

**THE MAYOR AND CITY COUNCIL
OF BALTIMORE,
100 N. Holliday Street
Baltimore, Maryland 21202,**

Plaintiff,

vs.

**UNISYS CORPORATION,
Unisys Way
Blue Bell, Pennsylvania 19424,**

**Serve On:
Resident Agent
THE CORPORATION TRUST
INCORPORATED
351 WEST CAMDEN STREET
BALTIMORE, MD 21201**

Defendant.

**In the
CIRCUIT COURT
for
BALTIMORE CITY**

Case No.:

2012 JAN 18 AM 11:43
CIVIL DIVISION

COMPLAINT AND REQUEST FOR JURY TRIAL

Plaintiff, the Mayor and City Council of Baltimore ("Plaintiff" or the "City"), by its undersigned attorneys, as and for its Complaint against the Defendant, Unisys Corporation ("Defendant" or "Unisys"), herein respectfully states:

INTRODUCTORY STATEMENT

1. This is an action for, among other things, breach of contract arising from Baltimore City Contract #06000 – Integrated Property Tax System. Specifically, Unisys represented to the City that it would provide the City with a fully functional and integrated tax system that would meet the City's needs. Unisys and Baltimore City entered into a contract in which Unisys claimed it would provide a tax system valued at approximately \$11.4 million.

After approximately 9 years and numerous missed deadlines by Unisys and its subcontractors, as well as the payment of over \$8 million by the City to Unisys, the City still does not have the functional and integrated tax system as contracted by the two parties.

PARTIES

2. Plaintiff, the Mayor and City Council of Baltimore, is a corporate body, organized pursuant to Article XI-A of the Maryland Constitution. The City is authorized by the Baltimore City Charter to institute suit to recover damages suffered by the City.

3. On information and belief, Defendant, Unisys Corporation, is a Delaware corporation doing business in the city of Baltimore. Unisys claims that it is in the business of providing consulting, software integration and software implementation services to entities, including public sector entities.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action under Md. Code Ann., Cts. & Jud. Proc. §§ 1-501, 3-403.

5. Venue is proper in this Court pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201.

FACTS COMMON TO ALL COUNTS

6. Baltimore City provides a wide range of governmental services to the citizens of Baltimore City, Maryland and to the businesses that operate in or do business with the City, including the assessment and collection of taxes on real property and personal property. The Department of Finance, acting through its Bureau of Revenue Collections ("Finance"), is responsible for the billing and collection of personal, real, and special benefits taxes in the interest of the citizens. The Baltimore City Department of Public Works ("DPW") is responsible for maintaining the City's property records, including combining and splitting pieces of real

property in Baltimore City. The Maryland State Department of Assessment and Taxation ("SDAT") provides property tax assessments for real property throughout the State. Assessments, based on the fair market value of the property, are certified by the SDAT to local governments, such as the City, where they are converted into property tax bills by applying the appropriate property tax rates. DPW and Finance, collectively, are responsible for working with SDAT to update and change property tax assessments, applying the appropriate tax rates, and updating State credits on real property to generate the tax bills.

7. In early 2000, the City desired to undertake the total and complete replacement of its tax system. By late 2000, the City determined that the existing systems used by its departments responsible for tax assessment and tax collection should attempt to take advantage of advances in technology in order to integrate. Among the key requirements for the City was to find a software system that could be readily integrated with its existing taxpayer and billing database. Other requirements for the software would be to integrate all of the City's tax data into a single relational database architecture and provide the taxpayers with a consolidated tax bill for the many taxes associated with real and personal property in Baltimore City.

8. In addition to the above mentioned key requirements, the proposed system was to improve the efficiency of several City departments by eliminating manual record keeping and eliminating the need for multiple databases; curtail labor intensive processing, increase productivity, and extend service to the public without increasing staff; effectively use the software application to apply tax payments and streamline the settlement process thereby permitting rapid disbursement of funds; improve the process of updating property assessments and calculating taxes; interface the property billing and collection system with the SDAT's

system to achieve greater access to information on-line; and promote accuracy of the system used by City personnel.

9. In 2001, the Baltimore City Mayor's Office of Information Technology ("MOIT") and the Department of Finance sought to find software that would meet the City's needs. Unisys represented to the City that it had vast experience in providing and implementing tax and revenue software systems for public entities, and specifically touted its alleged experience and expertise in providing solutions for local governmental entities.

10. Unisys proposed to the City that it use an integrated tax system offered by Manatron, Inc. The Manatron Visual Property System ("MVP System") was represented by Unisys to be the best software for integration with a taxpayer and billing database with the Unisys Revenue Management System ("RMS"). Unisys proposed that the City retain Unisys to implement the MVP System and that the implementation of the entire project would occur over a three-year period. Unisys represented to the City that it would provide the overall project management, which would include installation of the MVP System, conversion of existing data into formats required by the new system, and training required for successful implementation of the project.

11. Unisys maintained that Phase I of the project, which was estimated to take about eighteen (18) months to complete, would provide for the administration and billing of real property, personal property and special benefits districts. Phase II was to include the following applications: a lien processing system, a tax sale system, a Geographic Interface System (GIS), a Zoning tracking system and a consolidated billing system. Phase III of the project was to add a business license system, a miscellaneous tax system and a bankruptcy system. Phases II and III, collectively, were expected to take an additional eighteen (18) months to complete.

12. On May 22, 2002 (the "Effective Date"), based upon Unisys' representations that it could deliver and install a fully operational and integrated tax system, the City and Unisys entered into Baltimore City contract #06000, entitled "Systems Integration Agreement for an Integrated Property Tax System for the City of Baltimore" (the "Contract" or the "Original Agreement"), in the total amount of \$7,099,000.00 for Phase I. The Contract consisted of the aforementioned Systems Integration Agreement, together with a number of attachments and schedules, including an agreed upon Statement of Work (the "SOW").

13. The SOW contained a detailed description of the scope for Phase I of the Integrated Property Tax System ("IPTS") project (the "Project"), including the deliverables for the Project and a detailed timetable for completion of Phase I. The SOW also represented tasks required to convert the City's existing real and personal property records. These tasks included integration with selected agencies to exchange information and implementation of the City's and the State of Maryland's requirements within the Unisys RMS and MVP System for the registration of taxpayers, taxpayer and property administration and billing, and reporting of collected funds. According to the SOW, the Unisys RMS was supposed to integrate the City of Baltimore's tax data into single relational database architecture, providing a taxpayer-centric view and a consolidated tax bill. The SOW timetable called for the project to begin with the "Project Kick-off" on July 15, 2002, and the commencement of the aforementioned tasks, leading to a proposed "Go-Live" date in November 2003.

14. Although Unisys attempted to adhere to the schedule at the onset, holding the Project kickoff meeting on July 15, 2002, the timetable quickly began to slip. According to a status report dated December 11, 2002, the Project was not ready to Go-Live by the November 1, 2003 deadline date. As a result, Unisys represented to the City that it could have the system

ready by a second projected Go-Live date of June 2004. On June 5, 2004, the parties convened to discuss the upcoming Go-Live date and several outstanding issues. By mid-June of 2004, however, it was apparent that Unisys would not meet their second proposed Go-Live date. At that point, Unisys proposed that the City delay the June 2004 Go-Live date to July 2004. Ultimately, however, Unisys missed the third proposed Go-Live date of July 26, 2004.

15. From July through December 2004, the parties continued to test and identify additional real and personal property issues. Unisys then proposed a Go-Live date of February 21, 2005, but was unable to meet this fourth proposed date due to the multitude of outstanding issues.

16. By March 2005, Unisys acknowledged that the project was behind schedule and that it was in danger of falling further behind schedule. Unisys acknowledged that it had failed to commit adequate resources to the project and the City team was in the position of having to wait on Unisys. At that time, Unisys promised the City that it would commit the needed resources to the project and that it would meet the next Go-Live date. This promise, however, was quickly broken and Unisys missed the Go-Live date.

17. Thereafter, the parties made an effort to identify all outstanding issues with the MVP System, and Unisys proposed yet another Go-Live date of June 7, 2005. Unisys, however, indicated that in order to make the Go-Live date, it would need to undertake the initial implementation of the Integrated Tax System with a reduced scope. Accordingly, the City agreed to an initial focus on going live with real property alone in July 2005, with the understanding that personal property would be available later in 2005. Unisys, however, failed to make the fifth Go-Live date.

18. After once again missing its deadline, Unisys had to propose a sixth Go-Live date

of February 21, 2006. Unisys also represented to the City that it only would be able to meet the February 2006 Go-Live date if the City would permit them to leave out substantial portions of the functionality agreed upon in the SOW and Original Agreement. The City reluctantly agreed to permit Unisys to temporarily leave out the substantial portions of the functionality after being assured that the remaining portions would be delivered later in 2006. Nevertheless, Unisys was still unable to make their sixth proposed Go-Live date and later missed another Go-Live date in July 2006.

19. Despite Unisys's numerous delays in meeting the critical first step of implementing the Integrated Tax System project, Unisys began to pull key personnel off of the Integrated Tax System project, including removing its Project Manager on or about June 30, 2006 and reducing their workforce from fifteen persons to just three or four persons. Unisys also unilaterally decided that it would not be fixing any more critical issues uncovered by the City after June 6, 2006. This significantly impacted the City's testing process and further delayed the project schedule.

20. By the end of 2008, the City had made payments of over \$8 million to Unisys prior to Unisys even completing Phase I. At that juncture, Unisys and its various subcontractors had missed the original and approximately twenty additional proposed Go-Live dates for the Integrated Tax System.

21. In December 2010, the City and Unisys agreed to conduct Unit testing on the IPTS. This test resulted in approximately 217 critical issues, labeled "A" issues, found within Phase I of the Unisys system, which the parties agreed were severe enough that any one of the issues would prevent the system from going live. After repeatedly giving Unisys time and opportunities to provide the tax system bargained for in the Contract, the City was forced to

declare Unisys in default and in breach of the Contract on March 18, 2011. Accordingly, the City refused to remit any additional money to Unisys until Unisys could demonstrate its ability to provide the City with an acceptable system, as bargained for in the Contract and SOW.

22. In response to the City's default notice, Unisys represented on a number of occasions that it had fixed all of the 217 issues. To prove its point, Unisys provided the City with a binder of test scripts that purportedly showed that the 217 previously identified A issues would run without any issues and demanded that the City accept the system as operational. The City relied upon Unisys's representations and allowed Unisys the opportunity to demonstrate that it had cured all the defaults and the defects in the system. Accordingly, the City and Unisys agreed to conduct limited joint validation testing, beginning on October 24, 2011 and lasting until November 4, 2011. The parties jointly negotiated an agreed upon testing protocol for the joint validation testing, and the type of data that would be used in the testing.

23. Although Unisys represented that it had corrected all of the deficiencies of the tax system, the test results revealed numerous agreed upon key capability failures. In addition, the City documented several additional "anomalies" during testing, which would also likely result in additional test failures. Although Unisys repeatedly represented that the test scripts would be completed without an issue, the joint validation testing was a clear indication that the MVP Software failed to provide the City with a fully function and integrated tax system, as bargained for in the Contract.

24. Despite the City's numerous efforts to allow Unisys to demonstrate that the Integrated Tax System was a fully functional and integrated tax system, Unisys has been unable to demonstrate that the system is ready to go live. After approximately 9 years and the expenditure of over \$8 million, Unisys has utterly failed to provide the bargained for Integrated

Tax System.

COUNT I – BREACH OF CONTRACT

25. Baltimore City incorporates by reference the foregoing paragraphs as if fully set forth herein.

26. Unisys and Baltimore City entered into a binding and enforceable agreement regarding the Integrated Tax System project that was agreed upon in the Contract and the schedules, addenda, and amendments to the Contract.

27. Pursuant to its agreement with the City, Unisys agreed that it would deliver and provide the City with a fully functional and integrated tax system. In addition, as part of the Contract entered into between the City and Unisys, Unisys impliedly covenanted to act in good faith and to deal fairly with the City concerning the subject of the Contract.

28. Baltimore City performed, or attempted to perform, its obligations under the Contract.

29. Unisys breached its agreement with the City by failing to deliver and provide the City with the fully functional and integrated tax system the City bargained for. Unisys also breached its covenant of good faith and fair dealing by, among other things, falsely, fraudulently and/or negligently misrepresenting to the City that the MVP software would be ready to Go-Live on approximately 21 dates, when Unisys knew or should have known that the MVP software would not be able to Go-Live. Unisys also breached its covenant of good faith and fair dealing by demanding that the City accept the MVP software without conducting mutually agreed upon testing, even though Unisys knew or should have known it could not provide a fully functioning and integrated tax system.

30. Unisys made misrepresentations to the City to induce the City to continue making

payments to Unisys. Unisys also made repeated misrepresentations to the City to induce the City to accept the tax system without conducting mutually agreed upon testing. Unisys made these misrepresentations even though Unisys knew that the MVP Software would not be ready to Go-Live and Unisys could not provide a fully functioning and integrated tax system.

31. Unisys has failed to perform its obligations under the Contract despite repeated demands by the City for Unisys' performance under the Contract. Despite payments by the City of over \$8 million, Unisys has failed to deliver to the City the bargained for fully functional and integrated tax system. Unisys' breach caused a default of the Contract. The breach and default of Unisys are so severe that the Contract has failed of its essential purpose.

32. Baltimore City has suffered damages as a direct and proximate result of Unisys' default and breach. The City's damages include direct, indirect, special, incidental and consequential damages.

COUNT II – BREACH OF EXPRESS WARRANTIES

33. Baltimore City incorporates by reference the foregoing paragraphs as if fully set forth herein.

34. Unisys warranted to the City that Unisys could deliver a fully functional and integrated system that met the City's requirements as bargained for in the Contract, thus creating an express warranty.

35. Unisys has failed to perform its services as promised under the Contract and SOW, and, to the extent that it has performed such services, it has not met the City's requirements and has not provided those services in the time promised by Unisys. Accordingly, Unisys has breached the express warranties provided to the City.

36. Any limitations contained in the Contract or SOW upon the City's remedies for

breach of the express warranties contained in those agreements have failed of their essential purpose. The City has fully performed its obligations under the Contract and SOW.

37. The City notified Unisys within a reasonable time, of the discovery of the breach of the express warranty.

38. As a direct result of Unisys's breach of express warranties, the City has suffered damages, including direct, indirect, special, incidental and consequential damages.

COUNT III – UNJUST ENRICHMENT

39. Baltimore City incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. Unisys has been unjustly enriched at Baltimore City's expense for accepting the City's monetary payments of \$ 8,505,522.86 but failed to deliver the fully functional and integrated tax system in a serviceable condition. Unisys has been unjustly enriched at the City's expense for accepting the City's monetary payments for service fees, while failing to complete the project and meet the recognized objectives of the City for which those services were being rendered. The City therefore seeks an accounting and disgorgement from Unisys of all monies received by Unisys from the City arising out of or related to the Integrated Tax System project.

COUNT IV – NEGLIGENT MISREPRESENTATION

41. Baltimore City incorporates by reference the foregoing paragraphs as if fully set forth herein.

42. Unisys has had at all relevant times, and continues to have, contractual and common law duties to provide the City with a fully functioning and integrated tax system.

43. Unisys represented to the City that it would provide the City with a fully functional and integrated tax system that would meet the City's needs.

44. Unisys was aware that its MVP Software was not performing, and had never performed, as a fully functional and integrated tax system as bargained for in the Contract.

45. On March 22, 2011, Unisys provided the City with a binder that allegedly demonstrated that all of the 217 previously identified critical issues had been resolved. Based partly on this representation that Unisys had fixed all outstanding issues with its upgraded tax software, on October 3, 2011, the Parties agreed to conduct a joint validation test on the agreed upon critical issues.

46. The joint validation testing commenced on October 24, 2011, and ran until November 4, 2011. Despite Unisys's repeated representations that it had corrected all of the deficiencies of the tax system, the test results revealed numerous agreed upon key capability failures and produced an unaccepted test rate failure.

47. Unisys negligently made false representations to the City that its software would provide the City with a fully functional and integrated tax system as bargained for in the Contract, and that upgraded software would cure any and all defects to system. Unisys, however, failed to provide the City with a fully functional and integrated tax system or show that all the previously identified issues had been resolved.

48. Unisys intended its representation to be relied upon for the City to accept the goods as requested. The City, at the time these negligent misrepresentations were made and at the time the City took the actions herein alleged, was ignorant that the statements made by employees of Unisys were misrepresentations, and the City could not, in the exercise of reasonable diligence, have discovered Unisys statements constituted misrepresentations. In reliance on the negligent misrepresentations of Unisys, the City continued to pay Unisys.

49. The City reasonably relied on the misrepresentation and suffered damages,

including, but not limited to, direct, indirect, special, incidental and consequential damages.

COUNT V – INTENTIONAL MISREPRESENTATION

50. Baltimore City incorporates by reference the foregoing paragraphs as if fully set forth herein.

51. The representations made by Unisys on or about March 22, 2011, that it had resolved all of the 217 previously identified critical issues constituted assertions of a false representation of a material fact to the City. Subsequent to March 22, 2011, Unisys represented to the City that 177 of the 181 test scripts associated with the critical issues would be completed without fault.

52. Unisys' repeated communications and representations to the City and to Baltimore City citizens that it had and could provide the City with a fully functioning and integrated property tax system were false when made, or the representations were made with reckless disregard for the truth of the matters stated.

53. Unisys owed a duty to the City to disclose that it had not resolved all of the 217 previously identified critical issues, that the test scripts associated with the critical issues would be completed without fault, and that it was unable to and had never provided the city with an integrated property tax system.

54. The City acted in justifiable reliance that Unisys would disclose to the City that that Unisys' software would provide the City with a fully functional and integrated tax system as bargained for in the Contract, and that the new software would cure any and all defects to system.

55. Unisys intended to deceive the City by repeatedly representing to the City that it had corrected all of the deficiencies of the tax system. As a result of these false representations,

the City and Unisys conducted a joint validation test on the agreed upon critical issues, resulting in numerous agreed upon key capability failures and an unaccepted test rate failure.

56. As the proximate result of Unisys' intentional concealment of the latent defects, and other of Unisys' intentional misrepresentations, as well as the City's justifiable reliance that Unisys had disclosed the true facts, the City has suffered and continues to suffer damages, including, but not limited to, direct, indirect, special, incidental and consequential damages.

PRAYER FOR RELIEF

WHEREFORE, Baltimore City prays that this Court enter a judgment in its favor, such judgment including:

A. Compensatory damages in an amount in excess of \$1,000,000.00 as to be determined by a jury.

B. Consequential damages in an amount in excess of \$30,000.00 to be determined by a jury for all necessary, probable, or natural consequences of Unisys' default under and breach of the Original Agreement, including without limitation all consulting fees, service fees, support fees, and other fees and expenses paid by Baltimore City to Unisys, the value of the time expended by Baltimore City personnel working on the project, and any other consequential or incidental costs or expenses incurred by Baltimore City.

C. An accounting of all monies received by Unisys from Baltimore City arising out of or in relation to the Contract, the software and the services and a disgorgement to Baltimore City of the same, reasonably believed to be and here alleged to exceed \$8 million.

D. Punitive damages in an amount in excess of \$8,000,000.00 as determined by a jury.

E. An award of the costs and expenses including reasonable attorneys' fees.

F. Such further relief as the Court may deem just.

January 18, 2012

By:




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JURY TRIAL DEMAND

BALTIMORE CITY HEREBY DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.



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