

RECEIVED  
APR 10 2026  
ROOM 521

**CHESTLEN DEVELOPMENT, L.P.,**  
Plaintiff,

-v-

**TUTOR PERINI BUILDING CORP.,**  
Defendant.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PA.

CIVIL ACTION – Commerce Program

No. 210100645 [Lead Case]

**DOCKETED**  
APR 10 2026  
R. POSTELL  
COMMERCE PROGRAM

**FINDINGS AS TO DAMAGES AND ORDER**

AND NOW, this 10<sup>th</sup> day of April 2026, upon conclusion of the damages portion of the last phase of the trial without a jury in these consolidated cases, and in accord with the findings of fact and conclusions of law issued simultaneously herewith, the Court enters the following **FINDINGS** as to **DAMAGES**:

1. The Court awards Chestlen **\$174, 681,212.00** in compensatory damages as follows.
  - Liquidated Damages: **\$97,895,000.00**<sup>1</sup>
    - a. Per Diem: (\$35,000/day x 2,797 days)
  - Out-of-Pocket Costs: **\$18,185,342.36**
    - a. Concrete Costs: **\$12,662,594.58**
      - i. Direct Concrete Repair Costs: **\$1,900,544.70**
      - ii. Architectural Work Needed for Remediation: **\$1,131,780.26**
      - iii. General Contractor Default/Assist: **\$4,454,019.45**
      - iv. Furniture, Fixtures, and Equipment: **\$5,176,250.17**

<sup>1</sup> Chestlen's Liquidated Damages as of April 10, 2026. Liquidated Damages will continue to accrue until date of Final Judgment.



- b. Punch List and Incomplete Scope: \$1,969,703.07
  - c. Incomplete MEP Work and MEP Repairs: \$881,893.43
  - d. Marriott-Directed Work: \$874,983.95
  - e. Glass Repair Work: \$156,280.33
  - f. Building Maintenance Unit Repairs: \$123,219.00
  - g. Lost Tax Abatement: \$1,516,668.00
- Damages to Replace and Repair Windows: \$8,059,170.00
  - Damages for Abuse of Contingency Fund: \$4,795,084.00
  - Damages for Loan Modification Fees and Costs: \$3,972,732.02
  - Damages for Sean's Landscaping Claim: \$202,472.00
  - Damages for Legal and Consulting Fees: \$14,140,276.98
  - Prejudgment Interest: \$27,431,135.09.<sup>2</sup>
    - a. Per Diem: (\$21,645.68/day x 2,797 days)

The Court **FURTHER FINDS:**

All the foregoing damages are a direct and proximate result of Tutor Perini's breaches of Contract:

The foregoing damages are direct and not barred by the contractual damage waivers in Sections 3.5 or 3.8; alternatively, the consequential damages waiver is unenforceable as a result of

---

<sup>2</sup> Chestlen's Prejudgment Interest as of April 10, 2026. Prejudgment Interest will continue to accrue until date of Final Judgment.

Tutor Perini's bad faith conduct and intentional and pervasive obstruction of its material obligations under the subject contracts.

The Court enters Judgment in Chestlen's favor and against Tutor Perini for the total amount of \$174,681,212.00.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Crumlish, III, J.", is written above a horizontal line.

Crumlish, III, J.

**CHESTLEN DEVELOPMENT, L.P.,**  
Plaintiff,

-v-

**TUTOR PERINI BUILDING CORP.,**  
Defendant.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PA.

CIVIL ACTION – Commerce Program

No. 210100645 [Lead Case]

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. Introduction

The next matter before the Court is the decision in the assessment of damages portion of the lead case of the consolidated actions involving disputes over the construction of the W Hotel (a 51-story building in Center City Philadelphia). Beginning in March of 2018 actions were commenced, and the docket reflects approximately 13 related Mechanic Lien actions, and 23 civil Complaint actions relating to this construction project. By agreement of the parties, these Civil Actions were consolidated and listed for non-jury trial.

The Court, on October 31, 2025, issued its decision as to liability of the principal parties (Chestlen, Tutor Perini, Ventana, Arch and Carney). The Court fully incorporates its Findings of Fact and Conclusions of Law by reference herein. After the October Decision, the Court, pursuant to Pa. R. Civ. P. 213, by its Orders, provided for sequential trial phases, separating the liability and damages portions, as to the five principal contracting parties. The Court then undertook a multi-month trial on the determination of damages (considering the resolution of claims as to the Design professionals) between Chestlen, Tutor, Carney, Arch and Ventana. Subsequent to the full consideration of the post liability trial, the admitted evidence and voluminous documentary, expert testimony and substantial pretrial and post-trial submissions, the Court undertook the careful

weighing of all offered testimonial, documentary evidence and expert opinions. Assessment of the credibility and relevance of the proffered evidence and weighing consideration of the trial evidence and the relevant contractual duties and obligations the Court issued an Order as to the relative liability of the parties which is more fully incorporated herein.

Beginning in 2015, Tutor Perini competitively bid and was awarded a contract as General Contractor, and, for substantial compensation, Tutor explicitly agreed to supervise the project, its subcontractors and trades people. At trial, Tutor conceded that its supervisory obligations was that of a fiduciary to Chestlen. The express contractual obligations of Tutor was an express substantial completion date of the project of August 3, 2018 for a guaranteed maximum price ("GMP") of \$255,782,216. Tutor was expressly and contractually obligated to oversee, coordinate and supervise the entire Project, the contractors and subcontractors honestly, efficiently and effectively. During the early stages of construction, defects arose. The defects and defaults of Tutor, contrary to its contractual duties, persisted throughout the entirety of the Project with Tutor magnifying its disregard of its duties and failing to disclose project complications to Chestlen. Tutor's intentionally deceitful misconduct and serial, material contract breaches made it impossible for Tutor to meet its obligatory Guaranteed Maximum Price and Substantial Competition Date.

The record before the Court demonstrated that Tutor's breaches of contract was not only material but also obstructed Chestlen's rights to ensure both competence and timely performance of its duties. By July 2018, one month before the required substantial completion deadline, Tutor unilaterally issued a proposed schedule where it provided for substantial completion of the Project nearly a year later in July 2019. The delay was not approved by Chestlen nor permitted under the contract. After the contracted for substantial completion date had passed, Chestlen notified Tutor

that they were contractually liable for liquidated damages pursuant to the contract.<sup>1</sup> Tutor nevertheless requested its first Certificate of Substantial Completion from Cope Linder Architect<sup>2</sup> (“CLA”) on December 15, 2020 – **twenty-eight months after** the contracted-for completion date and more than one year after Tutor’s “scheduled” substantial completion date. CLA advised that they could not grant a certificate and provided Tutor with a Substantial Completion checklist, a list of work necessary achieve substantial completion, and a list of incomplete work – Tutor ignored all three.<sup>3</sup> Again, Tutor submitted yet another request for a Certificate in February 2021, which CLA, on behalf of Chestlen, refused in March 2021. **To date Tutor Perini has not obtained a Certificate of Substantial Completion for the W/Element Hotels, and no evidence was submitted to the contrary – that Tutor ever achieved Substantial Completion as contractually required.**

As the evidence before the Court demonstrated beyond peradventure, Tutor failed to act in the best interests of the project as Chestlen’s contractual fiduciary. Tutor engaged in material, deceptive and intentional breaches of contract, ultimately impairing the financial stability of the project. Tutor also intentionally failed to communicate truthfully and concisely with Chestlen as required under the controlling contracts and improperly diverted payments paid to them by Chestlen. Tutor’s material breaches and its own intentional sabotage of its contractual duties and obligations to the project is wholly and directly attributable to the Hotel not obtaining a Certificate of Substantial Completion which is directly related to the claims of Chestlen’s damages.

---

<sup>1</sup> See Findings as to Liability at 27, ¶ 141-44.

<sup>2</sup> CLA now known as “Nelson Worldwide”.

<sup>3</sup> *Id.* at 34-35, ¶ 188 (citing Ex. 1291, pp. 1, 10-11) and <sup>3</sup> *Id.* at ¶ 189 (citing Ex. 1291).

By failing to place loyalty, trust, and fairness in its fiduciary, Chestlen, above its own personal gain, Tutor breached one of the highest standards of care recognized by law. The Court, while deliberating on the award of damages, found that there is substantial evidence that Tutor's conduct was outrageous and intentional and did consider the award of substantial punitive damages in favor of Chestlen supported by the clear evidence of Tutor's reprehensible conduct. However, in the context of a breach of contract claim, such damages may not be recoverable, absent independent tort liability or exceptional circumstances, neither of which has been established here.

The Court concludes as a matter of fact and law that Tutor's material breaches of contract, whose were first in time, were serial, in bad faith, and pervasive thereby frustrating the performance of its own material duties to Chestlen, thus preventing Chestlen's performance of any duties to Tutor. Chestlen has proven at trial by an overwhelming preponderance of evidence that Tutor, relentlessly and materially breached its affirmative contractual duties to Chestlen.

The Court, having carefully observed and assessed the weight and credibility of the fact and expert witnesses and massive amounts of exhibit and documentary evidence submitted and admitted at trial, and thoroughly considering the arguments of counsel will fulfill its role as the trier of fact. Giving careful consideration, its weighing of all the admissible, relevant and probative evidence and assessing the credibility of all witnesses will rule as a matter of fact and law on all asserted damages, claims and defenses in this damages stage of the case. The Court finds the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Following the liability phase, the Court found that Tutor Perini materially breached its Contract with Chestlen. See **Conclusions of Law**, ¶ 5(a)-(h).

2. The Court found that during Tutor Perini's performance and lack thereof, Tutor engaged in pervasive acts of bad faith and seriously violated its contractual fiduciary obligations to Chestlen by, among other things, putting itself's interests ahead of the interests of Chestlen and the Project. *Id.* at ¶¶ 13-14, 17-18.

3. The damages phase was held over four days from January 27, 2026, to January 30, 2026, with three days of live testimony (January 28-30), and one day of videotaped trial submitted by agreement (January 27).

4. Chestlen presented evidence in support of its business records, including the following:

a. A "Job Cost Report," containing record of "[e]very cost that went through the project . . . along with the funding sources that paid for those costs at times." 1T (Wallace), 26:4-7; **Exhibit 434**.

b. Chestlen's payment applications to its lender, containing a compilation of "all the costs that had been accrued and were about to be paid over the last 30 days," which was then submitted to Chestlen's lender for funding. 1T (Wallace), 28:6-30:15; **Exhibits 1777-1844**.

c. Invoices from Chestlen's contractors and vendors (if not part of Chestlen's lender payment applications).

d. Chestlen's bank statements from its construction account for the years 2018-2022, **Exhibits 11131-11135**, as well as other bank accounts from which payments were made on Chestlen's behalf, **Exhibits 10821-10822**. See **1T** (Wallace), 31:3-34:6.

e. Chestlen's records relating to its financial performance, **Exhibit 10834**, loan modifications, **Exhibits 11087, 10909, 10897, 11085**, loan interest payments, **Exhibit 10926**, and payments made for legal and consulting professionals, **Exhibit 10836**.

5. Chestlen also called three witnesses: Jared Wallace, Chestlen's Chief Financial Officer, **1T** (Wallace), 23:13-21; Paul Pocalyko of HKA Global, Inc. ("HKA"), a forensic construction accountant and damages expert, **3T** (Pocalyko), 62:9-12; and Eric Olson of Simpson, Gumpertz & Heger ("SGH"), an engineer and expert on window wall systems and the costs to repair or replace operable vents and punch windows in the Hotel. See **Olson Tr.**, 18:13-16.

6. Tutor Perini, by its counsel, had the full opportunity to cross-examine Chestlen's witnesses. It also presented only two witnesses in its rebuttal case: Carl LaFraugh, whom Tutor Perini proffered as an expert in schedule, delay, and damage issues, **4T** (LaFraugh), 39:17-19; and Joseph Schuster, of Thornton Tomasetti, whom Tutor Perini proffered as an expert on the interaction between the façade and the building structure, **5T** (Schuster), 11:19-23. Tutor Perini offered several project documents as purported evidence without witness testimony, on stipulation of the parties.

#### I. **CHESTLEN IS ENTITLED TO LIQUIDATED DAMAGES**

7. Chestlen is entitled to liquidated damages under Section 3.5 of the Contract as Tutor Perini did not obtain Substantial Completion of the Work by the Required Substantial Completion Date of August 3, 2018. See **Findings of Fact**, ¶ 45.

8. The calculation of liquidated damages is set forth in Section 3.5 of the Contract, which provides, in relevant part, as follows:

If the Construction Manager fails to attain Substantial Completion of the Work on or before the Required Substantial Completion Date, the Construction Manager shall be obligated to pay to the Owner upon demand, as liquidated damages and not a penalty, Thirty-Five Thousand Dollars (\$35,000.00) for each day commencing on and including the tenth (10th) day after the Required Substantial Completion Date until Substantial Completion has occurred (including the date that Substantial Completion actually occurs).

**Exhibit 407, § 3.5.**

9. Liquidated damages began to accrue on August 13, 2018. *Id.*

10. The Court adopts the following method and calculates Chestlen's liquidated damages as follows.

11. The Court concludes that Chestlen's liquidated damages continue to accrue until final judgment.<sup>4</sup>

12. Under Section 3.5 of the Contract, Chestlen's liquidated damages continue "until Substantial Completion has occurred . . . ."

13. Tutor Perini has presented no evidence that it ever obtained Substantial Completion of the Work. See **Findings of Fact**, ¶ 196.

14. Through January 31, 2026, Chestlen is entitled and award of \$95,480,000.00 in liquidated damages (\$35,000/day x 2,728 days). See **Exhibit 11187**, p.2 (fig. 2).

15. After January 31, 2026, Chestlen's liquidated damages continue to accrue at the rate of \$35,000 per day.

16. Based on the date of the accompanying Final Judgment, Chestlen's liquidated damages are \$95,480,000.00, plus \$35,000.00 per diem after January 31, 2026.

---

<sup>4</sup> Final Judgment will be entered after damages are assessed between Tutor Perini and Carney.

## **Tutor Perini is Not Entitled to Offset Chestlen's Liquidated Damages**

17. Tutor Perini raises several arguments against Chestlen's right to liquidated damages.

18. *First*, Tutor Perini argues that a fire sprinkler main break on the 48th floor in March 2020 caused a project delay for which Tutor Perini should not be responsible. See **Findings of Fact**, ¶ 185.

19. However, the Court finds that Tutor Perini offered **no evidence** on the issue during the damages trial, and Chestlen showed that the fire sprinkler main break was due to the negligence of Tutor Perini's subcontractor. See 2T (Wallace), 32-35; **Exhibit 11092** at Perini2571582 ("[T]he reported joint separation was the result of an out of specification groove diameter . . .").

20. *Second*, Tutor Perini seeks a mitigation credit equal to Chestlen's revenue from operating the Hotel in 2021. See, e.g., **Findings of Fact**, ¶ 212, n.8.

21. However, the Court concludes that Chestlen had no duty to mitigate its damage, as Tutor Perini was solely responsible for its overwhelming and material breaches of its contractual duties to Chestlen to fully perform its obligations for obtaining Substantial Completion and it had the opportunity and ability to mitigate. See *TruServ Corp. v Morgan's Tool & Supply Co., Inc.*, 614 Pa. 549, 39 A.3d 253, 262 (Pa. 2012) (non-breaching party has no duty to mitigate when the breaching party responsible for performance has an opportunity to mitigate).

22. Accordingly, the Court concludes that Tutor Perini is not entitled to an offset based on Chestlen's operating revenue.

## **II. CHESTLEN IS ENTITLED TO ITS OUT-OF-POCKET COSTS.**

23. Based on the Court's previous Findings as to Liability it concludes that Chestlen is entitled to damages for the out-of-pocket costs it incurred as Tutor Perini materially and intentionally breached the Contract.

24. Chestlen presented its out-of-pocket costs in several subcategories, all tied to specific obligations Tutor Perini failed to fulfill under the Contract: (1) concrete-related costs, (2) punch list and incomplete work within Tutor Perini's scope, (3) MEP remediation, (4) Marriott-directed work, (5) glass and exterior repairs, (6) BMU repairs, and (7) additional taxes due to Tutor Perini's failure to timely deliver a required certificate of occupancy. See **Exhibit 11187**, p.3.

25. Chestlen's out-of-pocket costs are documented in the Job Cost Report and corroborated through numerous invoices. **Exhibit 434**.

26. All the out-of-pocket costs below were incurred as a direct result of Tutor Perini's breaches of the Contract and are recoverable as damages to Chestlen.

a. **Concrete Costs**

Direct Concrete Repair Costs

27. Chestlen directly paid contractors (Surface Specialists Inc., Creative Surfaces Inc., and Re: Source New Jersey Inc. (a/k/a PA Flooring)) to repair the defective concrete from the third floor to the top of the building. See **Conclusions of Law**, ¶ 5(b); 1T (Wallace), 39:2-43:15; **Exhibit 11175**, **Exhibit 10091**, **Exhibit 10105**, and **Exhibit 11187**, p.4.

28. Chestlen directly paid for additional services from Pennoni, a local engineering firm who served as third-party monitor for the concrete work on the Project. See 1T (Wallace), 43:17-44:11; and **Exhibit 11187**, p.4. Pennoni was already working on the Project, but its monitoring and testing work from July 2018 onward was additional work that was needed

because of Tutor Perini's defective concrete work. 2T (Wallace), 95 ("The additional time and expense is what's reflected on that line item"); *Id.* at 97 ("The concrete defects caused Pennoni to be on the project for far longer and provide far more services than we had estimated at the beginning."); **Exhibit 11166.**

29. All these costs are a direct result of Tutor Perini's material and substantial breaches of contractual and fiduciary duties relating to its deficient concrete work.

30. The Court awards Chestlen \$1,900,544.70 in damages for this category of out-of-pocket costs. **Exhibit 11175, Exhibit 11166, Exhibit 10091, Exhibit 10105, and Exhibit 11187, p.4.**

#### Architectural Work Needed to Remediate Concrete

31. Chestlen also was compelled to pay a project architect (Nelson Worldwide) to provide architectural services ("room-by-room floor maps") that were necessary to remediate the damages caused by Tutor's breaches of its contracts relating to defective concrete. See **Conclusions of Law, ¶ 5(b); 1T (Wallace), 46:2-47:2** ("They were the party responsible for creating the room-by-room floor maps so that the remediation companies could perform their work"); **2T (Wallace), 88, 99; see also Transcript of Jan. 31, 2025 (Smith), 65:6-72:13; Exhibit 272; Findings of Fact, ¶ 178.**

32. Chestlen's repair-related architectural costs are a direct result of Tutor Perini's material breaches of contract connected to its deficient concrete work.

33. The Court awards Chestlen \$1,131,780.26 in damages for this category of out-of-pocket costs. **Exhibit 11163; Exhibit 11187, p.5.**

#### General Contractor Default/Assist

34. Chestlen incurred out-of-pocket costs for additional management and oversight of the concrete remediation work (“GC Assist”) as Tutor Perini refused to oversee nor facilitate Chestlen’s floor remediation subcontractors caused by Tutor’s breaches. See 1T (Wallace), 59:15-61:10; **Exhibit 11187**, p.7.

35. Chestlen engaged T.N. Ward, a “large general contractor” with “access to the union labor pools,” to supervise the remediation work and perform Tutor Perini’s default of its construction manager duties. See 1T (Wallace), 59:21-60:5; **Exhibit 11180**; **Exhibit 11187**, p.7.

36. The deficient concrete and subsequent remediation also required Chestlen’s owner’s representative, Vine Street Matthews (“VSM”), to provide additional services for floor remediation, operable windows, and other work in Tutor Perini’s scope. See 1T (Wallace), 61:1-13; 2T (Wallace), 89-90 (explaining that “a large portion of [VSM’s] time” from February 2019-on was spent overseeing remedial work and remedying Tutor Perini defaults); **Exhibit 11183**; **Exhibit 11187**, p.7.

37. When remediation work started in early 2019, Tutor Perini, punitively and in bad faith, evicted VSM from the office space its staff was using, which required Chestlen to pay for office space for VSM while VSM oversaw the remedial work. 1T (Wallace), 63:1-25; **Exhibit 11130**; **Exhibit 11187**, p.7.

38. All Chestlen’s “GC Assist” costs are a direct and proximate result of Tutor Perini’s breaches of contract.

39. The Court awards Chestlen **\$4,454,019.45** in damages for this category of out-of-pocket costs. **Exhibit 11130**; **Exhibit 11180**; **Exhibit 11183**; **Exhibit 11187**, p.7.

#### Furniture, Fixtures, and Equipment

40. Tutor Perini's defective work and other serial and material breaches of contract caused Chestlen to incur out-of-pocket costs relating to the remediation of furniture, fixtures, and equipment ("FF&E") in the Hotel well in excess of what Chestlen otherwise would have spent.

41. At the start of the Project, Chestlen hired Hospitality Logistics International ("HLI") to perform FF&E work. 1T (Wallace), 47:25-48:6. HLI bid its FF&E work as a "not to exceed" price for specified services including FF&E storage, drayage, and installation. Id. at 49:6; **Exhibit 10925**.

42. In 2018—the same period when Tutor Perini was intentionally concealing the known concrete defects from Chestlen—Tutor Perini failed to provide Chestlen with a critically accurate construction schedule and instructed Chestlen to ship FF&E to the United States with full knowledge that Chestlen would not be able to install it as it arrived. 1T (Wallace), 51:16-22; **Transcript of March 25** (a.m.) (Wagner), 34:2-16.

43. Once the FF&E arrived, in 2019, HLI attempted to install FF&E in the building but encountered multiple issues due to Tutor Perini's breaches of its contractual obligations. 1T (Wallace), 51:25-52:4 (HLI was encountering issues with the floor. They were encountering soffit issues with soffit heights, wall issues with the length of spans . . . ."); *see also Findings of Fact*, ¶ 155 ("Chestlen began installing FF&E on the 20th floor because of issues . . . on lower floors.").

44. Because of the lack of an honest and accurate schedule by Tutor coupled with the flooring deficiencies, FF&E needed to be warehoused significantly longer than anticipated, id. at 51:18-22, and HLI was "requesting significant change orders to keep moving forward" with FF&E installation in light of the workmanship issues. Id. at 52:1-4.

45. By the time concrete remediation was underway as a result of Tutor's breaches, HLI had billed nearly its entire "not to exceed" amount despite completing just 20% of the anticipated work. Id. at 51:3-8.

46. To avoid the spirality of expensive change orders with HLI, Chestlen terminated its FF&E contract with HLI and hired T.N. Ward to perform the FF&E installation work on a time and materials basis. See 2T (Wallace), 104-105 ("Because HLI could not perform its GMP due to [] issues, including the concrete defects, the amount of remobilization time, the fact that the rooms were not ready when HLI was on site, the cost of the change orders was so excessive that it made more sense . . . to go with TN Ward.").

47. Chestlen directly paid T.N. Ward for its FF&E work. 1T (Wallace), 52:18-53:5; **Exhibit 11179; Morrison Depo. Designation**, 78:3-10 (describing furniture modifications due to improper ceiling heights); **Neumann Depo. Designation**, 81:23-83:24 (same).

48. Chestlen also was forced to pay additional costs to warehouse FF&E for several months while the floor remediation took place. Those costs are itemized in receipts from Chestlen's purchasing agent, Bray Whaler. See 1T (Wallace), 58:9-59:13; **Exhibit 11046**, pp. 140, 171.

49. In addition to increased FF&E installation costs, Chestlen was forced to pay contractors to perform FF&E remediation, which was direct result of Tutor's breaches as to the defective concrete floors and the lack of proper temperature control in the building once FF&E was on site. See 2T (Wallace), 111 ("By the time we had arrived in the building, the HVAC system was not working in many rooms. We had found warped furniture, delaminated furniture, furniture with bubbles in the paint."); **Neumann Depo. Designation**, 43:22-45:6.

50. Chestlen was forced to expend funds to Furniture Medic by Craftsmen to remediate FF&E that “had been exposed to very high temperatures or had been stuck in warehousing for a long period of time.” 1T (Wallace), 53:9-54:5; **Exhibit 11150**. It paid BVH Hospitality Solutions to repair furniture. 1T (Wallace), 54:7-55:2; **Exhibit 11139**. Chestlen paid Diversified Millwork to cut FF&E so it would fit into the undersized space Tutor Perini built. 1T (Wallace), 55:3-23; **Exhibit 11145**. And it paid Nicholas Lesbros to repair delaminated desks. 1T (Wallace), 55:25-56:19; **Exhibit 11164**.

51. Chestlen was also forced to pay Ritter Contracting to operate the Hotel elevators on a second shift so the FF&E work could move quickly. 1T (Wallace), 56:21-57:19; **Exhibit 11169**.

52. Tutor Perini’s actions distinctly caused Chestlen to pay additional sums for FF&E work and is liable for all those costs.

53. The Court awards Chestlen \$5,176,250.17 in damages for this category of out-of-pocket costs.

#### **Punch List and Incomplete Scope**

54. Tutor Perini failed to perform contractually required final punch list work throughout the Hotel and failed to complete work within its scope. 1T (Wallace), 69:16-21; *see also* **Transcript of Jan. 31, 2025** (a.m.) (Smith), 94:7-95:9; **Exhibit 1293**.

55. Punch list work was within Tutor Perini’s scope, and Chestlen never relieved or excused Tutor Perini from its obligation to create and perform the work set forth in a final punch list. *Id.* at 74:10-14.

56. The two primary contractors Chestlen hired, as a result of Tutor's refusal to complete the punch list work, were Zeal Renovation and Hispanic Ventures, who worked extensively throughout the Hotel.

57. Zeal Renovation, for example:

performed a lot of tile restoration work and fixes, caulking, lights. They fixed a lot of doors, thresholds. There was some issues with the entryway, tiles, and where they met with the carpeting. So they kind of fixed that issue. They were like a commercial-grade handyman.

Id. at 71:18-24; **Exhibit 11184**.

58. Hispanic Ventures performed punch-list painting throughout the "entire tower" (i.e., floors 9 to 52), which was necessary because:

There were contractors throughout the building doing work where the rooms needed to be restored or the hallways needed to be restored. There was damage from FF&E installed that needed to be painted. In some cases, it turned out that Tutor Perini had ordered whoever was putting in the fire alarm system to put in the fire alarm before they had painted, and so by the time we got there, all of the fire alarm boxes had been painted over. And if you tried to take the box off, a lot of paint from the wall would come off with it. So we needed a lot of restoration work in the rooms to finish them up.

**1T** (Wallace), 73:22-74-9; **Exhibit 11153**.

59. Chestlen was required to pay T.N. Ward to perform MEP punch list and commissioning work at the end of the Project. See **1T** (Wallace), 74:20-75:19; **Exhibit 11181**.

60. Chestlen hired other contractors to complete additional work required because of Tutor's breaches, including Accent Fence, which performed corrective work in the parking garage, see **1T** (Wallace), 75:21-76:15 and **Exhibit 11136**; Glazing Concepts, which performed glasswork in the guest room showers, see **1T** (Wallace), 76:17-78:7 and **Exhibit 11151**; Hi-Shine, Inc., which cleaned and sealed tile and stone in the Hotel podium level, see **1T** (Wallace), 78:9-

79:4 and **Exhibit 10717**; Houdini, which is a locksmith Chestlen hired to repair and replace broken locks on the guestroom doors, see **1T** (Wallace), 79:6-80:3 and **Exhibit 10736**; Armor Masonry, which performed concrete masonry work that Tutor Perini failed to perform, see **1T** (Wallace), 80:5-81:8 and **Exhibit 11138**; Matthew Rathgeb Painting, which performed painting in the parking garage, see **1T** (Wallace), 81:10-82:6 and **Exhibit 10612**; and S.A. Comunale, which was hired to move a sprinkler, see **1T** (Wallace), 82:8-83-2 and **Exhibit 10661**.

61. Tutor Perini also failed and refused to provide Chestlen with up-to-date as-built drawings for the Hotel, contrary to its contractual duty. **1T** (Wallace), 114-3:115:18; **Exhibit 407**, General Conditions § 4.9.3 (“The As-Built Plans shall be maintained and kept current by the Construction Manager . . . .”); § 8.5.2.1 (payment applications require “proof that the As-Built Drawings are up to date”). When Chestlen sought a tenant for the Hotel’s retail space and agreed to perform certain plumbing fit-out work to secure the tenant, see Section VI, *infra*, “none of the plumbers would bid because they kept citing that [Chestlen’s] as-built documents were not the condition of the building.” **1T** (Wallace), 114:13-15. Chestlen hired Bala, an engineering firm, to provide as-built drawings for the retail space. *Id.* at 115:4-11; **Exhibit 10001**.

62. Chestlen also found that “none of the riser clamps [on the riser pipes] had been installed in sufficient quantity.” **1T** (Wallace), 113:2-12.

63. As a result, Chestlen had to hire Chadwick Service Company to finish the installation of the riser clamps. *Id.* at 113:12-114:1; **Exhibit 10002**.

64. All Chestlen’s costs from completing punch list work and other work within Tutor Perini’s scope are a direct result of Tutor Perini’s breaches of contract.

65. The Court awards Chestlen **\$1,969,703.07** in damages for this category of out-of-pocket costs.

### **Incomplete MEP Work and MEP Repairs**

66. Chestlen incurred out-of-pocket costs as a result of Tutor Perini's breaches to complete or repair Tutor Perini's MEP work, which was entirely within Tutor Perini's contractual scope.

67. Chestlen was required to pay contractors to repair and/or complete MEP work within Tutor Perini's contractual scope, including plumbers (City Plumbing, Devine Brothers, E.B. O'Reilly; E.J. Raith), 1T (Wallace), 84:4-85:15, 91:1-93:9, 94:25-95:14; **Exhibit 11141; Exhibit 11144; Exhibit 11146; Exhibit 11147**; electrical contractors (Schneider Electric, The Revolt Group, John Kay Electric, J.F. Electric), 1T (Wallace), 89:24-90:23, 93:11-94:21, 97:2-98:7, 100:18-101:11; **Exhibit 11160; Exhibit 11171; Exhibit 11168; Exhibit 10748**; sheet metal contractors (SSM Industries), 1T (Wallace), 95:21-96:22; **Exhibit 11174**; contractors to work on the kitchen hoods (TAB Systems), 1T (Wallace), 98:9-99-1; **Exhibit 11176**; and lighting design contractors (Sean O'Connor Lighting, Optolum), 1T (Wallace), 99-14-10015, 101:15-102:7; **Exhibit 10764; Exhibit 10754**.

68. Chestlen was also forced, as a result of Tutor's breaches, to buy certain MEP supplies itself, such as aerators and faucets (Ferguson), 1T (Wallace), 102:11-103:18; **Exhibit 11448**, as well as HVAC filters (Tri-Dim), 1T (Wallace), 104:16-105:17; **Exhibit 11182**.

69. Tutor Perini failed and refused to deliver, as contractually required, the mechanical building components in like-new condition, which required Chestlen to hire an HVAC company (SDA Mechanical) to overhaul and perform "extensive" maintenance on the HVAC equipment:

They overhauled all the HVAC equipment on the project. They're still the HVAC equipment maintenance company, replace compressors, replace water source heat pumps. The metal surrounds that the water source heat pumps were in and needed to be sealed for the air intake to work were never constructed correctly. So they had to replace a lot of those surrounds and seal them up. Otherwise, basically, the water source heat pump would fail because it would be sucking in air from the wrong

place. They dealt with a lot of the HVAC equipment that powered the whole building when we had problems. It's extensive.

**1T** (Wallace), 105:21-107:2; **Exhibit 11185**.

70. Chestlen was required to hire, as a result of Tutor's breaches, an engineering firm, Horizon Engineering Associates ("Horizon Engineering"), as a third-party monitor for commissioning of the building systems. **1T** (Wallace), 86:6-88:2. However, while performing its base contract work, Horizon Engineering discovered incomplete work and defective work in the building systems. As a result, Chestlen had to pay Horizon Engineering beyond its base contract amount to perform repairs and complete the commissioning. *Id.* at 86:6-88:2; **Exhibit 11156**.

71. The Court concludes that Chestlen's costs for completing and repairing MEP work are a direct result of Tutor Perini's breaches of contract.

72. The Court awards Chestlen **\$881,893.43** in damages for this category of out-of-pocket costs.

#### **Marriott-Directed Work**

73. The Hotel operator, Marriott, managed certain remedial work on the Project (directly related to Tutor's breaches), which Chestlen paid for through an operating account it created for Marriott's benefit. See **1T** (Wallace), 115:22-119:19; **Exhibit 11187**, p.11.

74. In September 2022, Marriott prepared a summary of the work it paid for from the operating account. **Exhibit 11187**, p.11. Chestlen provided additional invoices for Marriott directed work that occurred after September 2022 and is attributable to Tutor Perini's material breaches of the Contracts (including invoices from SDA Mechanical for additional HVAC repair and maintenance, and invoices from Lyndee Electric for invoices relating to an undersized lobby heater). See **1T** (Wallace), 118:16-119:15; **Exhibit 11185**; **Exhibit 11186**.

75. The Court concludes that Chestlen's costs from its Marriott-directed work are a direct result of Tutor Perini's material breaches of contract.

76. The Court awards Chestlen \$874,983.95 in damages for this category of out-of-pocket costs.

#### **Glass Repair Work**

77. Tutor Perini's material breaches also left the Hotel in a state where windows required reglazing and adjusting, and guest room mirrors required cutting to accommodate vanities that were cut short. **1T** (Wallace), 121:18-122:4.

78. Chestlen was forced to hire a contractor (The Glass Company) to perform that work on the windows and mirrors. *Id.* at 122:3-124:13; **Exhibit 11177**.

79. The Court concludes that Chestlen's glass repair work is a direct result of Tutor Perini's breaches of contract.

80. The Court awards Chestlen \$156,280.33 in damages for this category of out-of-pocket costs.

#### **Building Maintenance Unit Repairs**

81. Tutor Perini was contractually required to deliver the Hotel with a new Building Maintenance Unit ("BMU"), which is used to clean high-rise windows. **1T** (Wallace), 125:4-24.

82. In 2020, Tutor Perini began using the BMU to replace windows. *Id.* at 125:13-18.

83. When Tutor Perini turned the BMU over to Chestlen, the BMU was not in like-new condition and needed repairs. Chestlen hired a contractor, Alimak, to perform the BMU repairs. *Id.* at 125:25-126:17; **Exhibit 11137**.

84. Notwithstanding these repairs, Chestlen has never been able to use the BMU to clean windows at the Hotel. **1T** (Wallace), 125:10-12; 126:21-127:4 ("[T]he BMU has been

nonfunctional for most of the time since [Tutor Perini] first started using it. . . . All the brake motors have failed.”); see also **Exhibit 313**, p.2 (Mr. Lenfest email to Mr. Sukalo that “[Tutor Perini] was never supposed to use the BMU for glass installs”; followed by Mr. Cooney internal email acknowledging, “By the way, he's right about the BMU. Just tell him we disagree and drop it.”).

85. Chestlen was required to engage a contractor, Bridge & Scaffold LLC, to replace and repair the broken BMU components to render it functional again. *Id.* at 127:5-15; **Exhibit 10833**.

86. The Court concludes that Chestlen’s BMU repair costs are a direct result of Tutor Perini’s material breaches of contract.

87. The Court awards Chestlen **\$123,219.00** in damages for this category of out-of-pocket costs.

#### **Lost Tax Abatement**

88. Tutor Perini’s breaches of contract also caused Chestlen to lose three years of a property tax abatement from the City of Philadelphia.

89. The property became eligible for tax abatement in the next full calendar year after it received a Certificate of Occupancy. **3T** (Wallace), 30:13-24.

90. Because the property received a Certificate of Occupancy in 2021, Chestlen has paid property taxes subject to the abatement from 2022 to the present, resulting in an annual property tax savings of approximately \$500,000. **1T** (Wallace), 128:11-129:6; **Exhibit 11124**.

91. However, because of Tutor Perini’s breaches of contract, the Project was not complete in 2018 (the year of the Required Substantial Completion Date), and Chestlen paid

unabated property taxes for tax years 2019, 2020, and 2021. **3T** (Wallace), 31:10-13; **Exhibit 10074; Exhibit 10310.**

92. Chestlen paid over \$1.5 million more in property taxes for 2019, 2020, and 2021 than it would have had to pay with the abatement. Any future value of the abatement is speculative, as Chestlen is under threat of foreclosure and would be unlikely to pass on the value of the abatement to a purchaser in a foreclosure sale. **3T** (Wallace), 32:3-23.

93. The Court concludes that Chestlen's pre-abatement taxes are a direct result of Tutor Perini's material breaches of contract.

94. The Court awards Chestlen \$1,516,668.00 in damages for this category of out-of-pocket costs, reflecting three years of unrealized property tax savings. **Exhibit 11187**, p.14.

**Tutor Perini Abandoned the Project and Is Responsible for Chestlen's Damages.**

95. The Court concludes that Chestlen incurred a total of \$18,185,342.36 in out-of-pocket costs to address Tutor Perini's substantial and material breaches of the Contract.

96. Although the Contract sets Tutor Perini's scope of work, Tutor often worked outside its scope. If Tutor Perini caused the harm, it is responsible for the damage, even to work that is not within its scope. See **3T** (Wallace), 51:2-11 ("I don't think you can claim an exclusion from scope means you don't have to fix the damage you caused.").

97. Chestlen demonstrated that Tutor Perini failed to provide a temperature and humidity plan for the building. Multiple Chestlen witnesses testified that the lack of a temperature and humidity plan had a direct impact on the FF&E. See **2T** (Wallace), 111 ("By the time we arrived in the building, the HVAC system was not working in many rooms. We had found warped furniture, delaminated furniture, furniture with bubbles in the paint."); see also **Transcript of March 25** (p.m.) (Wagner), 26:11-18 ("Because there are certain requirements depending on

finished materials of what is too hot, too cold, too humid for the materials to hold up and maintain their warranty. And if the spaces weren't properly conditioned and those materials are getting installed, then there would be a risk of problems with the material not performing or lack of ability to warrant the products.”).

98. Tutor Perini materially breached its contractual duties when it mismanaged and affirmatively disrupted the schedule, which also directly impacted Chestlen’s FF&E costs. See 1T (Wallace), 51:18-22 (“Early on in 2017, 2018, Tutor had ordered VSM to bring all the FF&E into the country and store it in a warehouse.”); 2T (Wallace), 107 (“Had Tutor Perini told VSM of the actual condition of the building and not lied to it about the condition and readiness for FF&E -- we had already bought five to six months of warehousing to cover some flexibility in the install.”); **Transcript of March 25** (a.m.) (Wagner), 34:2-16 (“[W]e were not confident that the schedule being provided was accurate and didn't want to incur additional warehousing costs . . . And we eventually got a commitment from [Tutor Perini] to release the materials . . . for delivery . . . and then the materials got here and sat in the warehouse many, many months longer than they should have.”).

99. Tutor Perini’s time-consuming workmanship created a cascade of delays and disruptions of progress resulting in material breaches which made Chestlen’s FF&E work more difficult, for which Chestlen incurred additional costs. 2T (Wallace), 104 (“If not for the floor difficulties and the concrete defects, [the original FF&E contractor] would have installed all the FF&E on a GMP-based contract.”).

100. Tutor Perini is responsible for the FF&E costs Chestlen was required to pay as a result of Tutor Perini’s material breaches of its contractual duties.

101. Tutor Perini never completed the Project, and from mid-2020 through 2021, Tutor Perini was no longer addressing or disclosing its errors, underscoring its manifest and calculated bad faith, contrary to its unambiguous contractual duties to Chestlen. **Transcript of March 28, 2025** (Wallace), 201:13-202:1 (“Some subcontractors had completed their scope. Many subcontractors had not completed their scope. Some contractors had ostensibly completed their scope, but we later found out a lot of the work was deficient.”); *id.* at 202:2-17 (explaining that Tutor Perini’s staffing was “not as consistent”); *id.* at 202:19-203:3 (“[S]cope was not getting done, the contractors were not on site to get scope done . . . [and] Tutor Perini simply disclaimed that they had to do the work.”). Even while it was seeking a certificate of substantial completion from the Project architect, Tutor Perini was not keeping a true punch list. See **2T** (Wallace), 110; **Exhibit 1288**.

102. By 2021, the Project was the disaster of Tutor Perini’s consequence of its’ intentional and/or negligent breaches of its contractual duties. Tutor punitively abandoned the project, after it had materially and, at times, maliciously refused to perform its duties to Chestlen, which required Chestlen to mitigate the impact of Tutor Perini’s material breaches and bad faith. Chestlen’s efforts, at a substantial additional cost and inconvenience, involved dozens of separate contractors. See **2T** (Wallace), 136.

103. According to Mr. Wallace:

I would estimate around 75 [people working to correct Tutor Perini related issues in the Hotel in 2021] . . . Zeal Renovation, which is a hotel restoration company . . . sent between 25 and 40 people who slept in the hotel for six months. We had at least three furniture restoration companies on at the same time. At least three electricians. At least three plumbers. TN Ward had sent carpenters . . . The rooms that were between 88 and 95 degrees suffered delamination of all the furniture and then warping of the furniture. So, they had to bring in crews. One was a guy by the name of John Ahern from New Jersey. Barry Pipe from Tennessee. And then there's

a third company, a guy named Nicholas Lazarus and under TN Ward's direction, they more or less had to do furniture restoration to every room.

**Transcript of March 28, 2025** (p.m.) (Wallace), 227:2-18.

104. Mr. Lenfest, Mr. Wallace, and Mr. Lenfest's administrative assistant, Tracy Coyle, personally helped finish the work in good faith. *See Transcript of March 28, 2025* (p.m.) (Wallace), 225:17:226:2 (describing when Mr. Lenfest "took a scissor lift and a heat gun" to fix tile issues in the ballroom), 228:8-18; **1T** (Wallace) (describing when Mr. Lenfest "went under the deck and reinstalled all the pedestals"), 70:2-21; **1T** (Wallace), 104:9-15 (describing how, for five months, he "would walk down the hall as fast as [he] could, holding both arms out, making sure all the doors were locked. . . . And it took about an hour every time, and then your legs are like jelly if you ever walked down 51 floors. Its pretty hard.").

105. Tutor Perini's bad faith breaches of its contractual duties directly caused repetitive construction issues and years of intentional bad faith mismanagement by Tutor forced Chestlen to undertake extraordinary efforts to remedy Tutor Perini's material and serial defaults to get the project near completion.

106. The Court concludes that Tutor Perini is responsible for all Chestlen's out-of-pocket costs directly incurred as a result of Tutor's material and serial breaches of its contracts.

### **III. CHESTLEN IS ENTITLED TO DAMAGES TO REPLACE AND REPAIR WINDOWS.**

107. The Court concludes that Chestlen is entitled, as a direct result of Tutor's material and serial breaches of its contracts, to damages for the costs of replacing the operable window vents and repairing the punch windows in the Hotel.

108. Tutor Perini was contractually required to deliver operable window vents and punch windows that functioned as intended; however, both the operable window vents and the punch

windows experience operability and performance issues. See, e.g., **Findings of Fact**, ¶ 211; **Olson Tr.**, 21:10-21.

109. To this day, Hotel rooms have numerous window vents that are inoperable, demonstrating that the Hotel has never been 100% available for occupancy because of these problems. 2T (Wallace), 30-31, 84-86.

110. Even window vents that are minimally operable (from a Building Code perspective) suffer from performance issues such as vibration and whistling, which means guests can “hear street noise,” “feel air coming in,” and even “[a]t times the window unit will just blow open.” *Id.* at 31-32.

111. Marriott, the W Hotel operator, is managing the defective window vents on an ad hoc basis by using a “tri-wipe,” to surround the window frame and reduce vibration and whistling. *Id.* at 31. However, the “tri-wipe” is not a permanent solution to the issues with the operable window vents. *Id.* at 32.

112. Chestlen has been advised that it must either “close the operable vents for good” and install a “mechanical fresh air system,” or “replace the operable vents [en masse].” *Id.*

113. The punch windows suffer from operability issues, such as “difficulty either closing or hitting/conflicting with other components of the window . . . .” **Olson Tr.**, 21:15-21.

114. Chestlen and Marriott anticipate replacing all the operable window vents in the Hotel, and to repair the punch windows, but as a continuing result of the damages Tutor caused to the building, Chestlen lacks the funds to do so. 2T (Wallace), 32.

115. Chestlen’s window damage expert, Eric Olson, opined that the “operable vents in the window wall system need to be replaced” and that “the punched windows in the sheer walls need to be adjusted or reset based on the severity of the problem.” **Olson Tr.**, 22:6-12.

116. Based on his analysis of a statistical sample of operable windows, Mr. Olson opined that 85-90% of the window vents have operability issues or, due to attempted repairs, suffered from other performance issues such as the inability “to resist air infiltration or resist wind loads.” Id. at 29:4-12.

117. Mr. Olson concluded that issues with the window vents will continue to occur because he found and recorded numerous instances of windows with no documented operability issues in 2021 showing operability/performance issues in 2024 during his inspection. Id. at 29:20-31:9.

118. Mr. Olson determined the operability and performance issue is a “systemic issue” that warrants replacing all the operable window vents. Id. at 25:15-24; 29:13-19. 145. Mr. Olson opined that the cost to replace the operable window vents and repair the punched windows would be \$5,616,313. Id. at 31:4-7.

119. That estimate is based on 2024 prices, which have increased since the issuance of Mr. Olson’s April 2024 report. Id. at 37:6-15.

120. For operable vent replacement, Mr. Olson opined that the cost of replacement materials would be \$80 per square foot, which was on the “low end of the range” for commercial windows. Id. at 31:12-21.

121. Mr. Olson opined that labor costs to replace the operable windows would be \$117/hour for four hours, per window. Id. at 31:22-32:8. 149. He based that amount on labor rates in actual invoices from the glass contractor who worked on the Hotel in 2021 (The Glass Company), plus 5% inflation, compounded annually through 2024. Id. at 31:22-32:8.

122. Mr. Olson factored in amounts for contractor General Conditions and Overhead and Profit, using percentages he has commonly seen in the industry. Id. at 32:23-33:7 (explaining that he applied a 25% profit margin “conservatively”).

123. As to the punch windows, Mr. Olson opined a repair method that is “all labor [] not replacement components.” Id. at 34:6-15.

124. He opined that the estimated cost for the labor would be \$2,000 per window. Id. at 33:8-9.

125. The work to replace the operable vents and to repair the punch windows would also utilize both a swing stage and the existing BMU.13 Id. at 34:16-35:9, 35:13-36:3.

126. The swing stage rental would cost \$105,000. Id. at 34:16-21.

127. As a result of using the BMU for the replacement and repair program, Chestlen would incur costs to repair the BMU and would have to replace the BMU earlier than anticipated if its use would have been limited to its intended purpose. 3T (Pocalyko), 88:25-90:22.

128. The additional cost for the use of the BMU and the replacement cost of the BMU would be \$2,400,000. Id.

129. Mr. Olson opined:

[B]ased on the history of the windows and the fact that so many of these people have tried to repair and it, it, it – the problem is recurring. Even after repair approached and attempt after attempt, the problem repeats itself. So I think there’s very little chance of success in doing the same thing and expecting a different outcome.

**Olson Tr.**, 27:23-28:3, 47:11-48:12.

130. Mr. Olson opined full replacement of the operable vents because “these windows are in wrapped frames and there’s no way to – to make the sash work, short of taking it out and

putting in a square sash that can fit into the rhomboidal opening that has resulted – or that we find at the building.” Id. at 28:6-10.

131. The Court finds Mr. Olson’s testimony, supported by trail evidence, highly credible and given persuasive weight.

132. Tutor Perini failed to deliver to Chestlen window vents and punch windows in accordance with its Contract obligations.

133. The Court awards Chestlen \$8,059,170.00 in damages to replace the operable windows and to repair the punch windows. See Exhibit 11187, p.14.

#### IV. CHESTLEN IS ENTITLED TO DAMAGES FOR CONVERSION OF CONTINGENCY FUNDS.

134. Tutor Perini converted, without authority, money from the contingency fund for the benefit of itself and for unauthorized expenses, such as to cover costs for its subcontractors’ negligence or to pay for general conditions expenses such as staff costs. *See Findings of Fact*, ¶¶ 318-320.

135. Tutor Perini also refused to refund Chestlen the intentionally converted contingency funds and refused to provide updated contingency logs. Id. at ¶ 321.

136. There is credible evidence of record that documented instances of Tutor Perini’s improper contingency usage. See, e.g., **Exhibit 177** (letters dated June 4, 2018, and February 15, 2018, detailing improper contingency use, as well as a contingency log with VSM mark-ups of inappropriate contingency uses).

137. Chestlen has identified over \$4.7 million in improper contingency usage on the Primary contract alone. **Exhibit 11187**, p.16; **3T** (Pocalyko), 93:4-11.

138. The magnitude of improper contingency usage across the Primary and Companion Contracts by Tutor renders the full amount of the Primary Contract contingency fund an

appropriate measure of damages. See 3T (Pocalyko), 93:16-24 (“I was trying to just highlight in my report the big ones, but when you look at the companion, you don't take that into account on an overall basis. This, in my opinion, is the proper adjustment that should be made.”).

139. The improper use and missappropriation of the contingency fund materially and directly damaged Chestlen, and Tutor Perini is required to compensate Chestlen for misusing the contingency fund. *See* 3T (Pocalyko), 92:16- 93:24.

140. The controlling contracts specify proper uses of contingency funds, see, e.g., **Exhibit 407**, § 4.5 (contingency cannot be used for Tutor Perini or its subcontractors' negligence), (2) VSM specifically rejected Tutor Perini's attempt to use contingency funds for surveying, subcontractor standby time, and other costs related to its negligence, **Exhibit 177**; 3T (Wallace), 19:5-22:19; 3T (Pocalyko), 146:6-25 (explaining that whether surveying was an appropriate use of contingency “depends on what caused that to happen and why it was occurring”), (3) none of Tutor Perini's witnesses were aware that VSM ever changed its position on those improper contingency uses as would be required to “estop” Chestlen, and (4); none of Tutor Perini's witnesses could show that the funds taken for improper and unauthorized uses were ever restored to the contingency fund. *See* 3T (LaFraugh), 82:4-86:25.

141. The Court concludes that Tutor Perini's serial and material misuse of the contingency fund was unauthorized by Chestlen and was a material breach of its contractual duties and Tutor failed to demonstrate that it ever reinstated the contingency fund.

142. The Court awards Chestlen **\$4,795,084.00** in damages, representing all the contingency funds Tutor Perini used on the Primary Contract.

V. **CHESTLEN IS ENTITLED TO DAMAGES FOR LOAN MODIFICATION FEES AND COSTS.**

143. The refusal of Tutor to substantiate and timely submit subcontractor payment applications, which was the consequence of Tutor's serial contract breaches and affirmative acts of bad faith, impaired Chestlen's creditworthiness and caused technical defaults of its construction loan agreements.. See **2T** (Wallace), 38:12-39:2.

144. As a direct result of Tutor's material breaches of its contractual obligations, Chestlen has been forced to enter into extraordinarily expensive loan modification agreements (the 4th, 5th, and 6th modifications). See *id.* at 39; **3T** (Pocalyko), 104:13-105:1 (explaining Chestlen is now and continuing to be "at the mercy of the lender" and that such modifications are "very expensive" and "come at a very, very significant price"); **Preftakes Depo. Designation**, 86:9-87:2.

145. As a further result of Tutor's breaches of contract and affirmative bad faith conduct, Chestlen has been required to pay extortionary penalties and extension fees to its lenders, as well as fees for legal and title services in connection with the modifications, totaling \$3,972,732.02. See **2T** (Wallace), 41:2-45:24; see also Exhibit 10909 (fourth modification flow of funds memorandum); **Exhibit 10897** (fifth modification settlement statement); **Exhibit 11085** (sixth modification settlement statement).

146. Additional accruing foreseeable damages directly resulting from Tutor's material breaches of its Contract with Chestlen are a virtual certainty. Chestlen expects to enter into another loan modification, because the "leash" from its lender under its current loan modification agreement is only six months long. See **2T** (Wallace), 46:1-15.

147. Chestlen is claiming all fees and costs reflected on the loan modification settlement statements but is not claiming interest payments. See **2T** (Wallace), 60-61; **3T** (Pocalyko), 105:2-106:12.17

148. The Court concludes that Chestlen's loan modification fees and costs are a direct result of Tutor Perini's material breaches of Contract and failure to deliver a lien-free building, contrary to Section 14.7 of the General Conditions to the Contract.

149. The Court awards Chestlen \$3,972,732.02 in damages arising from the loan modifications.

**VI. CHESTLEN IS ENTITLED TO DAMAGES FOR SEAN'S LANDSCAPING'S CLAIM.**

150. Chestlen is entitled to recover the entire unpaid amount of Sean's Landscaping Inc.'s ("Sean's Landscaping") contract claim against Tutor Perini.

151. As a direct result of Tutor's breaches of its contractual obligations to Chestlen, Tutor Perini's subcontractors started filing liens on the Property, Chestlen contacted some of those contractors to attempt to negotiate a resolution of their lien claims. 2T (Wallace), 50. In one case, Chestlen was able to successfully negotiate with a subcontractor, Sean's Landscaping, to remove its lien. *Id.* at 51:1-4.

152. Under the settlement agreement, Chestlen paid Sean's Landscaping \$60,000; in assignment agreement, Sean's Landscaping removed its mechanics' lien and assigned its contract claim against Tutor Perini under Docket No. 210900794 to Chestlen ("Assigned Claim"). See **Exhibit 11066**.

153. In the Assigned Claim, Sean's Landscaping alleged that Tutor Perini failed to pay for contracted work with a value of \$202,472.00. See **Exhibit 11125**.

154. Tutor Perini has not paid Chestlen the value of the Assigned Claim. See 2T (Wallace), 52:20-22.

155. Tutor Perini presented no cognizable defense to the merits of the Assigned Claim.

156. The Court awards Chestlen \$202,472.00 as damages for the Assigned Claim.

**VII. CHESTLEN IS ENTITLED TO DAMAGES FOR LEGAL AND CONSULTING FEES.**

157. The Contract contains provisions under which Tutor Perini is liable for Chestlen's attorneys' fees, consulting fees, and related professional costs in vindicating its rights.

158. In Section 4.17 of the General Conditions to the Contract, Tutor Perini agreed to indemnify and hold Chestlen harmless from third-party claims to the extent those claims arise out of Tutor Perini's conduct:

To the fullest extent permitted by Laws, the Construction Manager shall indemnify, defend with counsel reasonably acceptable to the Owner and hold harmless the Owner, the Lenders, and their respective trustees, officers, directors, agents, employees, subsidiaries and affiliates (each, an "Indemnitee"; collectively, the "Indemnitees"), from and against all claims, demands, causes of action and suits (collectively, "Claims") by third parties, and all losses, costs, expenses, judgments, damages and expenses, including reasonable attorneys' fees and costs of investigation and dispute resolution (collectively, the "Losses"), to the extent arising out of or resulting from the performance or nonperformance of the Work by the Construction Manager . . . .

*See Exhibit 407, General Conditions ¶ 4.17.*

159. In Section 13.2 of the General Conditions to the Contract, the parties agreed that if a dispute arose, the prevailing party would be entitled to recover its attorneys' fees and expenses:

In any suit, arbitration or other action taken to enforce any of the covenants or agreements of the Contract, or to enforce any remedies arising out of a breach of the Contract by any party, the substantially prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the other reasonable costs and expenses incurred by the prevailing party in connection with such action.

*See Exhibit 407, General Conditions ¶ 13.2.*

160. In Section 14.7 of the General Conditions to the Contract, Tutor Perini agreed to "indemnify and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with [] liens." *See Exhibit 407, General Conditions ¶ 14.7.*

161. As of January 21, 2026, Chestlen has paid \$14,140,276.98 in legal fees and related consulting/professional expenses. **Exhibit 10836**.

162. The underlying backup documentation for many of the invoices and payment were separately admitted into evidence and available for Tutor Perini to cross-examine witnesses with at trial (which it declined to do). *See, e.g., Exhibits 11131-11135* (Chestlen's construction account statements from 2018-2022); **Exhibit 10821** (account statement); **Exhibit 10822** (account statement); **Exhibit 11194** (Blank Rome invoices); **Exhibit 11195** (Glaser Weil invoices); **Exhibit 11195** (Royer Cooper invoices); **Exhibit 10837** (Christopher Lee, Esq., (Special Master) Invoice), **Exhibit 11143** (Core Consulting), **Exhibit 10890** (Executive Presentations), **Exhibit 11149** (FJD Procurement), **Exhibit 10896** (Galli Law), **Exhibit 11154** (HKA Global), **Exhibit 11158** (JAMS), **Exhibit 11159** (JD Digital Documentation), **Exhibit 11161** (KL Discovery Services), **Exhibit 10969** (MAGNA Legal Services), **Exhibit 11162** (Maser Consulting), **Exhibit 11165** (NJ Legal), **Exhibit 11167** (Procon Consulting Architects), **Exhibit 11170** (Raths, Raths & Johnson), **Exhibit 11173** (Simpson, Gumpert & Heger), **Exhibits 11140 and 11142** (System One/Cimplifi), and **Exhibit 11178** (TM Financial Forensics).

163. The vendors in issue provided the following services:

- a. Blank Rome provided litigation and pre-litigation legal services. **2T** (Wallace), 11.
- b. Glaser Weil, likewise, provided litigation and pre-litigation legal services. *Id.* at 11-12.
- c. Royer Cooper provided legal finance counsel for Chestlen's and, since November 2024, also served as its litigation counsel. *Id.* at 12.

- d. ND Galli Law LLC provided litigation services for Chestlen's senior lender (Barings/Mass Mutual) and, under Chestlen's loan agreements, Chestlen was required to indemnify its lender for those legal fees. Id. at 13-14.
- e. KL Discovery is a discovery vendor who provides services for Barings/Mass Mutual and its counsel in connection with the litigation. Id. at 15.
- f. RRJ is an engineering firm that provides expert services relating to concrete. Id. at 15-16.
- g. SGH is an engineering firm that provides expert services relating to the operable window vents and in response to certain geotechnical issues Tutor Perini raised. Id. at 16-17.
- h. CORE is a construction consulting firm that provides expert services relating to schedule and delay issues. Id. at 17-18.
- i. HKA is a financial consulting firm that provides expert services relating to Chestlen's damages. Id. at 18.
- j. Maser Consulting is an engineering firm that provided survey data in connection with RRJ's analysis. Id. at 19.
- k. Procon Consulting is a construction consulting firm that performed investigations relating to tile and water infiltration in the showers. Id. at 19-20.
- l. JD Digital Documentation took photographs to document the condition of the property, which was necessary "[b]ecause Tutor Perini would not agree to the condition of the project." Id. at 20.
- m. TMF Financial is a financial consulting firm that was hired to perform an audit, which ultimately it did not perform. Id. at 21.

- n. Magna is a litigation services company who provided trial equipment and related trial services. Id. at 21.
- o. Christopher Lee was the court-appointed special master during the discovery phase of this litigation. Id. at 22.
- p. FJD invoices are for the court reporting services for the liability phase of the trial. Id. at 23.
- q. JAMS is an alternate dispute resolution company who provides mediation services to the parties in connection with the litigation. Id. at 23-24.
- r. New Jersey Legal is a discovery vendor who provided services to Chestlen in connection with documents produced in discovery. Id. at 24.
- s. Cimplifi/System One is a discovery vendor who provided services to Chestlen during pre-production collection, search, and document review phases. Id. at 25.
- t. The Law Offices of Carl Roberts represented VSM during pre-suit investigation of Tutor Perini's performance issues on the project (before Blank Rome and Glaser Weil became involved). Id. at 26.
- u. DLA Piper provided finance counsel to Chestlen's senior lender and fees Chestlen was required to pay in connection with the various loan modification agreements. Id. at 26-27.
- v. Troutman Pepper provided litigation services for Chestlen's senior lender. Id. at 26.
- w. Cozen O'Connor provided finance counsel to Chestlen's subordinate lender, the PIDC. Id. at 26-27.
- x. Executive Presentations is a vendor who created trial demonstratives for Chestlen and its experts during the liability phase of trial. Id. at 27.

y. Chestlen also incurred expenses from Marriott for food, lodging, and related accommodations for its trial team during the liability phase of trial. *Id.* at 48; **Exhibit 10835**.

164. The Court finds a direct nexus between Chestlen's legal and professional expenses and Tutor Perini's breaches of contract, which resulted in third-party claims, liens, and this litigation. See, **Exhibit 407**, General Conditions ¶¶ 4.17, 13.2, 14.7.

165. Chestlen suspected issues with Tutor Perini's performance as far back as 2016, and that the issues came into focus in late 2017 because of the significant delays with the window wall installation (which later turned out to be related to the deficient concrete). See **Findings of Fact**, ¶¶ 89, 96-97.

166. Thereafter, Chestlen began hiring legal professionals and consultants to protect its rights under the Contract, including the law firms Blank Rome (**Exhibit 11194**) and Glaser Weil (**Exhibit 11195**), and non-legal professionals such as JD Digital Documentation (**Exhibit 11159**), Procon Consulting Architects (**Exhibit 11167**), TM Financial Forensics (**Exhibit 11178**), and Rath, Rath & Johnson (**Exhibit 11170**).

167. Chestlen's other legal and professional expenses all arise from Tutor Perini's failure to perform its contract obligations, which required significant pre-suit investigation, litigation, and culminated in this trial.

168. Tutor Perini does not challenge Chestlen's contention that it paid \$14,140,276.98 for legal and professional services.

169. Chestlen has also submitted an un rebutted declaration in support of the reasonableness of the attorneys' fees it paid to its litigation counsel. See Declaration of Jonathan M. Korn.

170. The Court finds that Chestlen's attorneys' fees and expenses, supported by overwhelming and credible evidence, are fair and reasonable and are a direct result of Tutor's breaches.

171. The Court awards Chestlen \$14,140,276.98 in damages for its legal and professional fees.

#### **VIII. CHESTLEN IS ENTITLED TO PREJUDGMENT INTEREST.**

172. Chestlen is entitled to prejudgment interest damages.

173. For a breach of contract action, prejudgment interest is a matter of right in four alternate circumstances:

- (1) a defendant commits a breach of a contract to pay a definite sum of money; or
- (2) a defendant commits a breach of contract to render a performance the value of which in money is stated in the contract; or
- (3) a defendant commits a breach of contract to render a performance the value of which is ascertainable by mathematical calculation from a standard fixed in the contract; or
- (4) a defendant commits a breach of a contract to render a performance the value of which in money is ascertainable from established market prices of the subject matter.

*Cresci Constr. Servs., Inc. v. Martin*, 64 A.3d 254, 259 (Pa. Super. 2013) (internal quotation marks and citations omitted).

174. In all other situations, the decision to award prejudgment interest, and the rate of interest, is a matter of discretion. *Id.* at 265.

175. Chestlen is entitled to prejudgment interest on its liquidated damages, and the Court in its discretion awards prejudgment interest for Chestlen's out-of-pocket costs, loan modification costs, and legal/consulting expenses because Chestlen paid and lost the benefit of those funds, and prejudgment interest is necessary and appropriate to make Chestlen whole.

176. The Court awards pre-judgment interest at the statutory rate of 6%.

177. The Court calculates damages by type and year, and applying the 6% statutory rate as simple interest, Chestlen's prejudgment interest is \$25,937,583.10 through January 31, 2026. **Exhibit 11187**, pp. 20-21. Until final judgment, pre-judgment interest accrues at the rate of \$21,645.68 per diem. **Exhibit 11187**, p.21.

178. The Court awards Chestlen \$25,937,583.10 plus \$21,645.68 per diem after January 31, 2026, in prejudgment interest.

**IX. TUTOR PERINI'S GLOBAL CHALLENGES TO CHESTLEN'S DAMAGES ARE REJECTED.**

**a. Tutor Perini Is Not Entitled to a GMP Credit.**

179. As set forth in Article 8.4 of the Contract's General Conditions, final payment and release of retainage is not due until the Project achieves both Substantial Completion and Final Completion and meets all other contract deliverables including those set forth in Article 8.4, which includes a lien-free building. **Exhibit 407**.

180. As set forth in Article 9 of the Contract and Article 8.4 of the Contract's General Conditions, final payment and release of retainage is not due until the Project achieves both Substantial Completion and Final Completion and meets all other contract deliverables including those set forth in Article 8.4, which includes a lien-free building. *Id.*

181. Article 9 provides that Chestlen shall only make final payment to Tutor Perini "following the later of: (1) the time of Final Completion (including completion of all punchlist items); (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants and approved by the Owner in its reasonable discretion; (3) all of the conditions to final payment

contained in the Contract Documents (including Paragraph 8.4 of the General Conditions) have been met; and (4) the Lenders have approved same.” *Id.*

182. Tutor Perini has **not** achieved any of the requirements to trigger final payment. Tutor Perini did not obtain Substantial Completion, let alone Final Completion. Nor has Tutor Perini submitted a final accounting to be reviewed and approved by Chestlen.

183. In addition, Tutor Perini has purportedly entered into settlements with a number of subcontractors, including Component Assembly, James Flooring and Suburban.

184. To date, Tutor Perini has not disclosed the terms of those settlements to Chestlen. To the extent that Tutor Perini settled for less than the contract balances owed to these subcontractors, Chestlen is entitled to 80% of those savings. *Id.* at § 4.1.

185. Tutor Perini also seeks to relitigate the Court’s liability decision on Tutor Perini’s counterclaim by presenting a series of unapproved change orders (**Exhibits 2562-2649, 2651-2652, 2654-2659, 2662-2663, 2665-2666, 2668-2676, 2678-2683, and 2687-2725**) to try to increase the GMP.

186. None of these change orders were approved by Chestlen (and Tutor Perini presents no evidence they were ever approved). The change orders primarily relate to Tutor Perini’s attempt to get paid for work that was due to Tutor Perini’s and its subcontractors’ defaults. *Id.*

187. In contravention of the contract requirements, “change orders” were also submitted to Chestlen months, sometimes years, after Tutor Perini’s subcontractors initially submitted them. Those are not legitimate change orders under the Contract. *See, e.g., Exhibit 407.*

188. The Court concludes that there is no basis to reduce Chestlen’s damage based on a purported GMP credit or a purported increase to the GMP.

**b. Chestlen’s Damages Are Direct, Not Consequential.**

189. Tutor Perini argues that many of Chestlen's claims damages are barred by the consequential damage waiver in Section 3.8 of the Contract.

190. Section 3.8 of the Agreement provides as follows:

Waiver of Consequential Damages. The Construction Manager and the Owner waive Claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

3.8.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons;

3.8.2 damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit . . . .

3.8.3.1 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Contract. Nothing contained in this paragraph shall be deemed to preclude an award of liquidated damages to the Owner in accordance with the requirements of Paragraph 3.5.

**Exhibit 407, § 3.8.**

191. Tutor Perini argues that this provision bars Chestlen from recovering certain out-of-pocket damages (concrete refinancing lender fees and additional taxes paid prior to the tax abatement), certain lien-related damages (penalties and extension fees to lenders due to the unbonded liens), as well as Chestlen's claim for legal fees.

192. "Direct damages refer to those which the party lost from the contract itself—in other words, the benefit of the bargain—while consequential damages refer to economic harm beyond the immediate scope of the contract." *Jay Jala, LLC v. DDG Constr., Inc.*, No. 15-3948, 2016 WL 6442074, at \*2 (E.D. Pa. Nov. 1, 2016) (quoting *Atl. City Assocs., LLC v. Carter & Burgess Consultants, Inc.*, 453 Fed. App'x 174, 179 (3d Cir. 2010)).

193. The distinction between “direct” and “consequential” damages is fact sensitive. *See MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 276 A.3d 1225, 1237 (Pa. Commw. Ct. 2022).

194. The analysis requires the Court to analyze the parties’ agreement as well as the factual basis for the type of damages in issue. *See Jay Jala, LLC*, 2016 WL 6442074, at \*2.

195. The Court concludes, based on the totality of the evidence, that all Chestlen’s claimed damages are direct, not consequential.

196. Several categories compensate Chestlen for Tutor Perini’s defective and incomplete work and reflect amounts Chestlen had to pay to deal with those issues. *See, e.g., id.* at \*5 (explaining that direct damages compensate a plaintiff for not getting what the defendant promised):

- Lender Fees to Remediate Concrete Defaults: Tutor Perini promised to deliver concrete in accordance with the Plans and free of defects. It did not do so. Because Tutor Perini provided defective concrete, Chestlen had to remediate the concrete. To remediate the concrete, it needed additional funds from its lender. To obtain those additional funds, Chestlen had to pay fees to its lender. Those lender fees are a direct result of Tutor Perini failing to do what the Contract required it do so. They are not consequential damages.
- Taxes Paid Prior to Tax Abatement: Tutor Perini promised to deliver a finished building by the Required Substantial Completion Date. Tutor Perini’s mismanagement led to the Project being incomplete in 2018, thus preventing Chestlen from accessing the tax abatement in 2019 as intended. In addition, because Chestlen’s damages arise from Tutor Perini’s mismanagement, they are also not barred under Section 3.5 (which

waives damages “solely due to delay” when there is an award of liquidated damages for the same period).

197. Chestlen’s lien-related damages (penalties and extension fees) arise directly from the Contract.

198. Section 14.7 of the General Conditions requires Tutor Perini to “indemnify and hold harmless [Chestlen] from all costs and expenses incurred by [Chestlen] in connection with such [mechanics’] liens [filed by Tutor Perini’s subcontractors].” **Exhibit 407**, General Conditions, § 14.7.

199. As explained above, the presence of those liens, which stem from Tutors direct and material breaches, made it impossible for Chestlen to refinance its construction loan to non-construction financing, causing Chestlen to pay more interest than it would have paid in the “but for” world in which Tutor Perini delivered a lien-free building. The liens also forced Chestlen to default on its loan agreements and pay penalties and extension fees. All those monies are “costs and expenses” Chestlen incurred as a result of the improper and unbonded liens.

200. Tutor Perini claims Chestlen’s damages are consequential based on the illustrative list of potential consequential damages in Section 3.8 (*e.g.*, damage for “losses of . . . financing”).

201. However, to determine the applicability of Tutor’s argument of categories of damages waiver, the threshold issue is whether the damage is direct or consequential, not whether an illustrative list of damages that may be consequential damages bears some semantic similarity to Chestlen’s categorization of its damages.

202. In *Jay Jala, LLC*, for example, the plaintiff sought to recover interest it paid on a construction loan because construction issues prevented it from refinancing the loan.

203. The defendant claimed the CDW included “loss . . . of financing” as an example of consequential damage and therefore sought to bar this category of damages. *Jay Jala, LLC*, 2016 WL 6442074, at \*6.

204. The court disagreed, reasoning that the defendant’s promise to complete the work by a date certain meant that loan interest was a “necessary construction input” for which the contractor was directly responsible:

“Defendant agreed to build the motel using no more than a certain amount of time and therefore, necessarily, a certain amount of loan interest. Defendant used up all the time and left the building unfinished, so Plaintiff can recover as direct damages the cost of additional time necessary to finish construction.

*Id.* at \* 6.

205. Finally, the Contract expressly authorizes Chestlen to recover its attorneys’ fees. *See Exhibit 407*, General Conditions § 4.17 (requiring Tutor Perini to indemnify and defend Chestlen from “losses . . . including reasonable attorneys’ fees and costs of investigation and dispute resolution . . . to the extent arising out of or resulting from the performance or nonperformance of the Work by [Tutor Perini]”), and § 13.2 (requiring Tutor Perini to pay Chestlen’s attorneys’ fees and costs in connection with “any suit, arbitration or other action taken to enforce any of the covenants or agreements of the Contract, or to enforce any remedies arising out of a breach of the Contract by any party”).

206. Even if any of Chestlen’s damages are consequential (they are not), the consequential damages waiver is unenforceable.

207. The court can decline to enforce a consequential damage waiver if the party seeking its protection engaged in intentional misconduct. *See, e.g., West Run Student Hous. Asscs., LLC v. Huntington Nat’l Bank*, No. 2:12-cv-76, 2013 WL 3993863, at \*4 (W.D. Pa. Aug. 5, 2013) (citing *Philips-Van Heusen Corp. v. Mitsui O.S.K. Lines Ltd.*, No. Civ.A. 1:CV-00-0665, 2002

WL 32348263, at \*13 (M.D. Pa. Aug. 14, 2002)) (stating that imitations of liability for consequential damages between “parties of equal bargaining power . . . will be enforced absent a showing that the breaching party engaged in willful or wanton conduct”); *Werner Kammann Maschinenabrik, GmbH v. Max Levy Autograph, Inc.*, 2002 WL 126634, at \*4 (E.D. Pa. Jan. 31, 2002) (explaining that sellers who act in bad faith should not be able to enforce limitation of damages clauses because it would leave the buyer without a remedy in a situation where buyer did not assume the risk).

208. Similarly, a party may avoid a contract provision on public policy grounds if it can show an “overriding public policy from legal precedents, governmental practice, or obvious ethical or moral standards.” *See Tayar v. Camelback Ski Corp., Inc.*, 47 A.3d 1190, 1199 (Pa. 2012); *John B. Conomos, Inc. v. Sun Co. (R&M)*, 831 A.2d 696, 708 (Pa. Super. 2003); *L & M Real Est. Devs., LLC v. Consol. Rail Corp.*, 328 A.3d 1068, 1073 (Pa. Super. 2024).

209. Because the Court has found Tutor Perini acted punitively, intentionally, and in bad faith, and contrary to its contractual and fiduciary duties, Tutor Perini, because of its own misconduct, is precluded from relying on the damage waiver in Section 3.8 of the Contract.

210. Tutor Perini exposed Chestlen to harms well beyond what rational contracting parties would have anticipated (and thus well beyond what Chestlen could have agreed to waive). *See, e.g., Findings of Fact*, ¶¶ 121-123 (describing Tutor Perini obtaining a Thornton Tomasetti memo opining that concrete issues were the result of improper shoring/reshoring, not sharing the memo with Chestlen, and failing to instruct Carney to change its means and methods).

211. In addition, Tutor Perini voluntarily and contractually accepted the role of Chestlen’s fiduciary on the project, which makes Tutor Perini’s conduct even more egregious and violative of moral and ethical norms. *See Yenchi v. Ameriprise Financial, Inc.*, 161 A.3d 811, 819

(Pa. 2017); *Retina Assocs. of Greater Phila., Ltd. v. Retinovitreal Assocs., Ltd.*, 176 A.3d 263, 280 (Pa. Super. 2017).

212. Accordingly, regardless of Tutor's mis categorization of Chestlen's damages, the damage waiver in Section 3.8 is unenforceable.

## CONCLUSION

1. The Court awards Chestlen **\$174,681,212.00** in compensatory damages as follows.
  - Liquidated Damages: **\$97,895,000.00**<sup>5</sup>
    - a. Per Diem: (\$35,000/day x 2,797 days)
  - Out-of-Pocket Costs: **\$18,185,342.36**
    - a. Concrete Costs: **\$12,662,594.58**
      - i. Direct Concrete Repair Costs: **\$1,900,544.70**
      - ii. Architectural Work Needed for Remediation: **\$1,131,780.26**
      - iii. General Contractor Default/Assist: **\$4,454,019.45**
      - iv. Furniture, Fixtures, and Equipment: **\$5,176,250.17**
    - b. Punch List and Incomplete Scope: **\$1,969,703.07**
    - c. Incomplete MEP Work and MEP Repairs: **\$881,893.43**
    - d. Marriott-Directed Work: **\$874,983.95**
    - e. Glass Repair Work: **\$156,280.33**
    - f. Building Maintenance Unit Repairs: **\$123,219.00**
    - g. Lost Tax Abatement: **\$1,516,668.00**
  - Damages to Replace and Repair Windows: **\$8,059,170.00**

---

<sup>5</sup> Chestlen's Liquidated Damages as of April 10, 2026. Liquidated Damages will continue to accrue until date of Final Judgment.

- Damages for Abuse of Contingency Fund: **\$4,795,084.00**
- Damages for Loan Modification Fees and Costs: **\$3,972,732.02**
- Damages for Sean's Landscaping Claim: **\$202,472.00**
- Damages for Legal and Consulting Fees: **\$14,140,276.98**
- Prejudgment Interest: **\$27,431,135.09.**<sup>6</sup>

a. Per Diem: (\$21,645.68/day x 2,797 days)

2. All the foregoing damages are a direct and proximate result of Tutor Perini's breaches of Contract.

3. The foregoing damages are direct and not barred by the contractual damage waivers in Sections 3.5 or 3.8; alternatively, the consequential damages waiver is unenforceable as a result of Tutor Perini's bad faith conduct and intentional and pervasive obstruction of its material obligations under the subject contracts.

4. The Court enters Judgment in Chestlen's favor and against Tutor Perini for the total amount of **\$174,681,212.00.**

---

<sup>6</sup> Chestlen's Prejudgment Interest as of April 10, 2026. Prejudgment Interest will continue to accrue until date of Final Judgment.