

STATE OF INDIANA ) IN THE MARION CIRCUIT COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO. 49C01-0610-CC-0043420

KENNETH SHEPHERD,

Plaintiff,

v.

HARCO ASPHALT PAVING, INC.,

Defendant.

**FILED**

32

DEC 20 2006

*Doris Ann Scholler*  
CLERK OF THE  
MARION CIRCUIT COURT

**ANSWER**

Defendant, Harco Asphalt Paving, Inc., by counsel, by way of its answer to Plaintiff's Complaint states as follows:

1. Defendant admits the material allegations contained in rhetorical paragraph 1 of Plaintiff's Complaint.
2. Defendant admits the material allegations contained in rhetorical paragraph 2 of Plaintiff's Complaint.
3. Defendant admits that Shepherd was a past employee of Harco Asphalt Paving, Inc. but denies the remaining material allegations contained in rhetorical paragraph 3 of Plaintiff's Complaint.
4. Defendant admits the material allegations contained in rhetorical paragraph 4 of Plaintiff's Complaint.

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5. Defendant is without sufficient knowledge or information with which to admit or deny the material allegations contained in rhetorical paragraph 5 of Plaintiff's Complaint, in particular as to which projects Plaintiff is referencing for this allegation, therefore denies them. However, Defendant does admit that there were public works projects on which the Plaintiff performed work while employed with Harco Asphalt Paving, Inc.

6. Plaintiff denies the material allegations contained in rhetorical paragraph 6 of Plaintiff's Complaint.

7. Harco admits that the term public work is defined by statute, but denies the remaining material allegations contained in rhetorical paragraph 7 of Plaintiff's Complaint.

8. Harco admits that there were projects awarded to it by the State of Indiana which were classified as public work projects, but denies that all projects or contracts on which Harco worked would be defined as public works projects.

9. Harco denies that each project on which it performed work between June 1, 2005 through September 11, 2006 was a public work project, or that it had a defined wage scale applicable to it. To the extent that it was a public work project the common wage scale schedule was provided to it.

10. Plaintiff denies the material allegations contained in rhetorical paragraph 10 of Plaintiff's Complaint.

WHEREFORE, Defendant, Harco Asphalt Paving, Inc., by counsel, prays for judgment in its favor and against the Plaintiff, that the Plaintiff take nothing by way of its Complaint, and for all other just and proper relief.

11. Upon information and belief Harco Asphalt Paving, Inc. admits the material allegations contained in rhetorical paragraph 11 of Plaintiff's Complaint.

12. Defendant Harco Asphalt Paving, Inc. admits that there is a federal law often referred to as the fair labor standards act that has numerous requirements, but denies the remaining material allegations contained in rhetorical paragraph 12 of Plaintiff's Complaint.

13. Defendant admits that the Plaintiff did, at times, have different rates of pay, while working for Harco, but denies the remaining material allegations contained in rhetorical paragraph 13 of Plaintiff's Complaint.

14. Defendant denies the material allegations contained in rhetorical paragraph 14 of Plaintiff's Complaint.

15. Defendant denies the material allegations contained in rhetorical paragraph 15 of Plaintiff's Complaint.

WHEREFORE, Harco Asphalt Paving, Inc., by counsel, prays for judgment in its favor and against the Plaintiff, that the Plaintiff take nothing by way of its Complaint, and for all other just and proper relief.

16. Defendant admits that Shepherd, as an employee, was eligible to request medical insurance from Harco Asphalt Paving, Inc., but denies the remaining material allegations contained in rhetorical paragraph 16 of Plaintiff's Complaint.

17. Defendant denies the material allegations contained in rhetorical paragraph 17 of Plaintiff's Complaint.

18. Defendant is without sufficient knowledge or information with which to admit or deny the material allegations contained in rhetorical paragraph 18 of Plaintiff's Complaint.

19. Defendant is without sufficient knowledge or information with which to admit or deny the material allegations contained in rhetorical paragraph 19 of Plaintiff's Complaint.

20. Defendant denies the material allegations contained in rhetorical paragraph 20 of Plaintiff's Complaint.

21. Defendant denies the material allegations contained in rhetorical paragraph 21 of Plaintiff's Complaint.

22. Defendant denies the material allegations contained in rhetorical paragraph 22 of Plaintiff's Complaint.

23. Defendant denies the material allegations contained in rhetorical paragraph 23 of Plaintiff's Complaint.

24. Defendant denies the material allegations contained in rhetorical paragraph 24 of Plaintiff's Complaint.

WHEREFORE, Defendant, Harco Asphalt Paving, Inc., by counsel, prays for judgment in its favor and against Plaintiff, that Plaintiff take nothing by way of its Complaint, and for all other just and proper relief.

25. Defendant denies the material allegations contained in rhetorical paragraph 25 of Plaintiff's Complaint.

26. Defendant is without sufficient knowledge or information with which to admit or deny the material allegations contained in rhetorical paragraph 26 of Plaintiff's Complaint, therefore denies them.

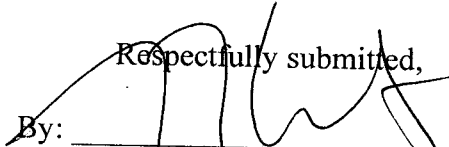
27. Defendant admits that the attached Exhibit "A" was a letter from Mr. Rifkin to Paul Harding, but denies the remaining material allegations contained in rhetorical paragraph 27 of Plaintiff's Complaint.

28. Defendant denies the material allegations contained in rhetorical paragraph 28 of Plaintiff's Complaint.

29. Defendant denies the material allegations contained in rhetorical paragraph 29 of Plaintiff's Complaint.

30. Although mislabeled as paragraph 28 of Plaintiff's Complaint, Defendant denies the material allegations contained in rhetorical paragraph 28 which sequentially should have been labeled as paragraph 30.

WHEREFORE, Defendant, Harco Asphalt Paving, Inc., prays for judgment in its favor and against Plaintiff, that the Plaintiff take nothing by way of its Complaint, and for all other just and proper relief.

Respectfully submitted,  
By:   
Michael L. Einterz, #11717-49

#### **AFFIRMATIVE DEFENSES**

Defendant, Harco Asphalt Paving, Inc., by counsel, by way of its affirmative defenses to Plaintiff's Complaint states as follows:

1. Plaintiff by his acts or omissions or the acts or omissions of his agents or representatives has waived his right to pursue any claims against the Defendant.
2. Plaintiff by his acts or omissions or the acts or omissions of his agents or representatives is estopped from pursuing any claims against the Defendant.

3. Plaintiff has failed to state claim upon which relief may be granted.
4. Plaintiff has failed to mitigate his damages.
5. As to claims asserted certain federal law entitlements, this court lacks jurisdiction to adjudicate the merits of those claims, therefore those claims should be dismissed.

WHEREFORE, Defendant, Harco Asphalt Paving, Inc., prays for judgment in its favor and against Plaintiff, that the Plaintiff take nothing by way of its Complaint, and for all other just and proper relief.

Respectfully submitted,

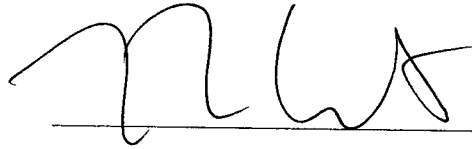
By: 

Michael L. Einterz, #11717-49

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been mailed by first class United States Mail, postage prepaid, to the following counsel of record, on the 20<sup>th</sup> day of December, 2006:

Robert S. Rifkin  
MAURER RIFKIN & HILL, P.C.  
11550 N. Meridian Street  
Suite 115  
Carmel, Indiana 46032



A handwritten signature in black ink, appearing to read 'Rifkin', is written over a horizontal line.

5455 W. 86th Street  
Suite 215  
Indianapolis, Indiana 46268  
(317) 337-2021