

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

Reflection Window & Wall, LLC,

Plaintiff,

vs.

**Talon Wall Holdings, LLC, Entekk
Group, Ltd., Chicago Heights Glass, Inc.,
and Kurt Levan,**

Defendants.

Case No. 1:22-CV-03509

**Talon Wall Holdings, LLC, Entekk
Group, Ltd., Chicago Heights Glass,
Inc., and Kurt Levan,**

*Counter-Plaintiffs/Third-Party
Plaintiff's*

vs.

**Reflection Window & Wall, LLC, and
Joel Phelps,**

*Counter-Defendants/Third-
Party Defendant.*

COUNTERCLAIM AND THIRD-PARTY COMPLAINT

Now Come Defendants/Counter-Plaintiffs, Talon Wall Holdings, LLC, Entekk Group, Ltd., Chicago Heights Glass, Inc. and Third-Party Defendant/Third-Party Plaintiff, Kurt Levan (hereinafter collectively referred to as “CHG Counter-Plaintiffs”) and for their Counterclaim against Reflection Window & Wall, LLC (“Reflection” or “RWW”) and their Third-Party Complaint against Joel Phelps (“Phelps”), state as follows:

NATURE OF ACTION

1. The Counterclaim is an action for common law defamation *per se, per quod*, and under the Illinois Slander and Libel Act 740 ILCS 145/2. The Third-Party Complaint sounds in contribution and is directed against Joel Phelps due to breach of his fiduciary duties.

THE PARTIES

2. Chicago Heights Glass, Inc. (“CHG”) is an Illinois corporation which was incorporated on April 23, 1962 and whose principal place of business is South Holland, Cook County, Illinois. At all relevant times, CHG has been an industry leading manufacturer and sub-contractor specializing, most notably, in custom glass façade construction and installation for skyscrapers throughout the Chicagoland area and across the country.

3. Entekk Group, LLC (“Entekk”) is a top-tier custom designer, supplier, and fabricator of state-of-the-art unitized monumental façade systems for the commercial construction market. Entekk is an Illinois corporation which was incorporated on November 18, 2014, whose principal place of business is South Holland, Cook County, Illinois.

4. Talon Wall Holdings, LLC (“TWH” or “Talon Wall”) is a limited liability company organized under Delaware law but authorized to do business in Illinois. TWH’s principal place of business is South Holland, Cook County, Illinois.

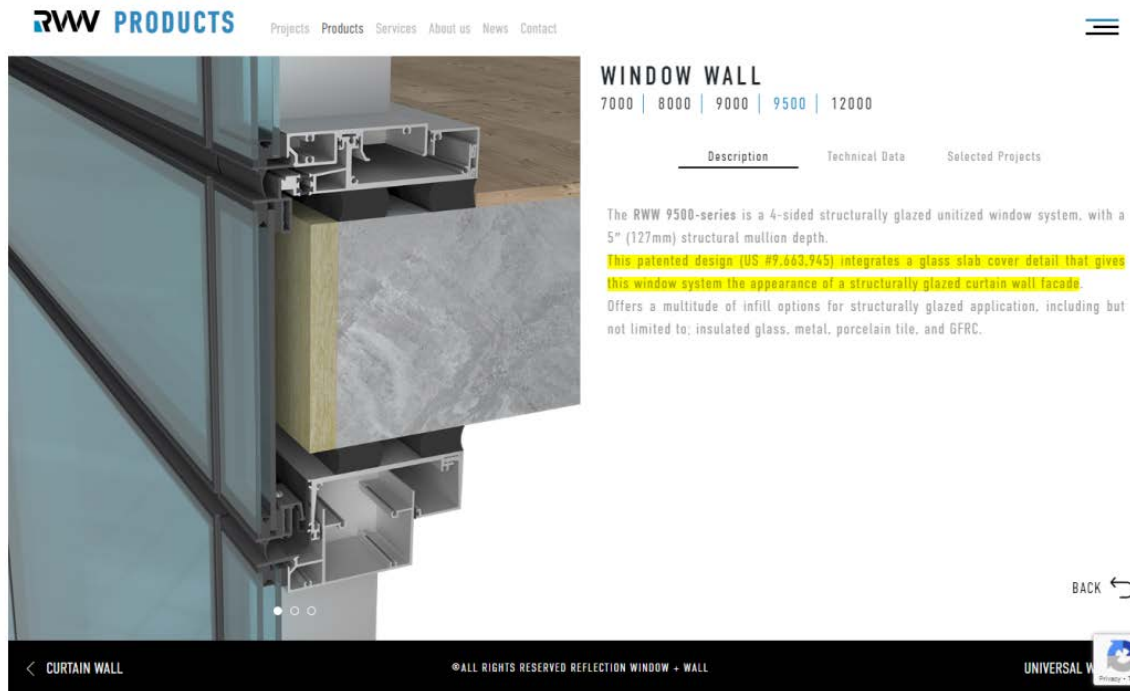
5. Kurt LeVan (“LeVan”) is the majority owner and the Manager/President of TWH, Entekk, and CHG.

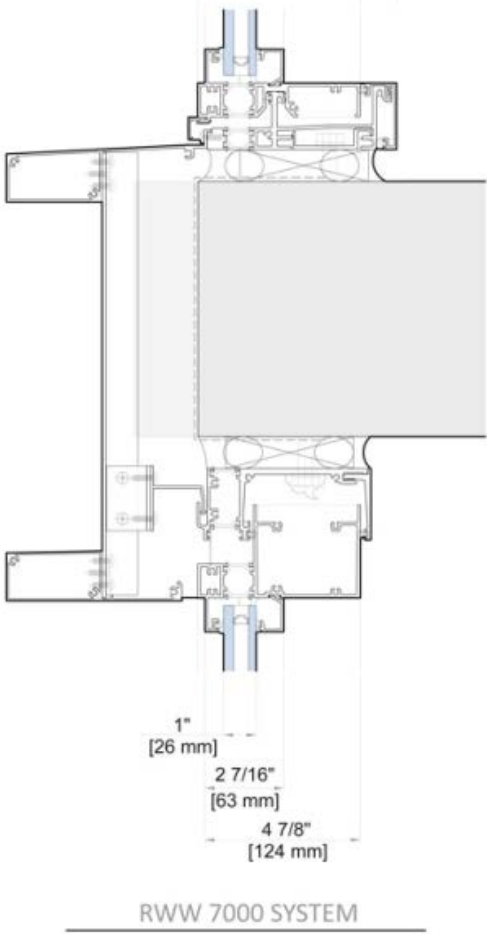
6. Reflection is a manager managed Illinois limited liability company whose address is 2525 N. Elston Ave., Suite D-240, Chicago, Cook County, IL 60647. Reflection's manager is Rodrigo D'Escoto.

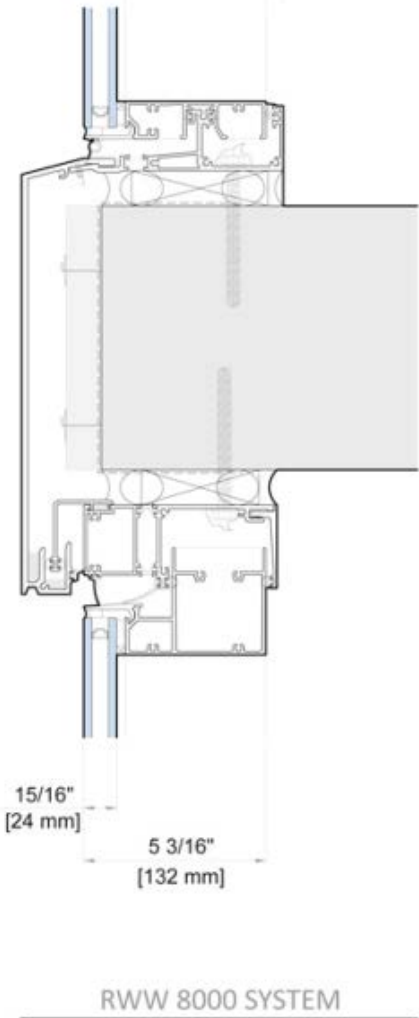
7. Phelps is an individual residing in Indiana who, until June of 2020, worked for CHG. Phelps is now employed by Reflection as Chief Operating Officer.

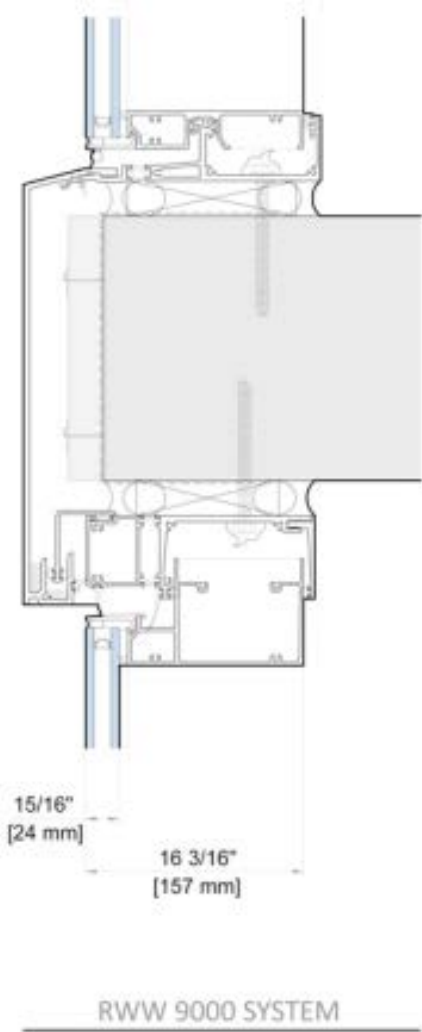
FACTS COMMON TO ALL COUNTS

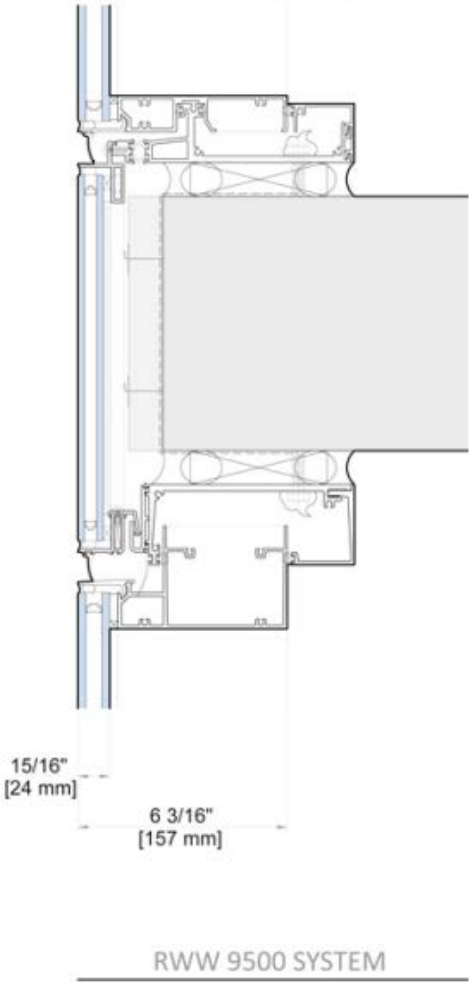
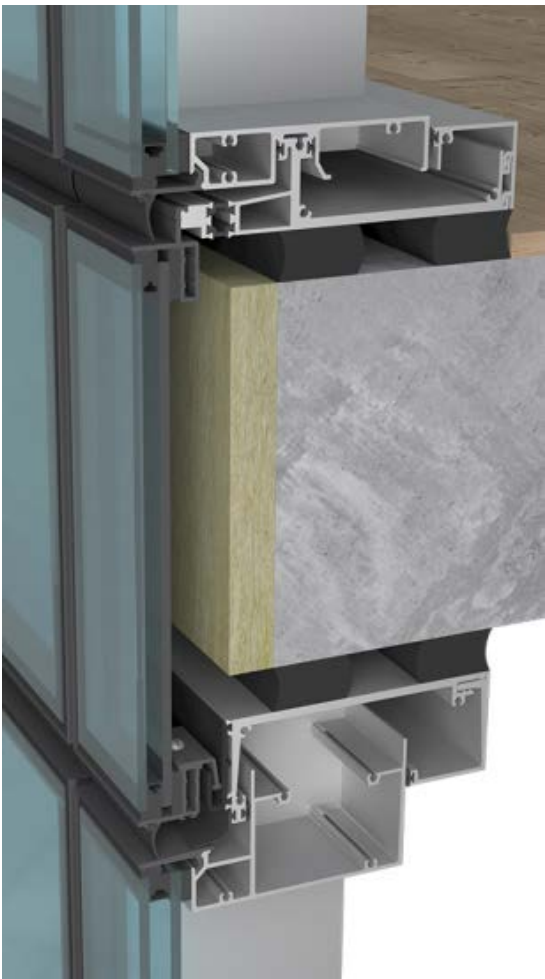
8. RWW is in the business of manufacturing and installing facades and related components for high rise buildings, either directly or through others. RWW is a long-time manufacturer and installer of window façade systems. RWW currently manufactures and installs a window wall type façade and offers five series thereof, the 7000 Series, 8000 Series, 9000 Series, 9500 Series and 12000 Series (the "RWW Window Wall Facades" or "RWW Window Wall Systems"):

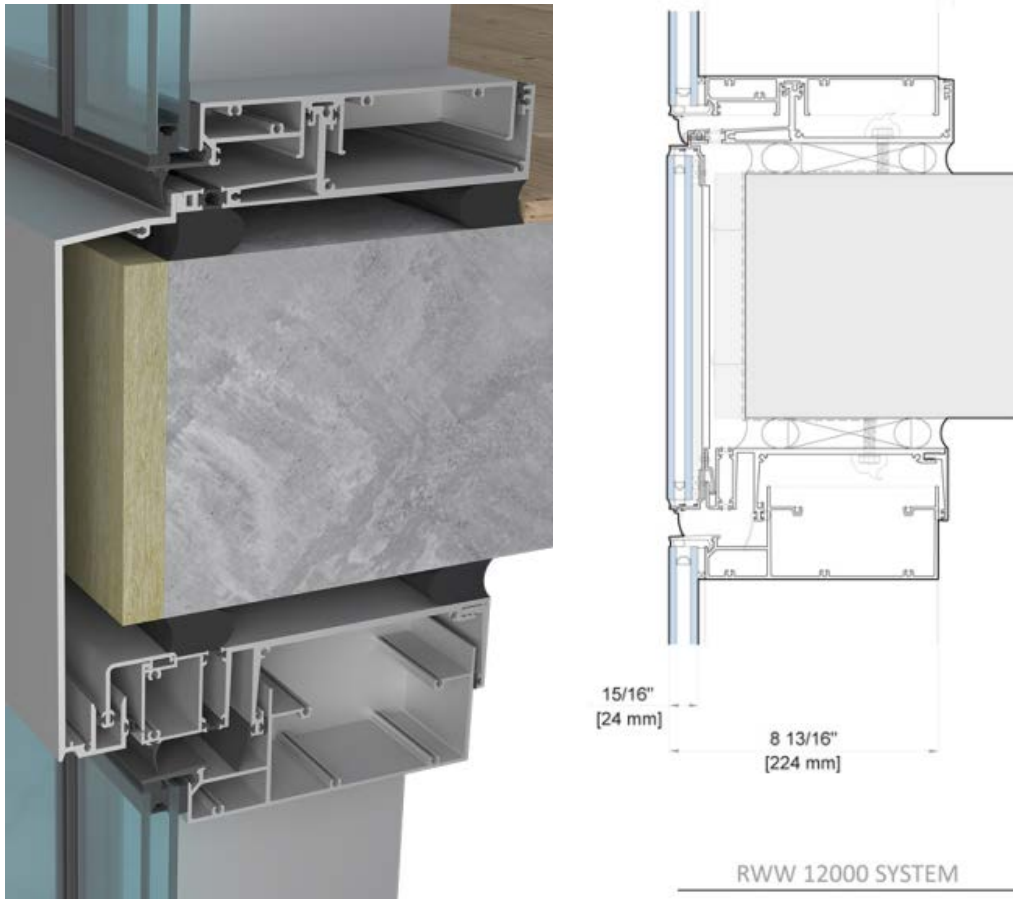












9. In paragraphs 29 through 32 of their Complaint in the above-captioned action, Defendants allege that because the exterior edge of floor slabs in window wall systems extends to and between an upper floor window frame element and a lower floor window frame element, window wall systems, and presumably the RWW Window Wall Systems, “are known for exceeding fire safety objectives for the spread of flames and hot gasses floor to floor and hence international and local building codes do not require edge-of-slab fire safing”:

29. Among the advantages of a window wall system, particularly with respect to high-rise buildings, is fire safety at the edge of slabs that prevents fire from traveling upward, because the major framing elements are fully compartmentalized between the top of a concrete slab and the underneath of the floor slab (ceiling) above.

30. Because the window wall is installed *between* floor slabs (which slabs can generally withstand exposure to fire for at least two hours), there is no opening (or void) through which fire or smoke can pass directly between floors of the building, thus, by design, window walls can effectively impede the spread of fire and hot gasses from floor to floor.

31. To the extent that fire was to breach the void between a window wall section and floor/ceiling slab, the flame would be drawn (by oxygen) out of the building, thereby protecting units above it from both fire and smoke.

32. As such, window wall systems are known for exceeding fire safety objectives for the spread of flames and hot gasses floor to floor and hence international and local building codes do not require edge-of-slab fire safing for window wall which are required for curtainwall products.

10. In RWW's US Patent No. 9,663,945, RWW similarly explained that window wall systems do not require edge-of-slab fire stopping because the slab edge extends beyond the interior of the system:

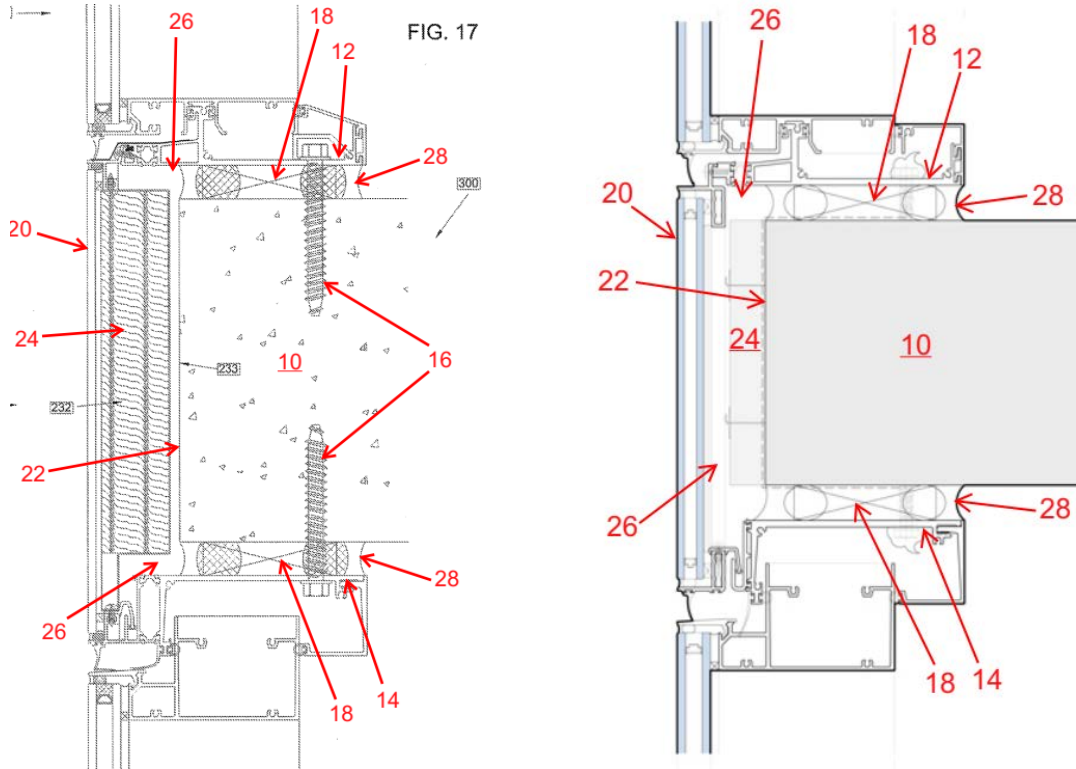
installation at each slab edge/curtain wall condition. **Win-
dow wall does not require fire stopping because the slab
edge extends beyond the interior of the system.**

Col. 2, lines 62-64.

11. For example, as shown in the drawing of the RWW 9500 Series window wall annotated in red below and Fig. 17 from RWW's patent No. US 9,663,945,

window wall systems, and presumably all the RWW Window Wall Systems, comprise a fire safe structure (the “Window Wall Fire Safe Structure”) wherein:

- a. the exterior edge (22) of the floor slab (10) extends beyond the interior of the system to between an upper floor window frame element (12) and a lower floor window frame element (14);
- b. the upper floor window frame element (12) and the lower floor window frame element (14) are secured to the floor slab (10) with screws (16), after their position is adjusted with intermittently spaced shims (18) to compensate for irregularities in the floor slab (10);
- c. a slab edge cover (20) is secured between the upper floor window frame element (12) and the lower floor window frame element (14) for covering the slab exterior edge (22);
- d. insulation (24) is installed either on the slab exterior edge (22) or on the slab edge cover (20);
- e. a slab edge void (26) extends between the upper floor window frame element (12) and the lower floor window frame element (14) along the slab exterior edge (22); and,
- f. silicone caulk (28) is provided in the gap between the upper floor window frame element (12) and top surface of the floor slab (10), and the lower floor window frame element (14) and the bottom surface of the floor slab (10), to seal the slab edge void (26).



12. CHG Counter-Plaintiffs are in the business of manufacturing and installing façades and related components for high rise buildings, either directly or through others under the Talon Wall® mark (the “Talon Wall System”).

13. The Talon Wall System is an industry-altering engineered, unitized, and factory glazed, hybrid curtain wall system. It accommodates a wide variety of window openings, and is far less complex to fabricate and install than all other competitive systems. It also requires less training and skill level to install than competing systems.

14. The Talon Wall System greatly reduces the labor, material and installation charges for curtain wall systems on high rise buildings.

15. The Talon Wall System's robust designs accommodate wide modules and unsupported double spans with no additional internal steel reinforcing or kicker supports at mid-spans.

16. The system also supports LEED goals by using an environmentally friendly, proprietary, reusable metal racking system for delivery to the construction site. This allows the complete unload, distribution, and specific placement of units to floors on a high rise building by two crew members in two hours or less. As a result of the same, the Talon Wall System eliminates dumpster cleanup charges for wood crates and packing material, as the racks may be returned for re-use.

17. The Talon Wall System meets or exceeds project specifications with class leading thermal, structural, air, acoustic and water performance. Due to the Talon Wall System's significant advantages over other industry competitors, it does not require field applied acoustical, fire-safing insulation¹, mullion wraps, or fire sealant at floor slab interfaces. It does not require layout or presetting of unit anchors at mounting locations to floor slabs.

18. Due to the unique design characteristics of The Talon Wall System, Counter-Plaintiffs have a significant competitive advantage over their industry peers (such as Reflection) as the Talon Wall System has become the preferred standard for many high-rise construction projects.

19. CHG Counter-Plaintiffs patented the structure and process through which The Talon Wall System is fabricated and installed, and which provides CHG

¹ However, fire-safing insulation is available upon request and has passed industry-standard tests for fire safety.

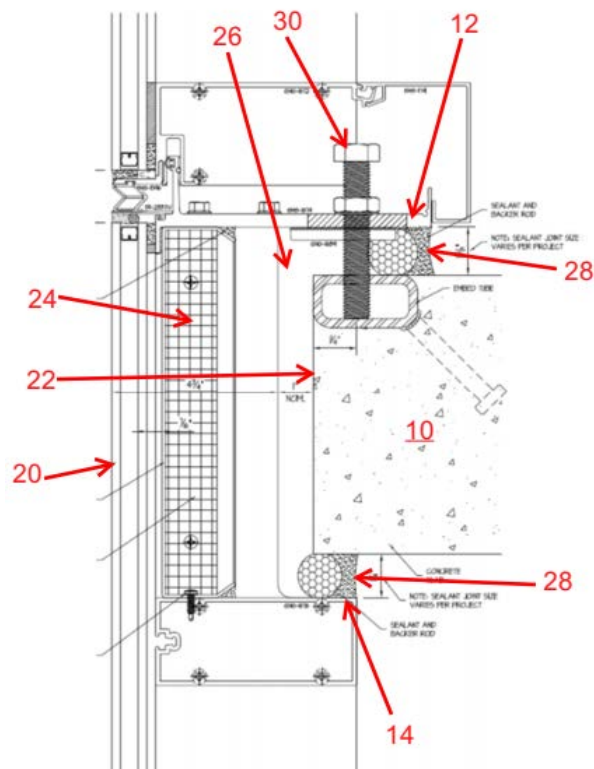
Counter-Plaintiffs their competitive advantage, namely, the structure and process through which the Talon Wall System's unitized panels are installed and adjusted vertically and horizontally along the exterior edge of the building floor slabs (the "Patented Adjustability Structure and Process"). CHG Counter-Plaintiffs hold U.S. Patent Nos. 9,752,319; 10,094,111; 10,202,764; 10,233,638; and 10,724,234, which cover the Patented Adjustability Structure and Process.

20. CHG Counter-Plaintiffs have sued Counter-Defendants for copying the Patented Adjustability Structure and Process and infringing the CHG Counter-Plaintiffs' patents.

21. In some of CHG Counter-Plaintiffs' facades, CHG Counter-Plaintiffs' Talon Wall System utilizes a Window Wall Fire Safe Structure nearly identical to the RWW Window Wall Systems and differs only in its Patented Adjustability Structure and Process, wherein, as shown hereinbelow in the annotated in red drawing of Counter-Plaintiffs' Talon Wall System:

- a. the exterior edge (22) of the floor slab (10) extends beyond the interior of the system to between an upper floor window frame element (12) and a lower floor window frame element (14);
- b. the upper floor window frame element (12) and the lower floor window frame element (14) are secured to the floor slab (10) and their position is adjusted to compensate for irregularities in the floor slab (10) with its Patented Adjustability Structure and Process which includes posts (30);

- c. a slab edge cover (20) is secured between the upper floor window frame element (12) and the lower floor window frame element (14) for covering the slab exterior edge (22);
- d. insulation (24) is installed either on the slab exterior edge (22) or on the slab edge cover (20);
- e. a slab edge void (26) extends between the upper floor window frame element (12) and the lower floor window frame element (14) along the slab exterior edge (22); and,
- f. silicone caulk (28) is provided in the gap between the upper floor window frame element (12) and top surface of the floor slab (10), and the lower floor window frame element (14) and the bottom surface of the floor slab (10), to seal the slab edge void (26).

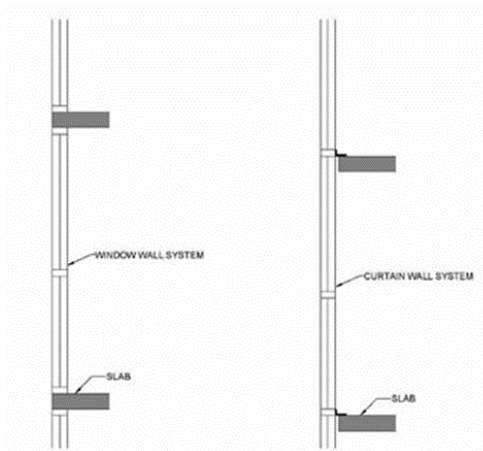


22. The Talon Wall System has been stringently evaluated by experts on fire safety through the process of approval for large projects throughout the country, and through third-party Engineering Judgments (including third-party fire testing).

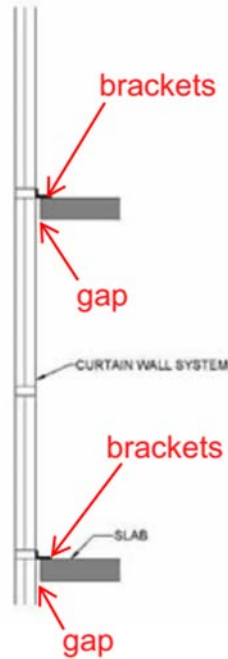
***Curtain Wall vs. Exposed Edge Window Wall
vs. Slab Edge Covered Window Wall***

23. On an extremely basic level, the difference between a curtain wall and a window wall is in its placement between the concrete floor slabs of a building. However, this is not as simple as it may seem on first glance when the details of individual designs are analyzed.

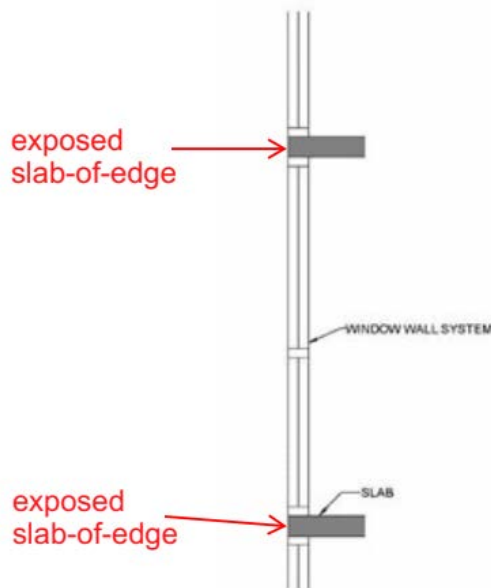
24. Counter-Defendants posit that the difference between these systems is simple, and attach the below illustration to their complaint:



25. Through their Complaint and the above illustration, Counter-Defendants allege that curtain wall systems are suspended in front of the slab exterior edge with brackets and, hence, have a gap or void between the slab edge and the system, which must be stuffed with fire safing material to prevent the spread of fire between floors:



26. Counter-Defendants would also have this Court believe that all window wall systems comprise floor slabs which extend completely through the upper and lower floor window frame elements and have an exposed slab-of-edge:



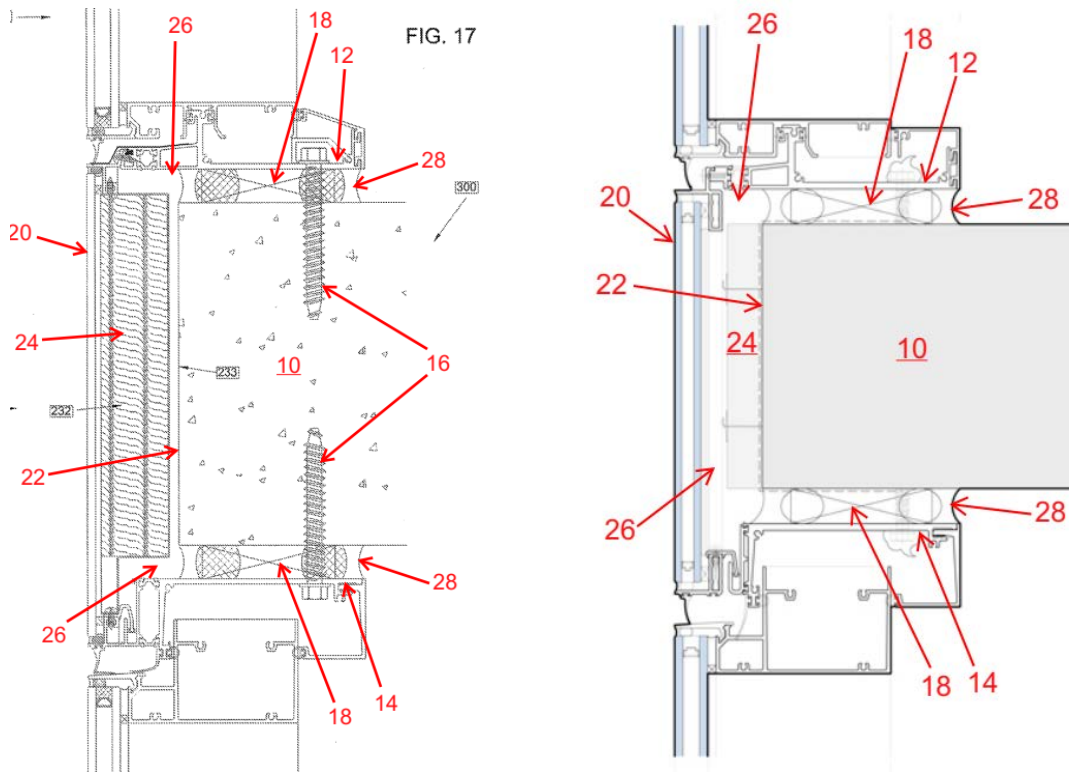
27. However, most modern window wall systems do *not* comprise an exposed slab-of-edge. Instead, modern window wall systems comprise a slab edge cover so as

to cover from plain view the slab-of-edge and/or insulation that may be installed thereat.

28. Notwithstanding the same, Defendants deceptively omit from their submissions that *none* of the RWW Window Wall Systems comprise an exposed edge-of-slab.

29. In fact, upon information and belief, Defendants have, for at least a decade, not installed a window wall which comprises an exposed edge-of-slab.

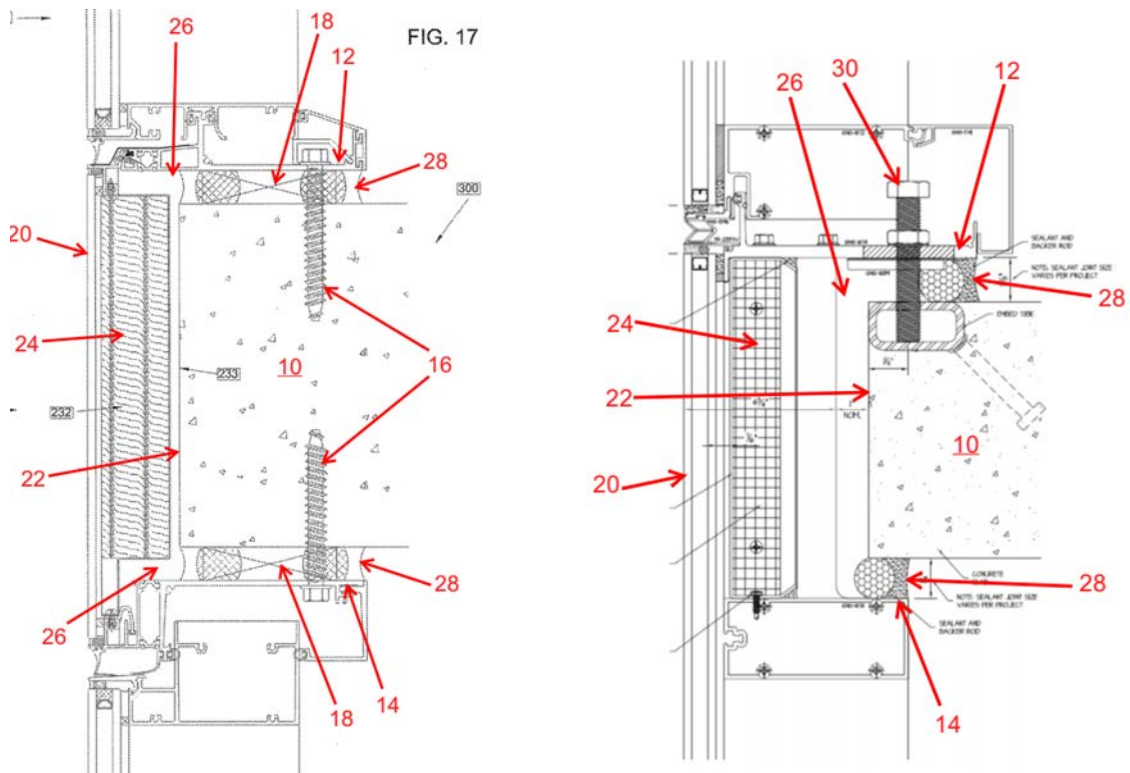
30. Despite their failure to acknowledge the same, all of the RWW Window Wall Systems comprise a slab edge cover such as that identified by the numeral 20 hereinbelow in the RWW 9500 Series window wall and Fig. 17 from RWW's patent No. US 9,663,945:



31. As illustrated below, in the drawing of RWW 9500 Series window wall (Fig. 17 from RWW’s patent No. US 9,663,945 on the left) and the drawing of the Talon Wall System (on the right), although the RWW window wall is secured to floor slab (10) with screws 16, whereas the Talon Wall System is secured to the floor slab (10) with CHG Counter-Plaintiffs’ Patented Adjustability Structure and Process which includes posts (30), both the RWW Window Wall Systems and the Talon Wall System comprise the identical Window Wall Fire Safe Structure wherein;

- a. the exterior edge (22) of the floor slab (10) extends beyond the interior of the system to between an upper floor window frame element (12) and a lower floor window frame element (14);

- b. a slab edge cover (20) is secured between the upper floor window frame element (12) and the lower floor window frame element (14) for covering the slab exterior edge (22);
- c. insulation (24) is installed on the slab edge cover (20);
- d. a slab edge void (26) extends between the upper floor window frame element (12) and the lower floor window frame element (14) along the slab exterior edge (22); and,
- e. silicone caulk (28) is provided in the gap between the upper floor window frame element (12) and top surface of the floor slab (10), and the lower floor window frame element (14) and the bottom surface of the floor slab (10), to seal the slab edge void (26).



32. Stated plainly, the RWW Window Wall Systems and the Talon Wall System utilize the *same* Window Wall Fire Safe Structure. Thus, if the Talon Wall System is not fire safe, the RWW Window Wall Systems fare no better.

33. As Reflection well knows, the RWW Window Wall Systems and the Talon Wall System both utilize the same Window Wall Fire Safe Structure, such that they are both fire safe and do not require edge-of-slab fire safing, as do *traditional* curtain wall systems.

34. Both the RWW Window Wall Systems and the Talon Wall System utilize the same Window Wall Fire Safe Structure and, if the International and local building codes were to require edge-of-slab fire safing for the Talon Wall System, then the International and local building codes would also require edge-of-slab fire safing for the RWW Window Wall Systems.

35. In fact, the International and local building codes do not require edge-of-slab fire safing for either the RWW Window Wall Systems or the Talon Wall System.

36. In short, Counter-Defendants cannot have it both ways. The Talon Wall's use of the Window Wall Fire Safe Structure (among other protections) is accepted as being fire safe not just by the industry, but by Counter-Defendants' own actions, as evidenced by their use of the identical Window Wall Fire Safe Structure.

Talon Wall's Development and Fire Testing

37. Because of the extensive design work, testing, fabrication costs, pricing and marketing associated with the design and creation of the Talon Wall System, if

a competitor had the same extensive industry experience in designing and installing window and curtainwall systems, it would take an equally experienced and qualified competitor an equivalent number of years and several million dollars to organically develop and reproduce a system that could compete with Talon Wall.

38. As part of the design and testing of Talon Wall, CHG Counter-Plaintiffs requested Engineering Judgments from several reputable safety firms.

39. Additionally, the CHG Counter-Plaintiffs had several fire tests done to ASTM E 2307² and NFPA 285³ standards.

40. Beginning in 2016, Entek provided Global Fire Protection Group (“Global”) with materials to render an Engineering Judgment on the fire safety of the Talon Wall System, which, at that time, was called the 7000PAF Window Wall System.

² ASTM is the American Society for Testing and Materials that establishes and publishes a variety of standardized tests for construction materials and components, such as a window wall or curtainwall. ASTM E 2307 is the accepted standard test for fire and temperature for a window system, whether window wall or curtain wall. It measures the performance of a perimeter fire barrier and its ability to maintain a seal to prevent fire spread and establishes a recognized test method and criteria for the evaluation of the ability of a perimeter fire barrier to maintain the fire resistance where a floor and exterior wall assembly are juxtaposed to a perimeter joint. (See ASTM 1.1, 1.3). The recommended testing method in the standard measures fire exposure from an interior compartment and using a flame emitted from a burner below a window specimen, a flame plume emitted from below a window burner (See ASTM 1.1-1.4). Passing results for fire are noted as an “F” rating and passing results for temperature are noted as a “T” rating. Notably, ASTM E 2307 does not measure smoke but solely recommends smoke be observed (ASTM e 2307 states: *This test method does not provide quantitative information about the perimeter fire barrier relative to the rate of leakage of smoke or gases or both. While it requires that such phenomena be noted and reported when describing the general behavior of perimeter fire barrier during the fire-resistance test, such phenomena are not part of the conditions of compliance.*

³ NFPA is the National Fire Protection Association. The NFPA 285 test provides a standard test method for determining the fire propagation characteristics of exterior wall assemblies and panels used as components of curtail wall assemblies. See NFPA 285 (2019). This test measures vertical fire propagation (i.e., flammability) upwards of a façade covering of metal.

41. As of June 24, 2016, Global opined that the system presented no fire exposure hazard between floors because no exposed end of a wall joint existed, which would have allowed for the passage of fire between floors at the location of the window wall assembly. A true and accurate copy of the June 24, 2016 Engineering Judgment of Global Fire Protection Group and Supplemental Engineering Judgment attached thereto and dated June 30, 2016, providing a 2 hour “F” Rating, is attached hereto and incorporated herein as Exhibit A. In that same Engineering Judgment, John Campbell opined that it is the opinion of Global that the installation of a listed firestop system (like that required for a *typical* curtain wall installation), is not required. *Id.*

42. Thereafter, in 2018, the CHG Counter-Plaintiffs reached out to Global to enter into a services agreement for the provision of several separate and distinct Engineering Judgments for specific projects that Counter-Plaintiffs would be installing Talon Wall upon. A true and accurate copy of the Proposed January 11, 2018 Engineering Judgment & Compliance review Services—Professional Services Agreement between Global and Chicago Heights Glass is attached hereto and incorporated herein as Exhibit B.

43. The engagement agreement specifically contemplated that it was prepared for Global to provide Engineering Judgments and compliance reviews or a complete engineering draft and design, and also provided that Global would provide Engineering Analysis Letters along with an Approval Stamp and Signature by a

Licensed Professional Engineer (PE/P.Eng.) for the appropriate State/Province where the system was being installed. *See* Exhibit B.

44. Subsequently, Global provided the following stamped project specific Engineering Judgments for the project listed therein:

- a. February 2018: 734 North Milwaukee, Chicago, Illinois, 2 Hour “F Rating” and system does not present an exposure hazard between floors. An exposed end of wall joint does not exist allowing for the passage of fire between floors at the location of the window wall assembly. It is the opinion of Global that the installation of a listed firestop system similar to that required for typical curtain wall installation is not required. A true and accurate copy of the Global February 2018 Engineering Judgment for 734 North Milwaukee, Chicago, IL, is attached hereto and incorporated as Exhibit C.
- b. April 2018: 1430 Wynkoop, Denver, Colorado, F Rating. As designed, the system does not present an exposure hazard between floors. An exposed end of wall joint does not exist allowing for passage of fire between floors at the location of the window wall assembly. It is the opinion of Global that the installation of a listed firestop system for similar to that required for a typical curtain wall installation is not required. A true and accurate copy of the Global April 2018 Engineering Judgment for

1430 Wynkoop, Denver, Colorado, is attached hereto and incorporated as Exhibit D.

- c. May 2018: The Hard Rock Hotel, New York, New York, same as 734 North Milwaukee. A true and accurate copy of the Global May 2018 Engineering Judgment for The Hard Rock Hotel, New York, NY, is attached hereto and incorporated as Exhibit E.
- d. April 2019: 210 Great Gulf, Toronto, Ontario, 2 Hour “F Rating” and system does not present an exposure hazard between floors. An exposed end of wall joint does not exist allowing for the passage of fire between floors at the location of the window wall assembly. It is the opinion of Global that the installation of a listed firestop system similar to that required for typical curtain wall installation is not required. A true and accurate copy of the Global April 2019 Engineering Judgment for 210 Great Gulf, Toronto, Ontario, is attached hereto and incorporated as Exhibit F.
- e. April 2019: 120 Great Gulf, Toronto, Ontario, Global reviewed the Entekk Talon Wall documentation and documentation provided by Dow Corning, and opined: As designed the Talon Edge of Slab System does not present an exposure hazard between floors, as an exposed end of wall joint does not exist with this system allowing for the passage of fire between floors. A true and

accurate copy of the Global April 2019 120 Great Gulf, Toronto, Ontario, is attached hereto and incorporated as Exhibit G.

- f. April 2019: 151 West Hastings, Vancouver, British Canada, 2 Hour “F Rating” and system does not present an exposure hazard between floors. An exposed end of wall joint does not exist allowing for the passage of fire between floors at the location of the window wall assembly. It is the opinion of Global that the installation of a listed firestop system similar to that required for typical curtain wall installation is not required. Global reviewed the documentation provided by Entekk and documentation provided by Dow Corning, and opined: As designed, the Talon Edge of Slab System does not present an exposure hazard between floors, as an exposed end of wall joint does not exist with this system (completely enclosed) allowing for the passage of fire between floors. A true and accurate copy of the Global April 2019 Engineering Judgment for 151 West Hastings, Vancouver, British Canada, is attached hereto and incorporated as Exhibit H.
- g. September 2019: 1375 West Fulton (Fulton/Ogden), Chicago, Illinois, 2 Hour “F Rating” and system does not present an exposure hazard between floors. An exposed end of wall joint does not exist allowing for the passage of fire between floors at the

location of the window wall assembly. It is the opinion of Global that the installation of a listed firestop system similar to that required for typical curtain wall installation is not required. A true and accurate copy of the Global September 2019 Engineering Judgment for 1375 West Fulton (Fulton/Ogden), Chicago, IL, is attached hereto and incorporated as Exhibit I.

- h. September 2019: 169 Meeker Avenue, Newark, New Jersey, Global reviewed the Entek Talon Wall documentation and documentation provided by Dow Corning, and opined: As designed, the Talon Edge of Slab System does not present and exposure hazard between floors, as an exposed end of wall joint does not exist with this system (completely enclosed) allowing for the passage of fire between floors. A true and accurate copy of the Global September 2019 Engineering Judgment for 169 Meeker Avenue, Newark, New Jersey, is attached hereto and incorporated herein as Exhibit J.
- i. September 2019: 2901 West Kingsley Road, Garland, Texas, same as 169 Meeker. A true and accurate copy of the Global September 2019 Engineering Judgment for 2901 West Kingsley Road, Garland, Texas, is attached hereto and incorporated herein as Exhibit K.

- j. November 4 2019: Avalon Cove, Newark, New Jersey, same as 734 North Milwaukee and 120 Great Gulf. A true and accurate copy of the Global November 2019 Engineering Judgment for Avalon Cove, Newark, New Jersey, is attached hereto and incorporated herein as Exhibit L.
- k. June 2021: 1900 Fort Myer Drive, Arlington, Virginia, same as 169 Meeker Avenue and 2901 West Kingsley Road. It is the opinion of Global that the installation of a listed firestop system similar to that required for typical curtain wall installation is not required. A true and accurate copy of the Global June 2021 Engineering Judgment for 1900 Fort Myer Driver, Arlington, Virginia, is attached hereto and incorporated herein as Exhibit M.
- l. June 2021: 1000 South Michigan Avenue, Chicago, Illinois, same as 2901 West Kingsley and 169 Meeker. A true and accurate copy of the Global June 2021 Engineering Judgment for 1000 South Michigan Avenue, Chicago, Illinois, is attached hereto and incorporated herein as Exhibit N.
- m. June 2021: 166 North Aberdeen, Chicago, Illinois, same as 169 Meeker, 2901 West Kingsley and 1000 South Michigan and further adding: It is the opinion of Global that the installation of a listed perimeter fire barrier firestop system similar to that

required for a typical curtain wall installation is not required. As such, the Talon Wall System does not qualify as an exterior curtain wall assembly and does not need to conform to additional CBC requirements for curtain wall assemblies such as Section 715.5 as a spandrel also does not exist. A true and accurate copy of the Global Engineering Judgment for 166 North Aberdeen, Chicago, Illinois, is attached hereto and incorporated herein as Exhibit O.

- n. July 2021: 555 Bryant Street, San Francisco, California, same as 169 Meeker, adding that: This conforms with Section 715.4 of the San Francisco Building code, which requires that any “voids created at the intersection of the exterior curtain wall assemblies and such floor assemblies shall be sealed with a system to prevent the interior spread of fire” and “proprietary testing has been completed by Intertek for the Entekk Talon Wall Façade System and the results of this propriety testing have been reviewed by Global. Testing was completed following the procedures for ASTM E2307... The results of this testing confirm that the Talon Wall System will ensure the 2-hour F-rating and 2-hour T-rating integrity of the floor/wall assembly, preventing the passage of heat and flame from one floor to another.” A true and accurate copy of the July 2021 Global Engineering Judgment for 555

Bryant Street, San Francisco, California, is attached hereto and incorporated herein as Exhibit P.

- o. July 2021: 1111 Church Street, Nashville, Tennessee, same as 169 Meeker, 2910 West Kingsley, 1000 South Michigan, and 166 North Aberdeen, adding that: This conforms with Sections 715.4 of the International Building Code, which requires that “any voids created at the intersection of the exterior curtain wall assemblies and such floor assemblies be sealed with a system to prevent the interior spread of fire” and “proprietary testing has been completed by Intertek for the Entekk Talon Wall Façade System and the results of this proprietary testing have been reviewed by Global. Testing was completed following the procedures for ASTM E2307... The results of this testing confirm that the Talon Wall Façade System will ensure the 2-hour F-rating and 2-hour T-rating integrity of the floor/wall assembly, preventing the passage of heat and flame from one floor to another.” A true and accurate copy of the July 2021 Global Engineering Judgment for 1111 Church Street, Nashville, Tennessee, is attached hereto and incorporated herein as Exhibit Q.
- p. January 2022: 15 Hanover, Newark, New Jersey, same as 1111 Church Street, and adding that: “This conforms with Section 71.4

of the International Building Code, which requires that any “voids created at the intersection of the exterior curtain wall assemblies and such floor assemblies be sealed with a system to prevent the interior spread of fire” and “proprietary testing has been completed by Intertek for the Talon Wall Façade System and the results of this proprietary testing has been reviewed by Global. Testing was completed following the procedures outlined in ASTM E2307... The results of this testing confirm that the Talon Wall Façade System will ensure the 2-hour F-rating and 2-hour T-rating integrity of the floor/wall assembly, preventing the passage of heat and flame from one floor to another.”” A true and accurate copy of the January 2022 Global Engineering Judgment for 15 Hanover, Newark, New Jersey, is attached hereto and incorporated herein as Exhibit R.

- q. April 2022: 160 North Morgan, Chicago, Illinois, same as 1111 Church Street, Nashville, Tennessee, and adding that: “Further, testing was successfully performed for up to 3-hours of fire resistance.” A true and accurate copy of the April 2022 Global Engineering Judgment for 160 North Morgan, Chicago, Illinois, is attached hereto and incorporated herein as Exhibit S.⁴

⁴ Independent Engineering Judgments were also secured from Global for Talon Wall Vertical Mullion Hollows in August 2018, and for independent fire rating tests of the Dow Sealants used in the Talon Wall install in February 2019, both passed with flying colors. A true and accurate copy of the Global

r. June 2022: 333 North Water, Milwaukee, Wisconsin, same as 1111 Church Street and 15 Hanover, and adding that: “This conforms with Sections 715.4 of the International Building Code, which requires that “any voids created at the intersection of the exterior curtain wall assemblies and such floor assemblies be sealed with a system to prevent the interior spread of fire” and “proprietary testing has been completed by Intertek for the Entekk Talon Wall Façade System and the results of this proprietary testing have been reviewed by Global. Testing was completed following the procedures for ASTM E2307... The results of this testing confirm that the Talon Wall Façade System will ensure the 2-hour F-rating and 2-hour T-rating integrity of the floor/wall assembly, preventing the passage of heat and flame from one floor to another. Further, testing was successfully performed for up to 3-hours of fire resistance.”” A true and accurate copy of the June 2022 Global Engineering Judgment for 333 North Water, Milwaukee, Wisconsin, is attached hereto and incorporated herein as Exhibit V.

45. In addition to the Global Engineering Judgments, the CHG Counter-Plaintiffs also engaged third-party safety firms to conduct actual fire tests on the Talon Wall System to ensure it met the ASTM E 2307 and NFPA 285 standards.

Engineering Judgments for the same are attached hereto and incorporated herein as **Exhibit T** and **Exhibit U**.

46. In December of 2020, Counter-Plaintiffs were in negotiations with a company called Kawneer, who was interested in licensing the Talon Wall System. As a result of the same, the CHG Counter-Plaintiffs and Kawneer hired the reputable firm, Intertek, to conduct ASTM E 2307 testing on the Talon Wall System.

47. This test resulted in Intertek stating, “[t]he assembly described and tested in this report met the conditions of ASTM E2307 and attained an ‘F’ and ‘T’ rating of 120 minutes.” Notably this test was performed without any fire retardant packing material and Talon Wall passed. A true and correct copy of the December 2020 Intertek Fire Test report is attached and incorporated as Exhibit W.

48. Then, in October of 2021, the CHG Counter-Plaintiffs again engaged Intertek to further test the Talon Wall System, this time with fire retardant packing material installed. The report stated, “[t]he assembly described and tested in this report met the conditions of ASTM E2307 and attained ‘T’ and ‘F’ ratings of 180 min.” A true and correct copy of the October 2021 Intertek Fire Test report is attached and incorporated as Exhibit X.

49. Finally, in December of 2021, the CHG Counter-Plaintiffs asked Intertek to test Talon Wall under the NFPA 285 standard. As with the foregoing tests, this test report also found the Talon Wall System passed the test and concluded that, “[t]he assembly described and tested in this report met the conditions of NFPA 285-19.” A true and correct copy of the December 2021 Intertek report is attached and incorporated as Exhibit Y.

50. In stark contrast to the many tests and judgments supporting the fire safety of Talon Wall, Reflection has only provided a single listing of the U-Wall to support their claims of superiority to the Talon Wall System. (See Reflection's Complaint Exhibit C).

51. Although Reflection alleges their U-Wall system is peer-reviewed and publicly listed as passing ASTM E 2307, they have recently significantly changed their system from the "Tomahawk" anchor to the "Tomahawk 2."

52. On information and belief this change was due to their clear infringement of CHG-Counter Plaintiffs' patents.

53. Although the original Tomahawk anchor was allegedly listed according to ASTM E 2307 standards, Reflection has not put forth test results for the Tomahawk 2 anchor system.

54. However, upon further inspection of this listing (dated September 27, 2021), it is clear that the test report is primarily related to a company called Specified Technologies, Inc. and their testing of Elastomeric and Firestop Sprays. (See Reflection's Complaint, Exhibit C, p. 1).

55. The Specified Technologies, Inc. test references a generic Curtain Wall Assembly. Importantly, that test does *not* list U-Wall or Reflection's Curtain Wall as fire safe. (*Id.*)

56. Finally, the Specified Technologies, Inc. test referenced by Reflections (as proof of their products superiority), passed only a two hour "F" rating.

Conversely, the Talon Wall System passed the “F” test *and* the three hour “T” rating test.

57. The test report itself instructs readers to go to Intertek’s online directory at <https://bpdirectory.intertek.com> to find out more information about the report. When visiting <https://bpdirectory.intertek.com> as instructed in the report, and searching the database for products related to Reflection or U-Wall, and searching the identifying numbers on the report, only Specified Technologies, Inc. Elastomeric and Firestop sprays return results for passing ASTM E 2307. There is no reference to U-Wall or Reflection.

Reflection’s Attempts to Compete

58. Phelps initially worked for CHG as a project manager between 2009 and 2013. Phelps left CHG for a short time but was later rehired in July of 2015.

59. Upon his re-hire by CHG, as a senior project manager, Phelps’ initial role was to manage CHG’s major projects, in particular, the Optima Signature project. CHG and Phelps had agreed that if their renewed relationship (and the Optima project) were successful, Phelps would be promoted to serve as CHG’s Vice President of Business Development. Following the successful completion of the Optima project, Phelps was subsequently promoted to be CHG’s Vice President of Business Development in 2018. In this role, Phelps assisted CHG in locating high-rise construction jobs suitable for Plaintiff’s proprietary glass façade technologies. In this way, Phelps marketed the Talon Wall System. In doing so, during Phelps’ employment at CHG, in his position at Vice President of Business Development, he

an unabashed champion for the fire safety of Talon Wall, sought after and established the relationship with a Fire Engineering firm, sought and personally obtained and submitted Engineering Judgements for multiple projects, met with Government Officials to promote the safety of the product, created multimedia presentations and handouts, and presented and touted the safety aspects of the product to countless customers, developers, and designers.

60. Incident to his high-level position with CHG, Phelps was routinely given access to CHG's proprietary and confidential information in order to sell jobs to CHG's prospective clients.

61. After several years as CHG's VP of Business Development, Phelps abruptly provided notice to CHG that he was terminating his employment. Although Phelps did not specify who his new employer would be, Phelps made exceedingly clear to CHG that Phelps would be working for a competitor of CHG and Entekk.

62. Upon providing notice of his intention to terminate his employment, CHG and Phelps engaged in extensive negotiations (directly and between their respective counsel) which eventually culminated in the parties agreeing to mutually terminate Phelps' employment with CHG, effective June 12, 2020, pursuant to a certain confidential Severance and Release Agreement.

63. Phelps' departure was to join Reflection as Director of Curtainwall, and in doing so, announce the entry of Reflection in to the curtain wall business. After Phelps abruptly left CHG and joined Reflection, Phelps reached out to Kurt LeVan

and asked to purchase a license to use the Talon Wall System, so that Reflection could market Talon Wall's superior product.

64. After Mr. LeVan declined to sell Reflection a license through Mr. Phelps, Reflection miraculously (and almost immediately) began producing their own version of the Talon Wall System, which they called the U-Wall Tomahawk Anchor System.

65. Instead of going through the extensive research and design process that CHG went through to create the Talon Wall System, Reflection took a short cut and essentially copied CHG's patented product.

66. Further, although there are hundreds of gasket and interlock designs used in the unitized curtainwall industry, Reflection chose to use the exact same gasket utilized by the CHG Counter-Plaintiffs. This deliberate decision was made based upon the incredible demonstrated performance of the Talon Wall product, to which Phelps was directly privy.

67. In the short period of time following Phelps' appointment as Reflection's Director of Curtain Wall, and now Chief Operating Officer, RWW was able to design, test, price, and market its knock-off UW8000 system to CHG's customers and clients. Importantly, Reflection had no prior experience with curtain wall systems prior to introducing this knock-off product. The *only* way this could have occurred on this expedited timeframe was if Phelps provided Reflection with an improper head start via the use of CHG Counter-Plaintiffs' confidential information.

68. In light of the above, CHG Counter-Plaintiffs were not without a remedy. They immediately filed a patent lawsuit alleging patent infringement. Reflection, tacitly admitting their infringement, elected to change its design to the Tomahawk 2 Anchor system.

69. Desperate to find a way to compete, Reflection deemed it necessary and appropriate to file this lawsuit, which baselessly alleges that the Talon Wall System is not fire safe. In an effort to compete through the courts rather than the marketplace, Reflection's Complaint alleges that multiple third-party fire tests and Engineering Judgments were fraudulent, and part of some far-reaching and illogical conspiracy.

The CHG Suit against Phelps

70. Following Phelps' move to Reflection, CHG and Entekk filed suit against Phelps for Breach of Contract and Breach of Fiduciary Duties.

71. Through the same attorneys representing Reflection here, Phelps filed several motions to dismiss, which were denied in large part. The lawsuit against Phelps remains pending in the Northern District of Illinois.

72. In one of Phelps' motions to dismiss, he likewise called into question the fire safety of Talon Wall, alleging it was a public safety concern such that he should not be held to the confidentiality requirements he agreed to when accepting a severance payment.

73. In response, Mr. Levan submitted a sworn declaration to the Court, reiterating that Talon Wall was extremely safe, had passed numerous fire safety

tests, and had received numerous fire safety Engineering Judgments from prominent engineering firms. A true and correct copy of the Levan Declaration is attached and incorporated as Exhibit Z.

74. Reflection now claims these sworn declarations are false and fraudulent.

The Reflection Lawsuit and Press Release

75. As they suffered repeated failures in the marketplace, Reflection sought to desperately and falsely advance its claim that Talon Wall was not fire safe by filing the above-captioned lawsuit on July 6, 2022.

76. Before the CHG Counter-Plaintiffs had even been served with the lawsuit, Reflection put out a press release, on July 7, 2022, touting the allegations made in the suit filed the day before. The July 7, 2022 press release is attached and incorporated herein as Exhibit AA.

77. The press release quoted extensively from the lawsuit, and alleged that the Engineering Judgments and fire test reports showing the Talon Wall System is safe were all fraudulent. The press release further claimed that Mr. LeVan and his companies were aware the Engineering Judgments and test reports were not accurate, and deceptively marketed the Talon Wall System to customers as fire safe when the CHG Counter-Plaintiffs knew it was not. In doing so, the Counter-Defendants deliberately mischaracterized, misquoted and misrepresented ASTM standards in an effort to scare monger and create suspicion when Counter-Defendants knew that all test requirements were met and passed by the Talon Wall System.

78. On information and belief, the purpose of sending the press release was to maliciously harm the CHG Counter-Plaintiffs' businesses and attempt to secure additional business for Counter-Defendants' own curtain wall and window wall products at the expense of harming the reputation of the CHG Counter-Plaintiffs.

79. Consistent therewith, the press release was sent to numerous online and paper news gathering organizations.

80. Upon information and belief, and through a diligent investigation, the following organizations have been informed of the defamatory press release and by extension the allegations of the above-captioned lawsuit either by receiving it directly from Reflection or learning of it due to Reflection's publication of the press release:

- a. Clark Construction
- b. bKl Architects
- c. HPA Architects
- d. Antonuvich Architects
- e. Goettsch Partners
- f. Peerless Products
- g. Power Construction
- h. Sterling Bay Real Estate
- i. Josloff Glass
- j. Tramell Crow Properties
- k. Brookfield Properties
- l. Skender Construction
- m. Alliance Glazing Technologies
- n. TEPCO Glass
- o. Consulting Collaborative
- p. Walsh Construction
- q. Thomas Moore
- r. Mark Meshulam
- s. LinkedIn
- t. Alliance Architectural Solutions
- u. Burns Architectural Products
- v. US Glass Magazine

- w. Engineering News Record Magazine
- x. Yahoo Finance
- y. Bloomberg Business
- z. Related Midwest
- aa. Thornton Tomasetti Engineers
- bb. Curtainwall Design Consulting
- cc. Gensler
- dd. AECOM
- ee. Giratanna Partners
- ff. Guardian Glass
- gg. Vitro Glass
- hh. Oldcastle Glass
- ii. TriStar Glass

81. It is expected that many more individuals and businesses in the industry will learn of the untrue statements in the press release in the near future.

COUNT I
DEFAMATION PER SE
(CHG Counter-Plaintiffs Against Reflection)

82. The CHG Counter-Plaintiffs repeat and reallege each of the allegations in paragraphs 1-82 as though set forth in full herein.

83. Reflection's July 7, 2022 press release made numerous false statements about the CHG Counter-Plaintiffs and their businesses.

84. These false statements included but are not limited to the below:

- a. That the Talon Wall System is not fire safe;
- b. That the Talon Wall System does not meet ASTM E 2307 standards;
- c. That the CHG Counter-Plaintiffs are/were aware the Talon Wall System is not fire safe; and,

- d. That the CHG Counter-Plaintiffs deceptively and recklessly touted the fire safety of the Talon Wall System, despite knowledge to the contrary.

85. These statements constitute defamation *per se* because they are so obviously and materially harmful that injury to reputation may be presumed and the statement consist of words that prejudice a party, or impute lack of ability, in his or her trade, profession or business.

86. The press release was published widely to the public at large and the entire fenestration industry and continues to be available online in several publications.

87. As a result of the publication of the false statements in the press release, the CHG Counter-Plaintiffs have suffered and will continue to suffer damage to their reputation and businesses, in an amount no less than \$150,000,000.

COUNT II
DEFAMATION PER QUOD (in the alternative to Count I)
(CHG Counter-Plaintiffs Against Reflection)

88. The CHG Counter-Plaintiffs repeat and realleges each of the allegations in paragraphs 1-87 as though set forth in full herein.

89. Reflection's July 7, 2022 press release made numerous false statements about CHG Counter-Plaintiffs and their businesses. The false statements included but are not limited to:

- a. That the Talon Wall System is not fire safe;

- b. That the Talon Wall System does not meet ASTM E 2307 standards;
- c. That the CHG Counter-Plaintiffs are/were aware that Talon Wall System is not fire safe; and,
- d. That the CHG Counter-Plaintiffs deceptively and recklessly touted the fire safety of the Talon Wall System, despite knowledge to the contrary.

90. These statements constitute defamation *per quod* because either the defamatory character of the statements is not apparent on their face and resort to extrinsic circumstances is necessary to demonstrate its injurious meaning; or the statements are defamatory on their face, but do not fall within one of the limited categories of statements that are actionable *per se*.

91. The press release was published widely to the public at large and the entire fenestration industry and continues to be available online in several publications.

92. As a result of the publication of the false statements in the press release, the CHG Counter-Plaintiffs have suffered and will continue to suffer damage to their reputation and businesses, in an amount no less than \$150,000,000.

COUNT III
DEFAMATION/SLANDER UNDER 740 ILCS 145/2
(Kurtis LeVan Against Reflection)

93. LeVan repeats and realleges each of the allegations in paragraphs 1-93 as though set forth in full herein.

94. Reflection's July 7, 2022 press release made numerous false statements about LeVan and his businesses. The false statements included but are not limited to:

- a. That the Talon Wall System is not fire safe;
- b. That the Talon Wall System does not meet ASTM E 2307 standards;
- c. That LeVan was aware the Talon Wall System is not fire safe; and,
- d. That LeVan deceptively and recklessly touted the fire safety of the Talon Wall System despite knowledge to the contrary.

95. Reflection's July 7, 2022 press release was made with full knowledge that Kurt LeVan had submitted sworn testimony in the *CHG v. Phelps* matter, testifying to the sufficiency of the Talon Wall System's fire safety and the numerous test and Engineering Judgments it had undergone.

96. Reflection's actions amount to actionable slander under 740 ILCS 145/2 as Reflection is charging Mr. LeVan with swearing falsely in a court proceeding, despite Reflection's knowledge of the falsity of their claim.

97. The press release was published widely to the public at large and the entire fenestration industry and continues to be available online in several publications.

98. As a result of the publication of the false statements in the press release, LeVan has suffered and will continue to suffer damage to his reputation and businesses, in an amount no less than \$150,000,000.

COUNT IV
COMMERCIAL DISPARAGEMENT
(CHG Counter-Plaintiffs Against Reflection)

99. The CHG Counter-Plaintiffs repeat and reallege each of the allegations in paragraphs 1-99 as though set forth in full herein.

100. Reflection's July 7, 2022 press release made numerous false statements about the CHG Counter-Plaintiffs and their businesses. The false statements included but are not limited to:

- a. That the Talon Wall System is not fire safe;
- b. That the Talon Wall System does not meet ASTM E 2307 standards;
- c. That the CHG Counter-Plaintiffs are/were aware that the Talon Wall System is not fire safe;
- d. That the CHG Counter-Plaintiffs deceptively and recklessly touted the fire safety of the Talon Wall System, despite knowledge to the contrary.

101. These false statements constitute commercial disparagement because such statements impugn the quality of the goods and services provided by the CHG Counter-Plaintiffs.

102. The press release was published widely to the public at large and the entire fenestration industry and continues to be available online in several publications.

103. As a result of the publication of the false statements in the press release, the CHG Counter-Plaintiffs have suffered and will continue to suffer damage to their reputation and businesses, in an amount no less than \$150,000,000.

COUNT V
CONTRIBUTION
(CHG Against Phelps)

104. CHG repeats and realleges each of the allegations in paragraphs 1-104 as though set forth in full herein.

105. When Phelps was an employee of CHG, one of his duties was obtaining fire testing and Engineering Judgments regarding the Talon Wall to ensure the safety of Talon Wall.

106. Phelps had a duty to CHG to obtain these judgments and testing utilizing a reasonable degree of care and skill as others would be held to in his position, and a duty to act with candor and honesty in obtaining these judgments and testing in order to receive accurate results.

107. Phelps retained Global on several occasions and consistently received positive Engineering Judgments as detailed throughout this pleading.

108. On information and belief, prior to Phelps' leaving CHG for Reflection, Phelps began compiling and leaking confidential company information regarding

CHG and its affiliates to Reflection, in order to secure a position with Reflection, and harm CHG.

109. As a high-level and highly compensated employee of CHG, Phelps had an absolute duty of loyalty to CHG, including ensuring that CHG's information and property was properly and safely maintained, and hidden from CHG's competitors, such as Reflection.

110. Clearly, Phelps was aware of the significant damage release of CHG's confidential information and company property would cause if released to CHG's competitors.

111. Phelps was also under a duty to report to CHG any disclosure of the confidential information and company property to CHG's competitors, such as Reflection.

112. Phelps breached these duties by: (1) improperly compiling, saving, copying or otherwise gathering confidential information, company information and other information including Engineering Judgments regarding Talon Wall for his own use and the use of CHG's competitors; (2) disclosing the confidential information, company property and other information to RWW while employed by CHG; (3) failing to notify CHG of these actions and disclosures; (4) commissioning and procuring Engineering Judgments he would utilize for his own gain to sell the Talon Wall System for his own personal gain and benefit while knowing he would provide those same Engineering Judgments to attack the Talon Wall System on behalf of his prospective and now employer, RWW; (5) disseminating those same

Confidential Engineering Judgments and other confidential information to attack the safety and reliability of the Talon Wall System knowing that the fire safety design of the Talon Wall System utilizes an improved version of the fire safety design of RWW's window wall systems by incorporating the concrete slab as a full fire stop; (6) falsely portraying those Engineering Judgments and confidential information to create a fire safety risk after having procured those Engineering Judgments and providing them to RWW; and/or, (7) other breaches of his fiduciary duty to CHG.

113. As a direct and proximate result of Phelps' intentional breach of his fiduciary duties, CHG has been damaged in an amount no less than \$150,000,000 and has and will suffer ongoing damages due to the lawsuit at issue here caused by Phelps' breach.

WHEREFORE, Counter-Plaintiffs, Chicago Heights Glass, Inc., Entekk Group, Ltd., Talon Wall Holdings, LLC, and Kurtis Levan, respectfully request that this Honorable Court enter an Order as follows:

- A. Awarding damages incurred by the CHG Counter-Plaintiffs in an amount to be proven at trial;
- B. Awarding punitive damages;
- C. Directing Counter-Defendants to recall and retract all defamatory publications from persons to whom they communicated the publications;
- D. Directing Counter-Defendants to issue a press release to the same organizations as their defamatory press release correcting and

retracting their false statements made about the CHG Counter-Plaintiffs and their products;

- E. Providing injunctive relief against Counter-Defendants preventing them from making further defamatory statements regarding the CHG Counter-Plaintiffs or their products;
- F. Requiring an accounting of Reflection's profits from the foregoing misconduct;
- G. Requiring disgorgement of profits resulting from all unlawful activity;
- H. Holding all Counter-Defendants jointly and severally liable; and,
- I. For such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

**Chicago Heights Glass, Inc.,
Entekk Group, Ltd., Talon Wall
Holdings, LLC. and Kurtis Levan,**
*Counter-Plaintiffs/Third-Party
Plaintiff*

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