



3. Upon information and belief, Integrys is a Wisconsin Corporation with its principal place of business located at 130 East Randolph Drive, Chicago, Illinois 60601, and was formerly known as Wisconsin Public Service ("WPS").

### **JURISDICTION AND VENUE**

4. This is an action for breach of contract and fraud.

5. This Court has original jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00 and this action is between citizens of different states. This Court has supplemental jurisdiction under § 1367(a)

6. Defendants have transacted business within the State of Minnesota and this judicial district, thus Defendants are subject to the jurisdiction of this Court.

7. Venue is proper in this district under 28 U.S.C. § 1391(a)(2) in that a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Minneapolis, Minnesota.

### **FACTUAL ALLEGATIONS**

8. Defendants approached Plaintiff in November 2004 and requested that Plaintiff provide them with development proposals for long term development opportunities. These lakeshore development opportunities were located throughout Wisconsin and the Upper Peninsula of Michigan and were associated with lakes that had been created through the construction of dams.

9. Thus, in the Spring of 2005, Plaintiff and, upon information and belief, others made development presentations to Defendants.

10. Defendants ultimately selected Plaintiff to be their long term partners for the development of these various lakeshore development opportunities throughout Wisconsin and the Upper Peninsula of Michigan.

11. Included within these long term lakeshore development opportunities were parcels of land located in Michigan which are commonly referred to as Bond Falls, Boney Falls, Cataract Basin and AuTrain Flowage.

12. In or about September 2005, after Defendants had committed themselves to working with Plaintiff on these lakeshore development opportunities and Plaintiff had expended substantial resources toward developing these opportunities, Plaintiff's representatives visited AuTrain Flowage and learned that the lake had been drawn down due to planned dam repairs, thereby rendering development of this site for retail lakeshore property untenable in the near future.

13. After learning of the low water levels and dam repairs at AuTrain Flowage, Plaintiff asked Defendants' representatives on September 30, 2005 if there were any planned dam repairs at any of the contemplated properties, including the Bond Falls site, because Plaintiff was working to purchase the Bond Falls property and other sites from Defendant.

14. Defendants' representatives stated that there were no planned dam repairs at any of the other sites, including Bond Falls. This representation was material because low water levels prevent and significantly delay the successful development and subsequent sale of lakeshore property.

15. Plaintiff relied on this representation and continued to pursue Bond Falls, and other sites, as a tenable lakeshore development opportunity.

16. Accordingly and based on Defendants' representation that there were no planned dam repairs at Bond Falls, Plaintiff and UPPCO entered into a Purchase Agreement on November 2, 2005 whereby Plaintiff would purchase the Bond Falls, Boney Falls and Cataract Basin parcels from UPPCO for \$8.9 million. The parties agreed to close the transaction no later than December 21, 2005.

17. On December 15, 2005, Plaintiff and UPPCO entered into a first amendment to the Purchase Agreement, which, in part, changed the transaction closing date to December 28, 2005.

18. By December 22, 2005, many known contingencies associated with the transaction had not been satisfied, thus Plaintiff would not close the transaction pursuant to the terms of the Purchase Agreement.

19. Thus, on December 22, 2005, Defendants' representatives traveled to Minnesota and met with Plaintiff's representatives at their Minneapolis offices to convince Plaintiff to close the transaction before the end of the year.

20. During this December 22, 2005 meeting in Minneapolis, Defendants' representatives put extreme pressure on Plaintiff to close the transaction.

21. During this meeting in Minneapolis, Plaintiff inquired about the necessary federal and state governmental easements and license approvals required for the development of the lakeshore property because Defendant was to obtain and provide these easements and licenses to Plaintiff.

22. Defendants' representatives told Plaintiff that there were no issues whatsoever that would impact granting these easements and licenses. In fact, Defendants' representatives told Plaintiff that "FERC (Federal Energy Regulatory Commission) does not have to approve the license for the shoreline easements."

23. These representations were material because dock and riparian rights are critical for the successful development and subsequent retail sale of lakeshore property.

24. Plaintiff relied on these representations and continued to pursue the transaction, ultimately closing a few days later.

25. Also during this December 22, 2005 meeting in Minneapolis, the parties discussed many known outstanding contingencies that needed to be resolved before the transaction could close and Plaintiff expressed concern that these pre-closing contingencies to the contract were not fulfilled. These known contingencies concerned zoning and subdivision approvals by local governmental agencies that needed to be resolved before the transaction could close.

26. Recognizing that these known contingencies concerning local zoning and subdivision approvals could not be cleared in time for the transaction to close before the end of 2005, Defendants' representatives agreed to reduce the purchase price to \$5.9 million, but the parties agreed that UPPCO could potentially recover the reduction in purchase price at a later time after the local zoning and subdivision approvals were received and Plaintiff developed the parcels.

27. This reduction in purchase price related to local zoning and subdivision approval contingencies, not to the easements and licenses that Defendants were to provide to Plaintiff.

28. Thus, on December 23, December 27 and December 28, 2005, Plaintiff and UPPCO entered into a second, third and fourth amendment, respectively, to the Purchase Agreement. Each of these three amendments to the Purchase Agreement were executed by Plaintiff in Minneapolis, thus the parties' contract was ultimately formed in Minnesota.

29. On December 30, 2005, Plaintiff and UPPCO closed on the purchase and sale of the properties.

30. After the transaction closed and on January 6, 2006, Plaintiff's and Defendants' representatives attended a meeting in the Upper Peninsula of Michigan involving several Federal, State and Local agencies who own lands in the area.

31. This January 6, 2006 agency meeting was contentious and adversarial. At the meeting, Plaintiff learned that many of the various governmental agencies were opposed to or had serious concerns with the development of the lands and the granting of access easements and licenses for docking.

32. Also at this January 6, 2006 meeting, Plaintiffs' representatives were told for the first time that Defendants' representatives had attended two prior, pre-closing meetings in December of 2005 where it was obvious to those in attendance at those December meetings that there were significant issues and hurdles presented that would substantially and negatively impact the likelihood of forthcoming governmental agency

approval for the necessary license from FERC for shoreline easements and dock rights. Indeed, it was readily apparent that the Federal and State governmental agencies were opposed to UPPCO's granting of the required easements and license.

33. It was conveyed to Plaintiff's representatives that the Michigan Department of Natural Resources, the U.S. Fish and Wildlife, the U.S. Forest Service, and the Michigan Department of Environmental Quality, among others, had expressed substantial concerns to Defendants in December 2005 regarding the necessary easements and licenses that UPPCO was to provide to Plaintiff.

34. On February 7, 2006, Plaintiff's and Defendants' representatives met in Wausau, Wisconsin for a planning session and discussed, among other things, the January 6, 2006 agency meeting. Remarkably, several of Defendants' representatives told Plaintiff that the January 6, 2006 meeting went well relative to the two December 2005 meetings with the same agencies.

35. Based on the January 6 and February 7, 2006 meetings, it was clear that Defendants' representatives' material pre-closing representations regarding the status of the necessary easement and license approvals required for the development of the lakeshore property were false.

36. Then, on or about September 26, 2006, Plaintiff learned that UPPCO had filed an application to install a fuse plug at the dam on the Bond Falls site. This application was filed before closing and was for a repair similar to the one Defendants' experienced at another site where a dam failure had occurred. Thus, Defendants' pre-closing material representation regarding planned dam repairs at Bond Falls was false.

37. Pursuant to sections 6(a) and 7(c) of the fourth amendment to the Purchase Agreement, UPPCO is required to deliver a Natural Shoreline Easement Agreement (individually the “NSA Easement and collectively the “NSA Easements”) and Road License (individually the “License” and collectively the “Licenses”) to Plaintiff within ten (10) days after Plaintiff delivered the legal descriptions for the easement areas to UPPCO.

38. On September 6, 2006, Plaintiff provided UPPCO the last of the required legal descriptions.

39. As of today (more than seventeen months after Plaintiff provided UPPCO the last of the required legal descriptions), UPPCO still has not delivered the NSA Easements or the Licenses to Plaintiff. These breaches of the parties’ agreement have prevented Plaintiff from developing the lakeshore property and selling retail lakeshore lots because, in part, the lots have no dock or riparian rights associated with them. In essence, without the NSA Easements or the Licenses, Plaintiff does not own developable lakeshore property and, as a result, has not obtained the benefit for which it bargained for with Defendants and paid substantial consideration for to UPPCO.

40. Pursuant to section 6(f) of the fourth amendment to the Purchase Agreement, UPPCO is required to release all mortgages, liens and other monetary encumbrances or obtain consents from the holders of such encumbrances from real property that is to be subject to the NSA Easements, the Licenses and certain Road Easements.

41. UPPCO has not released the property from all mortgages, liens and other monetary encumbrances, thereby causing damage to Plaintiff.

42. Pursuant to section 6(g) of the fourth amendment to the Purchase Agreement, UPPCO is required to use commercially reasonable efforts to obtain land from the U.S. Forest Service located between the Bond Falls flowage and the Bond Falls site (the "Forest Service Land").

43. Upon information and belief, UPPCO has failed to use commercially reasonable efforts to obtain the Forest Service Land, thereby causing damage to Plaintiff.

**COUNT I – FRAUD (UPPCO and Integrys)**

44. Plaintiff incorporates by reference Paragraphs 1 through 43 as if stated herein.

45. Defendants made material representations of fact which induced Plaintiff to enter into a contract with UPPCO.

46. Plaintiff relied on these material representations of fact.

47. These material representations of fact have been shown to be false.

48. Plaintiff has suffered more than \$75,000.00 in monetary damages and other losses directly and consequentially attributable to Defendants' material misrepresentations of fact.

49. Plaintiff is entitled to monetary and equitable relief, including, without limitation, rescission, based on Defendants' fraud.

**COUNT II – BREACH OF CONTRACT (UPPCO)**

50. Plaintiff incorporates by reference Paragraphs 1 through 49 as if stated herein.

51. Plaintiff and UPPCO are parties to a binding contract.

52. UPPCO has committed many material breaches, including those identified herein.

53. UPPCO's numerous breaches of the contract have caused Plaintiff to suffer more than \$75,000.00 in monetary damages and losses, both directly and consequentially attributable to the breaches.

**COUNT III – BREACH OF DUTY OF GOOD FAITH  
AND FAIR DEALING (UPPCO)**

54. Plaintiff incorporates by reference Paragraphs 1 through 53 as if stated herein.

55. UPPCO owes Plaintiff a duty of good faith and fair dealing in connection with its contract with Plaintiff.

56. UPPCO has breached the duty of good faith and fair dealing owed to Plaintiff.

57. UPPCO's breach of its duty of good faith and fair dealing owed to Plaintiff has caused Plaintiff to suffer more than \$75,000.00 in monetary damages and losses, both directly and consequentially attributable to the breaches.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1. A finding that Defendants made material misrepresentations of fact that induced Plaintiff to enter into its contact with UPPCO;
2. A finding that Defendants material misrepresentations of fact caused Plaintiff to suffer substantial monetary damages and losses, in an amount to be determined at trial;
3. A finding that UPPCO breached its contract with Plaintiff and thereby caused Plaintiff to suffer substantial monetary damages and losses, in an amount to be determined at trial;
4. A finding that UPPCO breached its duty of good faith and fair dealing owed to Plaintiff and thereby caused Plaintiff to suffer substantial monetary damages and losses, in an amount to be determined at trial; and
5. Such other and further relief, including, without limitation, monetary relief, attorney's fees and costs, which the Court may deem just, equitable and appropriate under the circumstances presented.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial as to all issues so triable.

February 25, 2008

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