising AEP that the pipe provided by Defendant was infringing on its intellectual property, causing brand confusion, and/or contained GB Connections'

⁵ This amount represents the replacement costs associated with a portion of the total non-conforming pipe ordered from Defendant.

proprietary information. GB Connections' letter not only put AEP on notice of GB Connections' claims, but also directed AEP to "not sell or market" the non-conforming pipe and threatened legal action if AEP failed to comply.

40. Despite its best efforts to work with Defendant, AEP was left with no choice but to take formal action and fully exercise its rights under the parties' MSA. On March 9, 2023, AEP issued a formal notice to Defendant renewing its rejection of the non-conforming pipe, advising Defendant that its delivery of non-conforming pipe constituted a material breach of the Agreement, and demanding curative action, including, among other remedies, the return of AEP's deposit. Defendant failed to cure its breach by either providing replacement pipe or refunding AEP's deposit.

41. Subsequently, and in an attempt to mitigate its damages, Plaintiff contacted GB Connections to see if it would permit Plaintiff and Defendant to resell the subject pipe as-is without referring to it as "GDBC" pipe (or any other derivative of that name). GB Connections denied Plaintiff's request, and further elaborated that the "ML-GDBC-2" pipe specifications provided by Defendant are, in GB Connections' opinion, plagiarized from GB Connections' own specifications.

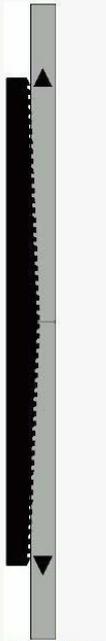
42. According to the pipe specifications from Defendant (the ML-GC-2 or the ML-GDBC-2 specifications), the pipe it provided has performance properties that are identical to the patented GBCD Connection. While AEP's inspection of the pipe revealed inconsistencies with GBCD characteristics, closer inspection of Defendant's "ML-GDBC-2" spec sheet reveals that Defendant provided materials that mimicked GB Connections' marketing language as well:

ML-GDBC-2 premium connection is a type of T&C connection, providing a low-cost Drilling with Casing and Liner Connection. Its performance exceeds API standard connections. Designed with API BC Threads and will make up with API BC pin noses. Max bearing face area, that will provide high torque resistance.

- Features**
1. Uses API BC Threads and Gauges.
 2. Meets API Coupling OD and Drift.
 3. Inter-changeable with API BC.
 4. API Triangle Stamp on Pin for secondary makeup verification.
 5. High Torque resistance.
 6. Drive-able.

GB CD Drilling with Casing Connection
 CD – Casing Drilling

Home / Connections / GB CD



Applications

- Running** Standard downhole casing applications
- Rotating** To aid string advancement
- Drilling with Casing / Drilling with Liners**
- Driving**

For use in non-abrasive environments

Description

Specialty **semi-premium connection** machined from API Coupling Stock providing a low-cost Drilling with Casing/Drilling with Liner Connection. The GB CD Connection performances exceed that of standard API connections. Connection designed with refined API BTC Threads and will make up with off-the-shelf API BTC threaded accessories. Innovative, triple taper buttress thread design (box only) reduces localized bearing stresses in critical areas for improved fatigue resistance. Pin noses meet in the center for positive indication of proper field makeup. Pin noses, designed for maximum bearing face area, provide high torque resistance.

US Patent 7,347,459

Features

- Uses API BTC Pin Threads (Slightly Modified).
- Tighter diametric tolerances for enhanced performance.
- Meets API Coupling OD and Drift Diameter Specifications.
- Inter-changeable with API BTC accessories.
- Field proven in a variety of static and dynamic applications.
- Excellent make/break repeatability under field conditions.
- Enhanced fatigue life.
- Full Scale laboratory cyclic tests demonstrate enhanced fatigue life.
- Can be inspected with standard API Thread Gauges by any properly trained/experienced Third Party.
- Positive makeup indication with pin nose engagement in center of connection. Also, has API Triangle Stamp on Pin for secondary makeup verification.
- Innovative Triple Taper Design reduces localized bearing stresses for enhanced fatigue resistance and reduced galling potential.
- High Torque resistance.
- Drive-able.

Available

- Casing sizes 4 1/2" OD to 20" OD (lighter walls).
- All API Casing Grades and 16" OD through 20" OD Line Pipe; Grades X-56 and X-80.

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43. Notwithstanding Bellanergy’s attempts to muddy the waters about the pipe it delivered by providing misleading and contradictory information, Bellanergy delivered non-conforming pipe. Bellanergy’s refusal to cure its breach of the Agreement has forced Plaintiff to bring this action.

CAUSES OF ACTION

COUNT I: BREACH OF CONTRACT (WORK ORDERS)

44. Plaintiff incorporates the foregoing paragraphs by reference.

45. Plaintiff and Defendant are parties to the Agreement, which is a valid and enforceable contract. Plaintiff fully performed its obligations under the Agreement; to the extent any obligation was allegedly not performed, it was excused or waived. Defendant, however, breached the Agreement by tendering and delivering pipe that did not conform to the GBCD Work Orders, which specified “5 ½” 20# HCP-110 GBCD.” Additionally, and in the alternative, Defendant breached the Agreement by tendering and delivering pipe that did not constitute a “GBCD type” or “GBCD equivalent.” Plaintiff sustained damages due to Defendant’s breaches and seeks all remedies provided by law, including actual damages, attorney fees, costs, and interest.

COUNT II: BREACH OF CONTRACT (CONTRACTOR’S WARRANTY)

46. Plaintiff incorporates the foregoing paragraphs by reference.

47. Defendant breached the Agreement by tendering and delivering pipe that did not “meet[] or exceed[] the specifications and requirements required by the work order,” was not “suited for [AEP’s] purposes,” was not “satisfactory to [AEP] in [AEP’s] sole discretion,” and/or was not “in full compliance with the Contract and all applicable laws, rules and regulations.” Furthermore, Defendant failed to “correct or reperform, at [Defendant’s] sole expense, any Work not meeting the foregoing requirements within thirty (30) days from the date they [were] made known to [Defendant].” MSA at ¶ 5. Plaintiff sustained damages due to Defendant’s breaches and seeks all remedies provided by law, including actual damages, attorney fees, costs, and interest.

COUNT III: BREACH OF CONTRACT (NON-INFRINGEMENT CLAUSE)

48. Plaintiff incorporates the foregoing paragraphs by reference.

49. The Agreement requires that any materials furnished by Defendant to Plaintiff “do[] not and will not infringe on any license or patent.” MSA at ¶ 26. Defendant breached the Agreement by procuring pipe with connections that infringe on GB Connection’s common law trademark. Plaintiff sustained damages due to Defendant’s breach and seeks all remedies provided by law, including actual damages, attorney fees, costs, and interest.

COUNT IV: BREACH OF EXPRESS WARRANTIES

50. Plaintiff incorporates the foregoing paragraphs by reference.

51. Plaintiff pleads this cause of action for breach of express warranties in the alternative, if it is found that AEP accepted the pipe.

52. When Defendant sold the pipe to AEP, Defendant made certain express representations and warranties to Plaintiff about the services Defendant would provide and the quality and characteristics of the pipe, including but not limited to that it had GBCD connections, met or exceeded the requirements of the GBCD Work Orders, was suited for AEP’s purposes, would be satisfactory to AEP in its sole discretion, and did not infringe any patent or license, and that Defendant would correct any deficiencies at its sole expense within thirty days. Defendant made those representations and warranties in the Agreement. The representations formed part of the basis for the agreement between Plaintiff and Defendant, and Plaintiff justifiably relied on the representations in purchasing the pipe from Defendant. Defendant breached its representations and warranties, causing Plaintiff to sustain damages for which it seeks all remedies provided by law, including actual damages, attorney fees, costs, and interest.

COUNT V: CONTRACTUAL INDEMNITY

53. Plaintiff incorporates the foregoing paragraphs by reference.

54. Defendant covenanted, represented, and warranted that “the use or construction of any and all tools, processes, and equipment and procedures furnished by or on behalf of

[Defendant] and used in the Work does not and will not infringe on any license or patent” and agreed to indemnify and hold harmless Plaintiff from “any and all claims, demands, and causes of action of every kind and character in favor of or made by any patentee, licensee, or claimant . . . which may result or arise from furnishing or use of any [] tool, equipment, or procedure by or on behalf of [Defendant] in connection with the Work.” MSA at ¶ 26. Defendant breached this covenant, representation, and warranty, causing Plaintiff to suffer injuries and damages that Defendant is contractually obligated to indemnify, including but not limited to the purchase price of the pipe and attorney’s fees incurred in connection with GB Connections’ letter and intellectual property claims.

COUNT VI: DECLARATORY JUDGMENT

55. Plaintiff incorporates the foregoing paragraphs by reference.

56. There is a real, immediate, and justiciable controversy between the parties concerning their rights and obligations under the Agreement.

57. Based on the express and unambiguous terms of the Agreement and the facts alleged above and to be proven at trial, Plaintiff seeks a declaratory judgment, pursuant to Texas Civil Practice & Remedies Code §37.004 and 28 U.S.C. § 2201, that : (1) Defendant is bound by the terms of the MSA; (2) the MSA is incorporated into the GBCD Work Orders; and that (3) Plaintiff properly rejected the non-conforming pipe in accordance with the parties’ MSA, (4) owes no further payment or obligation to Defendant, (5) is entitled to contractual indemnity from Defendant for losses including but not limited to the purchase price of the pipe and attorney’s fees incurred in connection with GB Connections’ letter and intellectual property claims, and (6) is entitled to a refund of the full price that it paid to Defendant for the rejected and non-conforming pipe, plus all other costs and damages alleged herein.

COUNT VII: FRAUDULENT INDUCEMENT

58. Plaintiff incorporates the foregoing paragraphs by reference.

59. Plaintiff pleads this cause of action for fraudulent inducement in the alternative.

60. Defendant fraudulently induced AEP to enter into the September Work Order.

61. Defendant issued the September Work Order for “GBCD” pipe without any intention of performing as promised.

62. Defendant knowingly made this false representation and immediately ordered pipe with a non-GBCD connection.

63. Defendant made this misrepresentation to induce AEP to enter into the September Work Order.

64. Plaintiff sustained damages due to Defendant’s fraudulent inducement and seeks all remedies provided by law, including actual and exemplary damages, costs, and interest.

CONDITIONS PRECEDENT

65. Any and all conditions precedent, including as it related to Plaintiff’s filing of this lawsuit, recovery against Defendant, and right to all relief requested herein have occurred, been fulfilled, fully performed, and/or been waived or excused.

ATTORNEYS’ FEES AND COSTS

66. Plaintiff is entitled to and seeks to recover reasonable and necessary attorneys’ fees, court costs, and expenses under Chapter 37 and 38 of the Texas Civil Practice and Remedies Code, and pursuant to the Section 31 of the MSA.

JURY DEMAND

67. Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- (a) an award of actual and exemplary damages;
- (b) declaratory judgment as set forth in Count VI;
- (c) reasonable and necessary attorneys' fees;
- (d) all costs of court;
- (e) pre-judgment and post-judgment interest; and
- (f) such other and further relief as the Court may deem just and proper.

Dated: April 15, 2024

Respectfully submitted,

/s/ Timothy S. McConn

Timothy S. McConn
State Bar No. 24032713
tmconn@yettercoleman.com
Matthew C. Zorn
State Bar No. 24106625
mzorn@yettercoleman.com
Katie Tipper-McWhorter
State Bar No. 24083974
ktipper@yettercoleman.com
Alexander R. Ades
State Bar No. 24127225
aades@yettercoleman.com
YETTER COLEMAN LLP
811 Main Street, Suite 4100
Houston, Texas 77002
(713) 632-8000
(713) 632-8002

**ATTORNEYS FOR
AEP EXCLUDED ASSETCo, LLC &
ADVANCE ENERGY PARTNERS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2024, the foregoing was electronically served on all counsel of record via the Court's CM/ECF.

/s/ Timothy S. McConn

Timothy S. McConn