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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-44-200

Allegheny Casualty Company, ... Appellant,

v.

Netmoco, Inc., Nora B. Lewis, and Harold L. Lewis, ... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF UNION

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP4400200

Allegheny Casualty Co vs. Netmoco Inc Etal

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

ORDER

Dated at Union, South Carolina, this 25th day of May, 2011.

Court Reporter:

s/ John C. Hayes III

PRESIDING JUDGE -

This judgment was entered on the 2nd day of June, 2011, and a copy mailed first class this 2nd day of June, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Kimila Lynn Wooten Elmore & Wall, PA P.O. Box
1887 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Michael Imhoff The Ward Law Firm, PA P.O.
Box 5663 Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

WILLIAM F. GAULT

William F. Gault - Clerk of Court

RECEIVED JUN 06 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)
)
Allegheny Casualty Company,)
)
Plaintiff,)
)
vs.)
)
Netmoco, Inc., Nora B. Lewis, and)
Harold L. Lewis,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C.A. No.: 2009-CP-44-200

ORDER

FILE FOR RECORD
2011 JUN -2 PM 2:07
WILLIAM F. GAULT
CLERK OF COURT
CLERK'S OFFICE

FACTUAL BACKGROUND

This case is an indemnity case brought by the Plaintiff surety against the corporate and individual Defendants based on a surety bond issued by the Plaintiffs for the benefit of the Defendants' landscape/mowing company, Netmoco, Inc. ("Netmoco").

On or about February 2007, Netmoco entered into a purchase order agreement with the South Carolina Department of Transportation ("SCDOT") for vegetation management services, including mowing, limb trimming and right-of-way clearing for various SCDOT locations. Allegheny issued the Performance Bond required by state law to protect SCDOT against defects in performance or failure to perform by Netmoco. SCDOT declared Netmoco in default under its contract, and when Netmoco refused to perform, SCDOT terminated the contract. Netmoco disputed the default.

SCDOT made a performance bond claim against Netmoco and the Plaintiff, for its costs to finish the terminated contract, in the amount of \$75,127.04. Because both Netmoco and SCDOT refused to compromise their positions, the undersigned law firm brought a declaratory

judgment suit against Netmoco, the individual indemnitors, and SCDOT to determine the rights of the parties on the default.

The underlying case was settled at mediation with the parties "walking away" with no admission of liability on either side. Under the terms of the General Indemnity Agreement signed by the individual Defendants, the Plaintiff alleges it is entitled to recover all "sums or liabilities incurred in connection with the Bond or claims," "all expenses paid or incurred in enforcing the [Indemnity Agreement], in procuring or attempting to procure the Surety's release from liability," and "expenses paid or incurred in recovering or attempting to recover losses or expenses paid or incurred." See General Indemnity Agreement, Exhibit "C" attached to Plaintiff's Memorandum in support of its motion for summary judgment. Plaintiff has sued under the General Indemnity Agreement to recover its costs and expenses.

Motions

There are three motions before the Court. These motions will be addressed in the order set forth here:

1. Defendants' Motion for Summary Judgment
2. Plaintiff's Motion for Summary Judgment
3. Defendant's Motion to Quash a Subpoena Issued by Plaintiff for Defendants' financial records

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." This Rule mandates the entry of summary judgment against a party who fails to establish the

existence of at least one element essential to the party's case, and on which that party will bear the burden of proof at trial. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545-46 (1991); citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-32; 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265, 273 (1986). In such a case, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Defendants' Motion for Summary Judgment

Defendants argue that Plaintiff is precluded from pursuing its claim for attorney's fees and costs by virtue of the "Settlement Agreement" of April 20, 2009. This agreement was entered into by the parties, and the South Carolina Department of Transportation in the federal declaratory judgment action as noted above.

Plaintiff argues their rights under the surety contract at issue are preserved in toto by Paragraph One of the Settlement Agreement. Defendants argue Paragraph Three of the Settlement Agreement completely disposed of the parties' respective rights between themselves as to payment of attorney's fees and costs.

Here, the Settlement Agreement has general language in Paragraph One, reserving its rights under the parties' surety agreement. This is followed in Paragraph Three by the more specific language which provides that the parties "will separately pay their own attorney's fees and costs."

In Ferrell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E.2d 424 (S.Ct. 1958),

The Supreme Court held:

It is too well recognized to require the citation of authority that when words of general import are followed by words of particular or restricted import relating to the same subject matter, the latter will operate to limit or restrict the former. 233 S.C. at 47.

Applying the axiomatic principle set forth in Ferrell, here Paragraph Three's specific language trumps Paragraph One's.

In the Settlement Agreement the parties use the adverb "separately." The root word, 'separate' has several meanings, significantly among these are as a noun, "to set or keep apart," as an adjective "set or kept apart," and "not shared; individual." The American Heritage College dic-tion-ar-y, Fourth Ed., p. 1264. In a commentary after the definitions at p. 1264 appears this, "separate applies both to putting apart and to keeping apart." Separate is synonymous with "divide, part, sever," and "sunder". Also, at page 1264.

Therefore, Defendants are entitled to summary judgment as a matter of law as to Plaintiff's suit for indemnity. There is no genuine issue of fact the parties' agreement on its face providing for each party to pay their own attorney's fees and costs.

Since the Court has granted Defendants' summary judgment, their counterclaims now are direct claims. The Court addresses Plaintiff's motions herebelow as they address defenses to Defendants' counterclaims.

Plaintiff's Summary Judgment Motion

Allegheny's motion for summary judgment as to Defendants' Bad Faith Counterclaim (Sixth Cause of Action)¹ is granted.

In Masterclean, Inc. v. Star Insurance Co., 347 S.C. 405, 556 S.E.2d 371(2001), our Supreme Court held that a principal (Defendants) cannot sue a surety (Plaintiff) for a bad faith refusal to pay a first-party claim. Our Supreme Court stated that a surety's claimed bad faith could be used as a defense by the principal in a suit by the surety.

The above conclusion is reached simply by the Court's following expressions from Masterclean;

¹ Defendants' Sixth Cause of Action is plead as a hybrid bad faith/negligence cause of action.

In holding that a principal cannot sue a surety in tort for a bad faith refusal to pay a first-party claim, it is important to note we do not preclude a principal from using a surety's bad faith in all instances. Several courts, including those not recognizing a principal's right to sue on bad faith in tort, allow the principal to assert a surety's bad faith as a defense to indemnification . . . while a principal may not use bad faith as a sword to extract damages from using bad faith as a shield in contract against a surety seeking indemnification. 347 S.C. at 414.

The above language is clear that there is only one instance in which a principal may utilize bad faith as to its surety and that is as a defense to an indemnification action by the surety. Plaintiff's motion for summary judgment as to Defendants' negligence claims is granted.

Defendants assert two counter-claims against Plaintiff on negligence theories (sixth and eighth causes of action). Defendants do not allege, nor could they, any duty owed by Plaintiff to them outside of their contractual relationship. Defendants have not alleged any special relationship between them and Plaintiff upon which a negligence claim could be bottomed.

In Tommy L. Griffin Plumbing & Heating Co. v. Jordan, 320 S.C. 49, 463 S.E.2d 85 (S.Ct. 1995), the Supreme Court held that "[a] breach of a duty which arises under the provisions of a contract between the parties must be redressed under the contract . . ." 320 SC at 54. The Court went on to say that only a breach of duty independent of contractual duties will support a tort action. 320 SC at 55.

As there is no genuine issue of material facts as to Defendants' negligence claims, Plaintiff is entitled as to judgment as a matter of law.

As to the bad faith claims, there are no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law.

Defendants' Seventh Cause of Action seeks attorney's fees and costs pursuant to § 38-59-40, South Carolina Code of Laws, 1976, as amended. The Code Section applies only to claims

under a policy of insurance. A surety contract is not a contract for insurance. See Masterclean, supra.

Plaintiff must be granted summary judgment on the Seventh Cause of Action as § 38-59-40 does not apply to the facts here extant. As to this, there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law.

As to their Tenth counterclaim, Defendants argue that their request for attorney's fees is based on same constituting actual damages and not on the traditional context of a request for attorney's fees between litigants.

Generally attorney's fees are recoverable only pursuant to contract or statute. However, our courts have recognized that attorney's fees incurred by a party in some situations are appropriate.

While not directly on point, our courts have held that attorney's fees may be recovered as an expense incurred in litigation. See Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (S.Ct. App. 2005). Defendants' position here is novel. Novel issues usually should not be decided absent a full and complete record. (S.Ct. 2009) Chastain v. Hiltable, 381 S.C. 508, 673 S.E.2d 826 (S.Ct. App. 2009).

Even though the instant issues are novel and could require a complete record for resolution, the allegations of the counterclaim's Tenth Cause of Action preclude Defendants' pursuit of their damages claim.

Defendants' Tenth Cause of Action alleges, in actuality though not verbatim, that the attorney's fees and costs they now seek are recoverable based on the bad faith of Plaintiff. The Defendants allege (paragraph 48 of their Answer and Counterclaim), that they have incurred

costs and attorney's fees based on Plaintiff "ignoring the good faith requirements of its agreement with Defendants."

Initially, it should be pointed out, that as plead (absent reliance on the principle of bad faith) it is difficult to put this cause of action in any recognizable cause of action. It is not plead in negligence, it does not adequately plead indemnity, and therefore, it could only fall into a cause of action in contract.

Referring to the earlier disposition of Defendants' counterclaim for bad faith and by reference to Marchbanks, the Court finds that Defendants' Tenth Cause of Action must fail. As to this Cause of Action, there are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law.

Defendant's Motion to Quash the Subpoena

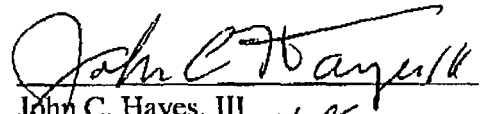
Defendant's Motion to Quash is granted. This issue is moot based on Defendants prevailing on its motion for summary judgment as to Plaintiff's claim. That is, Plaintiff seeks financial information under the terms of the indemnity contract and, as decided above, Plaintiff cannot recover under its contract with Defendants.

Wherefore, there being no genuine issues of material fact, the parties are entitled to judgment as a matter of law as follows:

1. Defendants' Motion for Summary Judgment as to Plaintiff's Complaint is granted, and
2. Plaintiff's Motions for Summary Judgment as to Defendants' Sixth, Seventh, Eighth and Tenth Causes of Action are granted, and
3. Defendants' Motion to Quash is Granted.

A handwritten signature in black ink, appearing to be "J. M. H.", is written over the bottom right portion of the page.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge H-8

May 25th, 2011
York, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

ALLEGHENY CASUALTY COMPANY

Plaintiff,

vs.

**NETMOCO, INC., SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION,
NORA B. LEWIS and HAROLD L. LEWIS,**

Defendants.

Case No. 7:08-CV-1689-GRA

**COMPLAINT
(Non-Jury Trial Requested)**

The Plaintiff Allegheny Casualty Company (“Allegheny”) complaining of the Defendants, Netmoco, Inc. (“Netmoco”), the South Carolina Department of Transportation (“SCDOT”), Nora B. Lewis, and Harold L. Lewis, says and alleges:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Allegheny, at all times herein mentioned was, a corporation organized and existing under the laws of the State of Pennsylvania, and at all times pertinent to this case was authorized to conduct surety business in the State of South Carolina.

2. The Defendant SCDOT is an administrative agency of the State of South Carolina.

3. The Defendant Netmoco is a corporation organized and existing under the laws of the State of South Carolina, having and maintaining its principal place of business in the County of Union, City of Jonesville, South Carolina.

4. Upon information and belief, the Defendant Nora B. Lewis is a resident and citizen of the County of Union, State of South Carolina.

5. Upon information and belief, the Defendant Harold L. Lewis is a resident and citizen of the County of Union, State of South Carolina.

6. There exists between the Plaintiff and the Defendants complete diversity of citizenship.

7. The amount in controversy, exclusive of interest and costs, exceeds Seventy Five Thousand and no/100 Dollars (\$75,000.00).

8. This Court has jurisdiction pursuant to 28 U.S.C.A. § 1332 and venue is proper pursuant to 28 U.S.C.A. § § 1391 and 1392.

FACTUAL BACKGROUND

9. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

10. On or about February 7, 2007, SCDOT and Netmoco entered into a purchase order agreement for vegetation management services, including but not limited to, mowing, limb trimming and right-of-way clearing for various SCDOT locations (the "Contract").

11. Allegheny issued a Performance Bond (the "Performance Bond") for Netmoco's benefit covering the performance of the Contract. The terms and conditions of the Performance Bond are incorporated herein by reference and a copy of the Performance Bond is included in Exhibit A attached hereto.

12. Certain disputes arose between SCDOT and Netmoco during the course of the performance of the Contract. As a result of these disputes, SCDOT declared Netmoco in default and terminated Netmoco's contract. Netmoco disputes its default by SCDOT and claims that its termination by SCDOT was wrongful.

FOR A FIRST CAUSE OF ACTION
(Declaratory Relief)

13. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

14. An actual controversy has arisen between the parties regarding their respective rights and obligations under the Contract and the Performance Bond.

15. A declaratory judgment of the rights, obligations, and breaches, if any, of the parties under the Contract and the Performance Bond and the validity of the default by SCDOT against Netmoco will clarify and settle all legal relations in issue between the parties.

16. Allegheny seeks to have this Court declare the rights, obligations, and breaches, if any, of the parties under the Contract and the Performance Bond pursuant to 28 U.S.C.A. §§ 2201 and 2202.

SECOND CLAIM FOR RELIEF
(Breach of General Indemnity Agreement)

17. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

18. On or about January 30, 2007, Netmoco, Nora B. Lewis and Harold L. Lewis (the "Indemnitors"), and Allegheny entered into a General Indemnity Agreement (the "GIA"), the terms and conditions of which are incorporated herein by reference and a copy is attached hereto as Exhibit B.

19. Allegheny has requested the Indemnitors to indemnify Allegheny concerning said SCDOT claims, and pursuant to the GIA, to adequately assure their performance under the GIA by

providing such sums to Allegheny as required under the GIA. The Indemnitors have failed and refused to comply with Allegheny's request, thereby breaching the GIA.

20. As the direct and proximate result of the Indemnitors' breach of the GIA, Allegheny has and will continue to suffer incidental, consequential, special, direct, and indirect costs and damages.

21. Allegheny is entitled to have this Court issue an Order directing the Indemnitors to specifically perform their obligations under the GIA by indemnifying Allegheny and by paying the funds requested by Allegheny under the GIA. Additionally, should the default and termination of Netmoco by SCDOT be determined by this Court to be valid, then, in that event, Allegheny prays for judgment against the Indemnitors in an amount equal to any amount to which Allegheny is determined to be liable to SCDOT; and, for all other costs and expenses incurred by Allegheny, including, but not limited to, interest, court costs, and attorney fees and all of the losses or expenses sustained or incurred by Allegheny.

WHEREFORE, Allegheny prays:

1. Upon the First Cause of Action, for an Order declaring the rights, obligations, and breaches, if any, of SCDOT, Allegheny, and Netmoco under the Contract and Performance Bond;

2. Upon the Second Cause of Action, for an Order directing the Indemnitors to specifically perform their obligations under the GIA by indemnifying Allegheny and by paying the funds requested by Allegheny under the GIA. Additionally, should the default and termination of Netmoco by SCDOT be determined by this Court to be valid, then, in that event, Allegheny prays for judgment against the Indemnitors in an amount equal to any amount to which Allegheny is determined to be liable to SCDOT; and, for all other costs and expenses incurred by Allegheny,

including, but not limited to, interest, court costs, and attorney fees and all of the losses or expenses sustained or incurred by Allegheny;

3. That the costs of this action be taxed against the Defendants; and,
4. For such other and further relief as this Court may deem just and proper

Respectfully submitted this 22nd day of April, 2008

s/L. Franklin Elmore

L. Franklin Elmore (I.D. No. 718)

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Attorneys for Allegheny Casualty Company

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Allegheny Casualty Company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER/CROSS CLAIM
	)	(JURY TRIAL DEMANDED)
Netmoco, Inc. South Carolina	)	C.A. NO.: 7:08-CV-1689-GRA
Department of Transportation,	)	
Nora B. Lewis and Harold L. Lewis,	)	
Spartanburg, South Carolina,	)	
	)	
Defendants.	)	

Netmoco, Inc., Nora B. Lewis and Harold B. Lewis, by and through their undersigned counsel, file this Answer/Cross Claim to Plaintiff's Complaint.

FOR A FIRST DEFENSE
(DENIAL)

1. Netmoco, Inc. (Netmoco), Nora B. Lewis (Nora), and Harold B. Lewis (Harold), deny all allegations not specifically admitted below and demand strict proof thereof.
2. Defendants Netmoco, Nora and Harold do admit that jurisdiction and venue is proper in the United States District Court for the District of South Carolina, Spartanburg Division thus admitting paragraphs 1 - 8 of the Complaint.
3. Paragraphs 9 - 12 are admitted.
4. As to paragraphs 13 - 16, it is admitted that the Defendants Netmoco, Nora and Harold do agree that the declaratory relief would be necessary, if a jury would determine the responding Defendants in this pleadings are obligated underneath the contract and performance bond with the Plaintiff. However, it is denied that the Defendants Netmoco, Nora and Harold have done anything in any way to breach the

contract with the Plaintiffs.

5. Paragraph 18 is admitted.
6. As to paragraph 19, it is admitted that the Plaintiffs have requested Netmoco, Nora and Harold to provide certain sums underneath the contract/performance bond. However, it is contested that these responding Defendants should be required to pay such sums of money due to the fact that South Carolina Department of Transportation has not provided a good faith claim for owed monies under the Plaintiff's contract/performance bond. Thus the responding Defendants would have not breached their general indemnity agreement.
7. Paragraph 20 is denied.
8. As to paragraph 21, the responding Defendants Netmoco, Nora and Harold agree that they are obligated to indemnify the Plaintiff as to any legal obligations that the Plaintiff may be ordered to pay on behalf of the responding Defendants. However as stated before responding Defendants do not feel they are obligated to pay the funds requested by this Plaintiff due to the fact the South Carolina Department of Transportation claim is without merit and therefore the rest of paragraph 21 is denied.

FOR A SECOND DEFENSE

9. Plaintiff is not entitled to any relief against the Defendants Netmoco, Nora and Harold because Defendants Netmoco, Nora and Harold have not breached any obligation towards this Plaintiff.

FOR A CROSS CLAIM
AGAINST SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
FOR A FIRST CAUSE ACTION
(BREACH OF CONTRACT)

10. That each and every allegation that has been specifically asserted shall be restated as if restated verbatim.
11. That Netmoco and the South Carolina Department of Transportation (SCDOT) entered into a contractual agreement whereby Netmoco would provide vegetation management services to include but not limited to mowing, limb trimming, and right of way clearing for various locations for the SCDOT thus constituting a performance contract.
12. That this performance contract has specific terms in which Netmoco has relied upon, as well provided performance services as more specifically described above. That the terms of the contract have been breached by SCDOT thus causing great damages to Netmoco.
13. That as a direct and proximate result of SCDOT's breach of the contract, Netmoco has suffered great injuries to include but not limited to loss of revenue; inability to sustain a business due to SCDOT classifying Netmoco in default; consequential damages; expectation damages, as well as special damages that have flowed as a natural consequential breach of this contract by SCDOT.

WHEREFORE, having fully answered Plaintiff's complaint, Defendant Netmoco, Nora and Harold would respectfully request the Complaint to be dismissed and Defendants Netmoco under the cross claim would be entitled to actual damages, consequential damages, and specific damages all in accordance with the breach of contract action underneath their cross claim by SCDOT, as well as any further relief this Court may deem just and proper.

John G. Reckenbeil

Dated: July 1, 2008
Spartanburg, SC

S/John G. Reckenbeil
Attorney for Netmoco, Inc., Nora B. Lewis
and Harold L. Lewis
Federal I.D. No. 7671
P.O. Box 1633
Spartanburg, SC 29304
(864) 582-5472

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF UNION) SIXTEENTH CIRCUIT
FILE FOR RECORD

ALLEGHENY CASUALTY COMPANY, INC., 7 P 12: 00 Case No. 2009-CP-44-200

Plaintiff,

S. BRADLEY MORRIS
CLERK OF COURT
UNION, SC)

vs.)

COMPLAINT
(Non-Jury Trial Requested)

NETMOCO, INC., NORA B. LEWIS,
and HAROLD L. LEWIS,)

Defendants.)

The Plaintiff Allegheny Casualty Company ("Allegheny") complaining of the Defendants, Netmoco, Inc., Nora B. Lewis, and Harold L. Lewis, says and alleges:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Allegheny, at all times herein mentioned was, a corporation organized and existing under the laws of the State of Pennsylvania, and at all times pertinent to this case was authorized to conduct surety business in the State of South Carolina.

2. The Defendant Netmoco ("Company") is a corporation organized and existing under the laws of the State of South Carolina, having and maintaining its principal place of business in the County of Union, City of Jonesville, South Carolina.

3. Upon information and belief, the Defendant Nora B. Lewis is a resident and citizen of the County of Union, State of South Carolina.

4. Upon information and belief, the Defendant Harold L. Lewis is a resident and citizen of the County of Union, State of South Carolina.

5. Jurisdiction and venue are proper in this Court by virtue of the amount in controversy and the residency of the Defendants.

FACTUAL BACKGROUND

6. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

7. Upon information and belief, the Company was at all times relevant to this action engaged in the construction/landscaping business.

8. On or about February 7, 2007, the Company entered into an agreement with the South Carolina Department of Transportation ("SCDOT") whereby the company was to provide certain vegetation management services for several SCDOT locations ("the Project").

9. Allegheny, as surety, executed and delivered Payment and Performance Bonds (the "Bonds") on behalf of the Company, as principal, for the Project.

10. As an inducement and in partial consideration for Allegheny's execution of the Bonds for the Company, the Company, by Defendant Nora B. Lewis, as President, together with Nora B. Lewis and Harold L. Lewis, as individuals ("Individual Defendants") (collectively, "Indemnitors"), executed a General Indemnity Agreement ("Indemnity Agreement"), dated January 30, 2007 and consequently accepted the terms thereof. A true and correct copy of the Indemnity Agreement is attached as Exhibit "A" hereto and incorporated by reference.

11. During the Project, certain disputes arose between SCDOT and the Company. As a result of these disputes, SCDOT defaulted the Company and terminated its contract on the Project. SCDOT also gave Allegheny notice of the default. The Company disputed the default and termination.

12. As a result of the default and termination as described above, and the Company's denial thereof, Allegheny was forced to file a suit for declaratory judgment in the United States

District Court for a declaratory judgment to determine the rights and liabilities of the parties with respect to the Project and the Bonds.

13. The dispute between SCDOT and the Company was recently resolved in mediation. However, as a direct result of the dispute, Allegheny, in an attempt to resolve that dispute, has paid in excess of \$35,861.21 in attorneys' fees and litigation expenses, all of which are recoverable under the Indemnity Agreement. After deducting all credits due to the Indemnitors, there remains due and owing to Allegheny under the Indemnity Agreement a sum in the amount of at least \$35,861.21.

14. Allegheny has made written demand upon the Company as principal on the Bonds, and has also made demand upon the Individual Indemnitors for indemnification and reimbursement of the amounts expended by Allegheny under the Bonds. Notwithstanding such demand, the Company and all Individual Indemnitors have failed, neglected, and refused to indemnify and reimburse Allegheny for said amounts, or to perform any of their obligations to Allegheny under the Indemnity Agreement in any manner whatsoever.

FIRST CAUSE OF ACTION AGAINST INDEMNITORS
(Breach of Contract)

15. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

16. Allegheny has performed all the terms and conditions on its part to be performed with respect to the Indemnity Agreement.

17. The Indemnitors have breached the Indemnity Agreement in that despite demand by Allegheny for performance by the Indemnitors, said Indemnitors have failed, neglected, and refused to pay Allegheny for losses incurred under the Bonds.

18. As a direct and proximate result of the Indemnitors' breach of contract, Allegheny has suffered damages, including expenses and attorneys fees, in a sum in excess of \$35,861.21.

SECOND CAUSE OF ACTION AGAINST INDEMNITORS
(Contractual Indemnity)

19. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

20. By the terms and condition of the Indemnity Agreement, the Indemnitors expressly agreed to indemnify Allegheny against any and all liability, loss, costs, damages, attorneys' fees, disbursements and expenses which Allegheny has sustained, or may sustain or incur by reason of, or in consequence of the execution of the Bonds, or by reason of Indemnitors' failure to perform or comply with any of the provisions of the Indemnity Agreement.

21. The Indemnitors, have at all times, failed and neglected to perform the terms of the Indemnity Agreement in accordance with demands of Allegheny to be exonerated, held harmless and indemnified, and refusing to reimburse Allegheny for costs, expenses and attorney's fees incurred in handling the Bond claim matters and in enforcing Allegheny's rights under the terms of the Indemnity Agreement

22. The Indemnitors have breached their obligations under the Indemnity Agreement by failing, neglecting, and refusing to pay to Allegheny the damages sustained by Allegheny pursuant to the Bonds. Although Allegheny has made demand upon the Indemnitors for payment, the Indemnitors have breached their obligation of indemnity and Allegheny is therefor entitled to recover all damages, costs, expenses, attorneys' fees, and other costs and expenses incurred to date in a sum in excess of \$35,861.21.

THIRD CAUSE OF ACTION AGAINST INDEMNITORS
(Exoneration)

23. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

24. Allegheny is informed and believes, based on the facts set forth above, that it will continue to incur liability, costs, expenses, and attorney's fees as a result of the failures of the Indemnitors to honor their obligations and duties arising under the Indemnity Agreement.

25. Allegheny is further informed and believes that these losses and liability are absolute but not yet totally liquidated.

26. Because the Indemnitors have each failed and refused to honor their obligations and to satisfy Allegheny's demands in connection therewith, Allegheny is informed and believes that it is entitled to an Order of this Court compelling the Indemnitors, jointly and severally, to exonerate Allegheny in accordance with the terms and conditions of the Indemnity Agreement and to hold Allegheny harmless and pay over to Allegheny all attorney's fees, costs, losses, and expenses incurred herein, in excess of \$35,861.21.

FOURTH CAUSE OF ACTION
AGAINST COMPANY ONLY
(Equitable Relief)

27. Allegheny realleges and incorporates herein by reference each and every allegation set forth in the paragraphs above to the extent consistent herewith.

28. Pursuant to the terms of the Bonds, Allegheny has incurred costs and expenses that are reimbursable under the Indemnity Agreement.

29. The Company will be unjustly enriched if it is allowed to retain the benefit of Allegheny's payment of attorneys' fees without reimbursing Allegheny for the amounts paid, plus costs, expenses, and attorneys' fees.

30. Allegheny is therefore entitled to reimbursement from the Company in an amount of in excess of \$35,861.21, the exact amount of which will be proven at the time of trial.

WHEREFORE, Plaintiff Allegheny Casualty Company prays for judgment against the Defendants as follows:

1. An award of all actual compensatory damages in a sum to be determined at trial, together with interest thereon according to law, and for any and all other damages sustained by Atlantic Mutual as proven at trial.

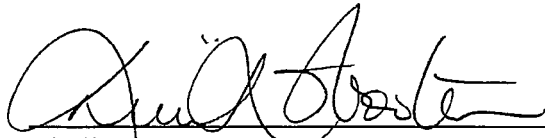
2. For an Order compelling the Defendants, jointly and severally, to exonerate Allegheny.

3. For interest on all sums at the maximum legal rate from the date of demand.

4. For cost of suit incurred herein, including costs, expenses, and attorneys' fees as provided by the terms of the Indemnity Agreement; and,

5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 04th day of July, 2009.



Kimila L. Wooten (S.C. Bar No. 64516)
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E-mail: kim.wooten@elmorewall.com
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF UNION) SIXTEENTH CIRCUIT
C. A. No. 2009-CP-44-200

ALLEGHENY CASUALTY COMPANY,)
Plaintiff,)

v.)

ANSWER AND COUNTERCLAIM

NETMOCO, INC., NORA B. LEWIS, and)
HAROLD L. LEWIS,)
Defendants.)

PARTIES, JURISDICTION AND VENUE

Defendants, Netmoco, Inc., Nora B. Lewis and Harold L. Lewis, answering the

Complaint of Plaintiff and making Counterclaim thereto would respectfully allege and show unto this Honorable Court that:

1. Defendants have no knowledge of the allegations made in paragraph 1 of the Complaint and demand strict proof thereof.
2. As to the allegations contained in paragraphs 2, 3, 4, and 5, Defendants admit same.

FACTUAL BACKGROUND

3. Defendants reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.
4. Defendants deny the allegations set forth in paragraph 7 of the Complaint.

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S. BRADLEY HUNTER
CLERK OF COURT
UNION, SC

5. Defendants admit the allegations contained in paragraphs 8, 9 and 10 of the Complaint.

6. As to the allegations contained in paragraph 11 of the Complaint, Defendant admits to a disagreement with the SCDOT in that SCDOT would not pay for the work in accordance with the Contract. However, Defendant specifically denies that SCDOT defaulted the Defendants and demands strict proof thereof. Further, Defendant specifically denies that SCDOT terminated the Contract and demands strict proof thereof.

7. Defendants deny the allegations contained in Paragraph 12, 13 and 14 of the Complaint as Allegheny did not have just cause to initiate a lawsuit against the Defendants and the costs incurred were unnecessary and spurious.

FIRST CAUSE OF ACTION AGAINST INDEMNITORS
(Breach of Contract)

8 Defendants reallege and incorporate herein by reference each and every allegation previously set forth above.

9. Defendants deny all allegations contained in Paragraphs 15, 16, 17, and 18 of the Complaint.

SECOND CAUSE OF ACTION AGAINST INDEMNITORS
(Contractual Indemnity)

10. Defendants reallege and incorporate herein by reference each and every allegation previously set forth above

11. Defendants deny all allegations contained in Paragraphs 19, 20, 21, and 22 of the Complaint.

THIRD CAUSE OF ACTION AGAINST INDEMNITORS
(Exoneration)

12 Defendants reallege and reaffirm each and every allegation set forth above as if fully set forth again.

13. Defendants deny all allegations contained in Paragraphs 23, 23, 25, and 26 of the Complaint.

FOURTH CAUSE OF ACTION AGAINST
COMPANY ONLY
(Equitable Relief)

14. Defendants reallege and reaffirm each and every allegation set forth above as if fully set forth again.

15. Defendants deny each and every allegation contained in paragraphs 27, 28, 29, and 30.

FIRST COUNTERCLAIM
(Refunds owed)

16. Defendants reallege and reaffirm each and every allegation set forth above as if fully set forth again.

17. Premium amounts for Surety and Performance bonds with Allegheny were determined by the total contract price on each contract. In the event that SCDOT paid less than the contract price, Allegheny was to refund part of the premium to Netmoco. It was the duty and responsibility of Allegheny to reconcile the accounts at the end of

each contract. Netmoco had paid premiums for substantially more than SCDOT paid on numerous contracts in 2005, 2006, 2007, and 2008. Allegheny has failed to reconcile these accounts and refund Netmoco the excess premiums. Defendants are informed and believe that this Honorable Court should require Allegheny to reconcile the premiums on all bonds issued to Netmoco and refund the appropriate amounts to Defendants.

SECOND COUNTERCLAIM
(Costs)

18. Defendants reallege and reaffirm each and every allegation set forth herein as if repeated *verbatim*.

19. Allegheny, by ignoring the good faith requirements of its agreement with Defendants, has cost them in excess of \$10,000 in attorney's fees and expenses. Defendants are informed and believe that this honorable court should require Allegheny to reimburse Defendants for their necessary expenses which would not have been incurred had Allegheny acted in good faith.

WHEREFORE, Defendants Netmoco, Inc., Nora B. Lewis and Harold L. Lewis pray that this Honorable Court grant the following relief:

1. Issuance of an Order dismissing all causes of action brought by Allegheny
2. Issuance of an Order requiring Allegheny to reconcile all accounts on premiums paid for bonds for the years for which Allegheny issued the performance and surety bonds.

3. Issuance of an Order requiring Allegheny to pay Defendants for their Attorneys fees and costs of defending their spurious lawsuits.

4. For such other and further relief as the Court deems just and equitable under the circumstances.



Nora B. Lewis
198 Lewis Drive
Jonesville, S. C. 29353
(864) 545-2184
FAX (864) 545 2302

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)
)

IN THE COURT OF COMMON PLEAS
CA NO.: 2009-CP-44-200

Allegheny Casualty Company,)
)
Plaintiff,)
)
v.)
)
Netmoco, Inc., Nora B. Lewis, and)
Harold L. Lewis,)
)
Defendants.)
_____)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

TO: THE PLAINTIFF ALLEGHENY CASUALTY COMPANY AND ITS
ATTORNEY KIMILA L. WOOTEN:

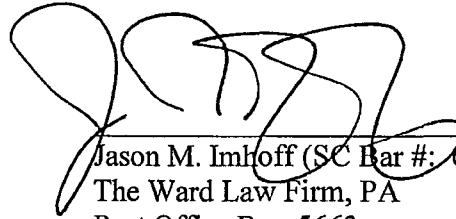
YOU WILL PLEASE TAKE NOTICE that Defendant, Netmoco, Inc., Nora B. Lewis, and Harold L. Lewis, by and through their undersigned attorney, will move before the resident or presiding judge of the Union County Court of Common Pleas on the tenth day after service hereof or as soon thereafter as counsel may be heard at such time and place as the Court may determine for an Order granting them summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to the issue of their liability to the Plaintiff, Allegheny Casualty Company.

This motion is based upon the following grounds:

1. There is no genuine issue as to any material fact in the case;
2. The only conclusion which can be drawn is that the Plaintiff has released any claim for Attorneys Fees or costs;
3. The only conclusion which can be drawn is that an accord and satisfaction has been reached in the case;

4. The only conclusion which can be drawn is the Plaintiff's claim against the Defendants Netmoco, Inc., Nora B. Lewis, and Harold L. Lewis must fail.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and is based upon the pleadings filed in this case, the settlement documents and/or release, other discovery materials filed or to be filed, affidavits filed or to be filed and the common and statutory law of the State of South Carolina.



Jason M. Imhoff (SC Bar #: 69355)
The Ward Law Firm, PA
Post Office Box 5663
Spartanburg, SC 29304
(864) 582-3075
(864) 585-3090

ATTORNEYS FOR DEFENDANTS
NETMOCO, INC., NORA B.
LEWIS AND HAROLD L. LEWIS

February 17th, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CA#: 2009-CP-44-200
COUNTY OF UNION	)	
	)	
Allegheny Casualty Company,	)	
	)	
Plaintiff,	)	
	)	BRIEF ON PLAINTIFF'S MOTION
v.	)	FOR SUMMARY JUDGMENT
	)	
Netmoco, Inc., Nora B. Lewis, and	)	
Harold L. Lewis,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Plaintiff's and Defendant's Motions for Summary Judgment based upon South Carolina Rules of Civil Procedure 56. Defendant submits this Brief in support of its motion for Summary Judgment and its opposition to Plaintiff's Motion for Summary Judgment.

PROCEDURAL HISTORY AND FACTS

This case arises out of disagreements and disputes concerning the terms and conditions of a Payment and Performance bond and a corresponding General Indemnity Agreement, issued by Allegheny Casualty Company to Netmoco. Netmoco was in the business of providing grass mowing services to governmental entities, including the South Carolina Department of Transportation (SCDOT). In order to procure contracts to mow for SCDOT, Netmoco and its principal owners, Harold and Nora Lewis were required to secure Payment and Performance Bonds on each contract. Those Payment and Performance Bonds were obtained by Defendants from Plaintiff, Allegheny Casualty Company. The corresponding General Indemnity Agreement stated that "[t]he indemnitors (Netmoco and Defendants) shall indemnify the Surety (Allegheny) against

any and all liability, loss, costs, damages, attorney's fees and other expenses which Surety may sustain or incur...". The Agreement also required that the Surety's determination in handling a claim must be "made in good faith".

Disputes arose between the SCDOT and Netmoco during a Chester County project such that the SCDOT made a claim to Allegheny under a bond on January 29th, 2008. Through numerous correspondence and telephone conversations Netmoco explained to Allegheny that it vehemently disagreed with SCDOT's allegations that it had defaulted under the contract and instead insisted that SCDOT had breached the contract. On February 11th, 2008 Allegheny sent defendants two letters. The first included SCDOT's claim under the performance bond for \$76,127.04 and requested information from defendants regarding SCDOT's claim within two weeks. The second February 11th, 2008 letter demanded \$85,000 from Netmoco as collateral security within the same two week period. In response to the letters defendants immediately hired counsel to respond to Allegheny's requests and demands, yet Allegheny again sent correspondence on February 29th, 2008 demanding \$85,000 in collateral by March 7th, 2008. During that period of time Netmoco provided any and all information requested by Allegheny. Upon information and belief, Allegheny did little or no investigation of the merits of SCDOT's claim.

On or about April 22nd, 2008, Allegheny filed suit against Netmoco and SCDOT in the United States District Court for the District of South Carolina, Spartanburg Division for declaratory judgment of its obligation under the bond and breach of contract against these defendants. On or about April 20th, 2009 the case was mediated and settled with the SCDOT agreeing to dismiss its claims against the bond. On July 7th, 2009

Allegheny brought the present action against defendants for breach of the indemnity contract and demanded in excess of \$35,000 in attorneys' fees it had incurred in the federal court action it brought.

Defendants answered on September 14th, 2009 and counterclaimed for "refunds owed" and "costs" which it claimed were in excess of \$10,000 in unnecessary attorney's fees caused by Allegheny's federal court filing. Defendant, Nora Lewis drafted and served that responsive pleading herself. Apparently little discovery occurred due to Nora Lewis' illness, but on or before June 10th, 2010 The Honorable J. Mark Hayes issued an order requiring the Lewis' to obtain counsel for the corporation Netmoco. The Complaint was amended to allege breach of contract, bad faith, improper claims practices, and negligence in addition to the original counterclaim causes of action. Plaintiff has filed the present motion for summary judgment on the counterclaim and Defendant has filed a motion for summary judgment based upon the April 20th, 2009 settlement.

STANDARD OF REVIEW

Summary judgment must be entered in favor of a party who shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See Rife v. Hitachi Constr. Machinery Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005) Summary judgment should be denied unless it is clear there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining if a genuine issue exists, the evidence and all inferences drawn from the evidence are viewed in the light most favorable to the nonmoving party. Fleming, 350

S.C. at 493-94, 567 S.E.2d at 860 (2002). Summary judgment should only be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, demonstrate there is no genuine issue of material fact. Rule 56 (c), SCRCF.

ARGUMENT

I. Plaintiff's Motion for Summary Judgment should be denied.

South Carolina has not completely barred claims against sureties in Tort for bad faith, negligence, or improper claims practices. Plaintiff repeatedly cites to Masterclean, Inc. v Star Insurance Co., 347 S.C. 405, 556 S.E.2d 371 (2001) for the proposition that all bad faith claims against sureties are barred. However, the South Carolina Supreme court specifically stated that “[i]n holding that a principal cannot sue a surety in tort *for bad faith refusal to pay a first party claim*, it is important to note we do not preclude a principal from using a surety's bad faith in all instances” Id. at 376 (emphasis added).

In Masterclean the court was answering a certified question addressing only the issue of whether a principal could bring a bad faith claim against a surety for failing to pay on the bond. The Supreme Court held that a principal could not bring that bad faith claim for numerous reasons, including the fact that the principal could not sue for its own default.

This case is significantly different in that Netmoco isn't attempting to allege a claim against Allegheny for paying or not paying a claim. Instead, Netmoco alleges that Allegheny owes it and all of its principals a duty to adequately investigate each claim prior to incurring costs taxable to the principal and failed to do so in this case. In fact,

both the contract and South Carolina's implied warranty of good faith and fair dealing require Allegheny to act in good faith and deal fairly with Netmoco.

Netmoco brought this claim in response to Allegheny's filing of two lawsuits against it for expenses Allegheny voluntarily incurred without adequate investigation or use of more cost effective remedies. Netmoco repeatedly informed Allegheny that SCDOT's claim was without merit and was proven correct when SCDOT withdrew its claim. Despite ultimate vindication, Allegheny voluntarily incurred and continues to demand in excess of \$35,000 in attorney's fees and climbing which were allegedly incurred in bad faith and due to negligence and/or improper claims handling.

The court should allow the causes of action for negligence, bad faith, and improper claims practices to proceed. The Supreme Court has not ruled on the issue and Allegheny, through its own contractual admission, must proceed in good faith. Therefore, Allegheny must be liable for bad faith disregard for the position of the principal. In this case, Allegheny knew that it would bring suit against Netmoco for any costs it incurred regardless of the outcome or merits of the SCDOT claim. Because the agreement required Netmoco to pay for any costs Allegheny incurred, it had no motivation to analyze or investigate the claim prior to filing suit and incurring substantial legal fees or explore alternate options. Arguably, if Allegheny was required to pay for the attorney's fees it may have spent more time investigating the claim and listening to its principal. If sureties may act without regard to the interest of the party ultimately responsible for payment, sureties have no incentive to adequately investigate or analyze any particular claim. The Supreme Court did not hold that sureties may act with impunity and without regard to the facts and consequences of their actions, especially

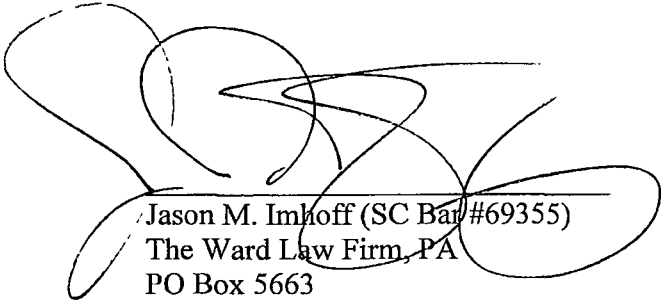
when those actions and costs are ultimately taxable to another party. For those reasons the cause of action for negligence, bad faith, and improper claims handling should remain, the economic loss rule is not applicable to those claims, and the Plaintiff's motion for summary judgment should be denied.

II. Defendant's Motion for Summary Judgment should be granted.

Plaintiff and Defendants mediated the case on April 20th, 2009. At that mediation the SCDOT withdrew its claim against these parties. Additionally, the parties agreed that "3. Each party will separately pay their own attorneys and the costs incurred in this matter." As the release is unambiguous regarding the parties liabilities for costs and attorneys fees from the underlying action, Plaintiff's present action for those costs and fees should be dismissed.

CONCLUSION

Based on the above-described law and facts, the Plaintiff's motion for summary judgment should be denied. For the forgoing reasons, Defendants respectively request that the Court enter an Order granting their Motion for Summary Judgment as a matter of law.



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ATTORNEYS FOR DEFENDANTS
NETMOCO, INC., NORA B.
LEWIS AND HAROLD L. LEWIS

May_____, 2011

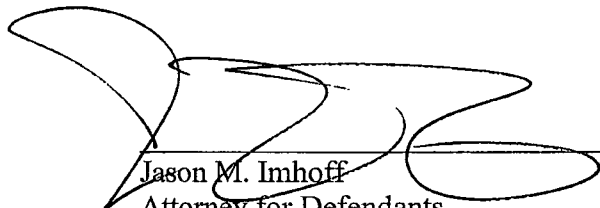
STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)
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Allegheny Casualty Company,)
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Plaintiff,)
)
v.)
)
Netmoco, Inc., Nora B. Lewis, and)
Harold L. Lewis,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CA#: 2009-CP-44-200

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the **Defendants Netmoco, Inc., Nora B. Lewis, and Harold L. Lewis' Brief on Defendant's Motion for Summary Judgment** was served upon the attorney for the Plaintiff on May 16, 2011 by via hand delivery:

Kimile L. Wooten, Esquire
Elmore & Wall, PA
PO Box 1887
Greenville, SC 29602


Jason M. Imhoff
Attorney for Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

SETTLEMENT AGREEMENT

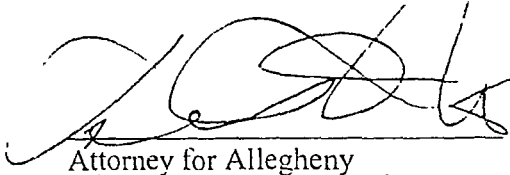
This agreement has been entered into between and among Allegheny Casualty Company (Allegheny), its successors and assigns, hereinafter referred to as "Plaintiff" and Netmoco, Inc. (Netmoco), South Carolina Department of Transportation (SCDOT), and Nora B. Lewis and Harold L. Lewis (Lewis), their heirs, personal representatives, employees, agents, successors, and assigns, hereinafter referred to as "Defendants", as follows:

1. The parties will execute a mutual Release, satisfactory to the Parties, releasing any and all claims which they may have against each other, their heirs, personal representatives, employees, agents, successors and assigns, arising out of any damages sustained by the parties resulting directly or indirectly from a Vegetation Management contract, Lot 4, Chester County, Contract number A00237014D, between SCDOT and Netmoco and Performance Bond issue by Allegheny to SCDOT in connection with work to be done by Netmoco in Chester County, South Carolina, including, but not limited to, all claims set forth or which could have been set forth in a lawsuit (including cross claims of Netmoco and Harold and Nora B. Lewis against SCDOT and any counterclaims or cross claims that SCDOT could have brought in this action) by Allegheny Casualty Company against Netmoco, Inc., South Carolina Department of Transportation, Nora B. Lewis and Harold L. Lewis, in the United States District Court for South Carolina, Spartanburg Division, under civil action # 7:08-CV-1689-GRA, except as hereinafter set forth. This settlement includes all claims, both known and unknown, which Netmoco and Lewis and SCDOT now have and which may arise in the future from

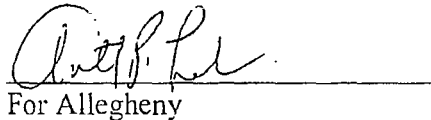
the matter in question against each other. Any claims which Allegheny may have against Netmoco, Inc. Harold Lewis and Nora B. Lewis for indemnity under the terms of a contract ("GIA") between Allegheny, as a party, and Netmoco and Harold Lewis and Nora B. Lewis, as the other party and any claims that Netmoco and Harold Lewis and Nora B. Lewis have against Allegheny are excluded from this Settlement Agreement. The cross claims of Netmoco and Lewis against SCDOT will be dismissed with prejudice and any claims between Allegheny and Netmoco and Lewis that are reserved will either be dismissed without prejudice, with the right to re file those claims in the county where Netmoco and the Lewis' reside or those claims shall be remanded by U.S. District Court to the County where Netmoco and the Lewis' reside, at the option of Allegheny.

2. Netmoco and the Lewis' agree that they will not bid on any SCDOT contracts in the future.
3. Each party will separately pay their own attorneys and the costs incurred in this matter.
4. PLAINTIFF AND DEFENDANTS ACKNOWLEDGE THAT THE ABOVE REPRESENTS THE TERMS OF THEIR AGREEMENT AND IS A FULL AND COMPLETE SETTLEMENT OF THE CASE.

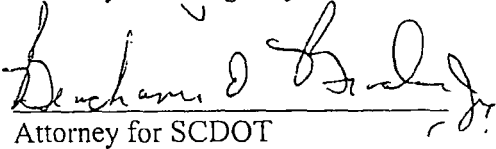
Done this 20th day of April 2009.



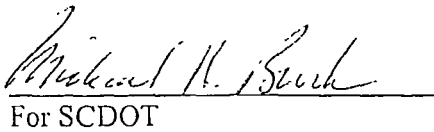
Attorney for Allegheny



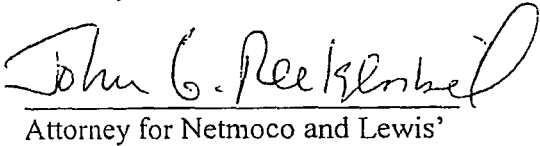
For Allegheny



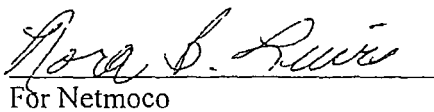
Attorney for SCDOT



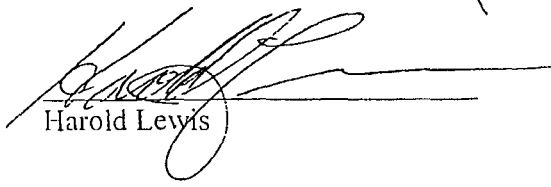
For SCDOT



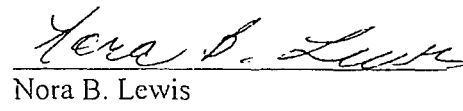
Attorney for Netmoco and Lewis'



For Netmoco



Harold Lewis



Nora B. Lewis

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOTICE OF ORDER, DECREE OR JUDGMENT

Rule 236

Plaintiff(s)

Allegheny Casualty Company,

Case Number

GD	10	23668
----	----	-------

Vs

Defendant(s)

Netmoco, Inc, Nora B.
Lewis & Harold Lewis

To: ☐ Plaintiff ☒ Defendant ☐ Garnishee ☐ Additional Defendant

You are hereby notified that the following Order, Decree or Judgment has been entered against you
on _____.

☐ Decree Nisi in Equity.

☐ Final Decree in Equity.

☒ Judgment of ☐ Confession ☐ Verdict ☐ Court Order ☐ Default ☐ Non-Suit
☐ Non-Pros ☐ Arbitration Award

☐ Judgment in the amount of \$ _____, plus costs.

☐ District Justice Transcript of Judgment in the amount of \$ _____, plus costs.

☐ If not satisfied with sixty (60) days, your motor vehicle operator's license will be suspended by the
Pennsylvania Department of Transportation.

Director, Department of Court Records, Civil/Family Division

By _____

Deputy

If you have any questions concerning the above, please contact :
Name/Address/Telephone Number of (Attorney/Filing Party)

Stuart E. Savage, Esq. 437 Grant St. Ste 1806 Pittsburgh PA 15219
(412) 281-1119

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ALLEGHENY CASUALTY COMPANY,
A Pennsylvania Insurance Corporation,

Plaintiff,

vs.

NETMOCO, INC., NORA B. LEWIS and
HAROLD L. LEWIS, her husband,

Defendants.

CIVIL DIVISION

No. *GD10-23668*

COMPLAINT IN CONFESSION OF
JUDGMENT PURSUANT TO
Pa.R.C.P. 2951(b)

Filed on behalf of Plaintiff,
ALLEGHENY CASUALTY COMPANY

Counsel of Record for this Party:

STUART E. SAVAGE, ESQUIRE
PA ID #00966

GOLDBERG, KAMIN & GARVIN
PA FIRM #497

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

(412) 281-1119

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALLEGHENY CASUALTY COMPANY, :
A Pennsylvania Corporation, :
 :
Plaintiff, : No.
 :
vs. :
 :
NETMOCO, INC., NORA B. LEWIS and :
HAROLD L. LEWIS, her husband, :
 :
Defendants. :

COMPLAINT IN CONFESSION OF JUDGMENT
PURSUANT TO Pa.R.C.P. 2951(b)

AND NOW COMES the Plaintiff, ALLEGHENY CASUALTY COMPANY, a Pennsylvania Corporation, by and through its attorney, STUART E. SAVAGE, ESQUIRE and the law firm of GOLDBERG, KAMIN & GARVIN, and pursuant to the authority contained in Pa.R.C.P. 2951(b), files the following Complaint in Confession of Judgment and avers the following:

1. The Plaintiff is Allegheny Casualty Company, a Pennsylvania Corporation, with its principal office in Allegheny County, Pennsylvania at 4217 Steubenville Pike, Pittsburgh, Pennsylvania 15205.

2. The Defendant, Netmoco, Inc., upon information and belief, is a South Carolina corporation, whose principal address is 198 Lewis Drive, Jonesville, South Carolina 29353.

3. The Defendants, Nora B. Lewis and Harold L. Lewis, upon information and belief are adult individuals and wife and husband, respectively, their addresses being at 198 Lewis Drive, Jonesville, South Carolina 29353.

4. Attached hereto and made a part hereof as Exhibit "A" and "B," respectively, are true and correct copies of the Performance Bond and Payment Bond issued by Plaintiff, Allegheny Casualty Company, to Netmoco, Inc., as Principal, in the amount of \$199,160.64, and the General Indemnity Agreement between the Corporate Defendant, Netmoco, Inc., as Principal and Indemnitor, and the individual Defendants, Nora B. Lewis and Harold L. Lewis, each individual Indemnitors. The Agreement of Indemnity at Paragraph 32 thereof authorizes the Confession of Judgment.

5. The Performance Bond issued to Defendant Netmoco, Inc. was to assure full and complete performance of the Contract of on or about April 20, 2007 between it (Netmoco) and the South Carolina Department of Transportation for vegetation control for portions of SCDOT Right of Ways in Chester County, Contract #A00237014D, Vegetation Management, Lot 4, Chester County.

6. It is averred that certain disputes arose between Netmoco, Inc. and SCDOT during the course of the performance of the Contract resulting in SCDOT declaring Netmoco to be in default under the terms of the Contract and terminated Netmoco's performance.

7. As a direct result of SCDOT declaring Defendant Netmoco in default of its Contract, Plaintiff, Allegheny Casualty Company, has been required to incur liability, costs, damages, attorneys' fees and other expenses in connection with the issuance of the instant Performance Bond in this matter and may be required to incur additional liability loss, costs, damages, attorneys' fees and other expenses into the indefinite future as a result of the issuance of the instant Performance Bond to Defendant.

8. Under and pursuant to the General Indemnity Agreement, Defendants, and each of them, are required to indemnify Plaintiff against any and all liability, loss, costs, damages, attorneys' fees and other expenses which the Surety (Allegheny Casualty Company, Plaintiff herein) may sustain or incur by reason of or in connection with the execution of the Performance Bond identified herein.

9. Defendants, to the time of the filing of this Complaint in Confession of Judgment, have refused and continue to refuse to indemnify Plaintiff for the above stated liability, and pursuant to the said General Indemnity Agreement, such failure by the Principal and/or Indemnitors to indemnify the Surety as aforesaid is a default under the General Indemnity Agreement which permits Plaintiff, Allegheny Casualty Company, to confess judgment against Defendants, as Indemnitors.

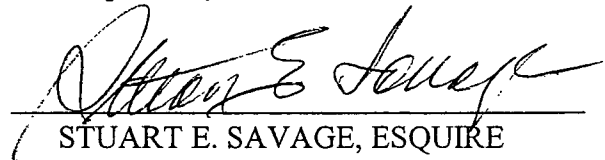
10. As a result of the foregoing, Defendants, Netmoco, Inc. and Nora B. Lewis and Harold L. Lewis, her husband, are liable to Allegheny Casualty Company, jointly and jointly and severally, as follows:

(a)	Counsel fees to Elmore & Wall, P.A.	\$38,117.27
(b)	Mediator's Fees	\$ 859.18
(c)	Loss adjustment expense for Allegheny Surety Company, acting on behalf of Allegheny Casualty Company	\$ 1,889.61
(d)	Reasonable attorneys' fees pursuant to Paragraph 32 of the Agreement 15% of \$199,160.64	<u>\$29,874.09</u>
	Total Due	\$70,740.15

11. Judgment is not being entered by confession against a natural person in connection with a consumer credit transaction.

WHEREFORE, Plaintiff, Allegheny Casualty Company, demands judgment against Defendants, jointly and jointly and severally, in the amount of Seventy Thousand, Seven Hundred Forty and 15/100 (\$70,740.15) Dollars, plus interest and costs as authorized by the Warrant of Attorney appearing in the attached instrument authorizing Confession of Judgment, and such other further relief as the Court deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stuart E. Savage", is written over a horizontal line.

STUART E. SAVAGE, ESQUIRE

Attorney for Plaintiff

ALLEGHENY CASUALTY COMPANY

VERIFICATION

I, TONY LEKSE, Claims Manager for Allegheny Casualty Company, the Plaintiff in the within matter, hereby certify that the averments set forth in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief.

I understand that this Verification is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn fabrication to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.

ALLEGHENY CASUALTY COMPANY

By: Tony Lekse
TONY LEKSE
Claims Manager

Date: 12/14/10

ALLEGHENY CASUALTY COMPANY

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: That Netmoco, Inc., 198 Lewis Drive, Jonesville, SC 29353, as Principal, hereinafter called Principal, and ALLEGHENY CASUALTY COMPANY a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, as Surety, hereinafter called Surety, are held and firmly bound unto SC Department of Transportation, P.O. Box 191, Columbia, SC 29202-0191, as Oblige, hereinafter called Owner, for the use and benefit of claimants as herein below defined, in the amount of

One Hundred Ninety Nine Thousand One Hundred Sixty and 64/100 Dollars (\$199,160.64), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated April 1, 2007 entered into a contract with Owner for Contract #A00237014D, Vegetation Management, Lot 4 Chester County. In accordance with drawings and specification prepared by _____ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contractor, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

"Any suit under this bond must be instituted before the expiration of twenty-four (24) months from the date on which the right of action accrues, but if this provision is prohibited by any law, then it shall be deemed to be amended so as to be equal to the minimum period of limitation allowed by such law."

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed Sealed and Dated April 1, 2007.

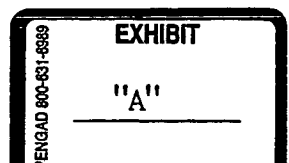
Netmoco, Inc.
Principal

Allegheny Casualty Company
Surety

By: _____
(Seal)

By: _____
Attorney-in Fact (Seal)

2/10/2007



ALLEGHENY CASUALTY COMPANY

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That Netmoco, Inc., 198 Lewis Drive, Jonesville, SC 29353, (hereinafter called "Principal"), as Principal and Allegheny Casualty Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, (hereinafter called "Surety"), as Surety, are held and firmly bound unto SC Department of Transportation, P.O. Box 191, Columbia, SC 29202-0191 as Obligee (hereinafter called "Owner"), as their interest may appear in the sum of One Hundred Ninety Nine Thousand One Hundred Sixty and 64/100 Dollars (\$199,160.64), for the payment of which sum, well and truly to be made, we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into a certain Contract dated April 1, 2007 for Contract #A00237014D, Vegetation Management, Lot 4 Chester County, in accordance with the terms and conditions of said contract, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly make payment to all persons supplying labor and material directly to the Principal in the prosecution of the work provided for in said Contract, then this obligation to be void; otherwise shall remain in full force and effect.

PROVIDED, however, that Principal and Surety shall not be liable to the Obligees or any of them unless the Obligees or any of them have performed the obligations to the Principal in accordance with the terms of said contract; and

PROVIDED, further, that Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

Signed, Sealed and Dated April 1, 2007.

Netmoco, Inc.
Principal

Allegheny Casualty Company

By: _____
(Seal)

By: _____
Attorney-in-Fact (Seal)

GENERAL INDEMNITY AGREEMENT

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), is made this 30th day of January, 2007, by the person or persons identified on the signature pages hereof as "Principal" (hereinafter, together with the persons described in the last sentence of Paragraph 20, the "Principal") and the persons identified on the signature pages hereof as "Additional Signatories" (collectively, and together with the Principal, the "Indemnitors") in favor of the Surety, or any other present or future subsidiary or affiliate of the Surety, which may issue Bonds (as defined below), as the case may be (any one or all of which, together with the companies described in Paragraph 13, are hereinafter referred to as the "Surety").

WHEREAS, Principal, solely or as co-adventurer with others, has requested and does hereby request the Surety to execute or procure the execution of such bonds, undertakings and recognizances (all of which, together with the bonds described in the last sentence of Paragraph 20, are hereinafter referred to as the "Bonds") as have been or may hereafter be applied for directly or through an agent, attorney or other representative by the Principal or by one or more of the Indemnitors; and

WHEREAS, the Indemnitors understand that the Surety expressly requires the delivery of this Agreement as part of the consideration for the Surety's execution of the Bonds or the Surety's refraining from canceling the Bonds; and

WHEREAS, the Indemnitors have a substantial, material and beneficial interest in the execution and continuation of the Bonds.

NOW, THEREFORE, in consideration of the premises and of the execution and continuation of the Bonds, the Principal and the other Indemnitors for themselves, their heirs, executors, administrators, successors and assigns, intending to be legally bound, do hereby jointly and severally covenant and agree with the Surety, its successors and assigns, as follows:

The recitals set forth above are an integral part of this Agreement are incorporated herein by reference as if set forth in their entirety.

Payment of Premiums

1. The Indemnitors will pay, when due, all premiums for each Bond in accordance with the Surety's rate filings or manual of rates or as otherwise may be agreed between the Surety and the Principal, as long as any liability of the Surety thereunder shall continue, and until the Surety is furnished with evidence satisfactory to the Surety that it has been discharged or released from such Bond and from all liability by reason thereof.

Indemnification

2. The Indemnitors shall indemnify the Surety against any and all liability, loss, costs, damages, attorney's fees and other expenses which the Surety may sustain or incur by reason of or in connection with the execution, renewal, continuation or replacement of the Bonds, including but not limited to (i) sums paid or liabilities incurred in connection with the Bonds or claims, suits or judgments under the Bonds, (ii) expenses paid or incurred in enforcing the terms hereof, in procuring or attempting to procure the Surety's release from liability and (iii) expenses paid or incurred in recovering or attempting to recover losses or expenses paid or incurred. The Indemnitors shall indemnify the Surety against any and all liability, loss, damages, attorney's fees and other expenses which the Surety may sustain or incur from relying upon representations made by the Indemnitors regarding defenses to claims made against any Bond that may be available to the Principal or the Surety.

The Surety shall have the exclusive right to determine whether any claim, liability, suit or judgment made or brought against the Surety or the Indemnitors or any one of them on any Bond shall or shall not be paid, compromised, resisted, defended, tried or appealed, and the Surety's decision thereon, if made in good faith, shall be final and binding upon the Indemnitors. The Surety shall also have the right to prepay the obligee on any Bond any amounts which the Surety, in good faith but in its sole and absolute discretion, (i) determines may become ultimately due on any Bond or (ii) deems may be necessary or advisable to protect any of the Surety's rights hereunder, even though a claim, suit or judgment has not yet been made or brought against the Surety on such Bond.

An itemized statement of payments made by the Surety for any of the purposes specified in this Agreement, sworn to by an officer of the Surety, or a voucher or vouchers for such payments, shall be prima facie evidence of the liability of the Indemnitors under this Paragraph 2.

Without limiting the Surety's exclusive right with respect thereto, if the Indemnitors desire that a claim or demand against the Surety be resisted and litigated, the Indemnitors shall satisfy any conditions specified by the Surety, including without limitation, any conditions for the Indemnitors to (i) give notice to the Surety to this effect, (ii) simultaneously deposit with the Surety, at the Surety's option, cash or collateral satisfactory to the Surety in an amount sufficient to cover the claim or demand and interest thereon to the probable date of disposition and (iii) at the Surety's option, either deposit simultaneously with the Surety cash or collateral satisfactory to the Surety in an amount sufficient to cover the expenses and fees of defense, including but not limited to the judgement or judgements amounts rendered or that might be rendered, with interest, costs, expenses and attorneys' fees, including those of the Surety, or take over the resistance and litigation of the claim.

The Indemnitors shall, at any time upon the request of the Surety, procure the discharge of the Surety from any Bond and from all liability by reason thereof.

Reserve Deposit; Obligations

3. If the Surety shall establish a reserve to cover any actual or potential liability, claim, suit or judgment under any Bond, the Indemnitors, immediately upon demand and whether or not the Surety shall have made any payment therefore, shall deliver to the Surety a sum of money equal to such reserve and any increase thereof to be used, at the option of the Surety, to prepay such liability, claim, suit or judgment or as cash collateral to secure the Obligations (as defined below). The Surety shall have the right to use such deposit, or any part thereof, in payment or settlement of any liability, loss or expense for which the Indemnitors would be obligated to indemnify the Surety under the terms of this Agreement.

The Indemnitors expressly agree that any sums remaining, if any, in the Surety's possession after payment or prepayment of any liability or claim reserved for, at the discretion of the Surety, may be applied to the payment or prepayment and satisfaction of any other Obligations. Such deposit may be commingled with any other funds of the Surety and otherwise handled in any manner deemed appropriate by the Surety. The surety shall have no obligation to invest or to provide a return on the deposit.

The "Obligations" shall mean any actual or potential liability, claim, suit or judgment under any Bond, and any loss, costs, damages and attorney's fees covered by the indemnification provisions of this Agreement, and any other obligations of the Indemnitors to the Surety or any affiliate of the Surety, now or hereafter existing, whether under this Agreement or the Declarations attached hereto and incorporated herein (including without limitation the payment of all interest fees and expenses) or any other agreement with the Surety or any affiliate of the Surety or otherwise.

Changes in Contract and/or Bond

4. If any Bond is given with respect to the Principal's obligations under a contract, the Surety in its sole discretion is hereby authorized, but not required, without notice to or knowledge of the Indemnitors (a) to consent to any change in such contract or in the plans and specifications relating thereto, or issue any substitute for or renewal of any Bond; (b) to make or guarantee advances or loans to or for the account of the Principal to be used in the performance of obligations of the Principal under any contract covered by a Bond, without being required to see to the application of the proceeds of such advances and regardless of the actual use of such proceeds, the amount of all such advances or loans being conclusively presumed to be a loss hereunder for which the Indemnitors are liable; (c) in the event of any Contract Default (as hereinafter defined in Paragraph 7), to exercise any of the rights and remedies available to it under this Agreement or otherwise to complete the contract, cause the same to be completed or consent to the completion thereof and to take any other action which the Surety may deem appropriate. The Indemnitors hereby release and discharge the Surety from all liability for its actions and omissions in taking possession of any work under a contract, except for liability resulting from the Surety's deliberate malfeasance. It is expressly understood and agreed that the Indemnitors shall remain bound under the terms of this Agreement even though any such consent to change by the Surety does or might substantially increase the liability of said Indemnitors.

Security Interest

5. This Agreement shall constitute a Security Agreement, subject to the trust created under Paragraph 11, in accordance, with the provisions of the Uniform Commercial Code, (the "Code") of every jurisdiction wherein such Code is in effect and may be used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under the Agreement or under the law, or in equity. The Principal and the other Indemnitors hereby assign, transfer, pledge and grant to the Surety, subject to the trust created under Paragraph 11 of this Agreement, a security interest in their right, title and interest in and to (a) all contracts in which any or all of the Indemnitors have an interest (whether or not bonded by the Surety), including without limitation (1) all monies due or to become due to the Principal under or as a result of such contracts, including but not limited to progress payments, deferred payments, retained percentages, compensation for extra work and proceeds of damage claims, and (2) all actions, causes of action, claims and demands whatsoever which the Principal may have in any way arising out of or relating to the Bonds or any contract (b) with respect to contracts bonded by the Surety, all machinery, plant, equipment, tools, materials and supplies (the "Equipment") now or hereafter owned by the Indemnitors, whether or not located at the work site, for use in the performance of such contracts and including all materials ordered or purchased for such contracts, whether in process or construction, in transit to the site or in storage elsewhere, and all subcontracts let or to be let in connection with such contracts and such subcontractors' surety bonds, (c) any deposit made pursuant to any provision of this Agreement and any other money, general intangibles, instruments or other property which has been or shall hereafter be pledged to the Surety, and all accounts and other obligations owed to the Indemnitors by the Surety or any affiliate of the Surety from time to time, and (d) all proceeds of the foregoing. The rights and property described in the foregoing clauses (a) through (d), together with the Additional Collateral (as hereinafter defined), are hereinafter referred to as the "Collateral". The foregoing security interest secures the payment and performance of all Obligations. For purposes of the security interest granted herein, the Surety be designated the "Secured Party" (as such term is used in the Code) on behalf of itself and as agent for any of its present or future subsidiaries or affiliates who may be Sureties under this Agreement.

Despite anything that might be stated to the contrary in this Agreement (a) the Indemnitors shall remain liable under all contracts included in the Collateral to the extent set forth therein to perform all of their duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Surety or any of the rights hereunder shall not release the Indemnitors from any of their duties or obligations under such contracts, and (c) the Surety shall have no obligation or liability under such contracts by reason of this Agreement, nor shall the Surety be obligated to perform any of the obligations or duties of the Indemnitors thereunder.

The Indemnitors represent and warrant that, except as otherwise disclosed to the Surety in writing: (a) the chief place of business and chief executive office of each Indemnitor and the office where each Indemnitor keeps its records concerning the Collateral, and all originals of all chattel paper which evidence Collateral, are located at the address set forth below the signature of such Indemnitor; (b) all originals of all chattel paper which evidence Collateral have been delivered to the Surety; (c) none of the Collateral is evidenced by a promissory note or other instrument; (d) the Indemnitors have exclusive possession and control of the Equipment; (e) there is no currently effective financing statement on file with respect to any assets of the Indemnitors, and the Indemnitors own the Collateral free and clear of any lien, security interest, charge or encumbrance, except for the security interest created by this Agreement and except for purchase money security interest in any Equipment; and (f) the tax identification number and name of each Indemnitor set forth in the signature pages hereof are complete and correct, and the Indemnitors have used no names other than the names so set forth.

The Indemnitors shall notify the Surety at least sixty (60) days in advance of any change in any Indemnitor's name, tax identification number, chief place of business, chief executive office or the office where it keeps its records concerning the Collateral and all originals of all documents, instruments and chattel paper which evidence Collateral. The Indemnitors shall hold and preserve such records, documents, instruments and chattel paper and will permit representatives of the Surety at any time during normal business hours to inspect and make abstracts from such records, documents, instruments and chattel paper.

Without the Surety's prior written consent, which shall not be unreasonably withheld, the Indemnitors shall not, nor permit any of their subsidiaries to: (i) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the assets (whether or not constituting Collateral) of their respective businesses, including but not limited to shares representing stock in their respective businesses and subsidiaries, either in whole or in part, or any interest therein except in the ordinary course of business and except for security interests not prohibited by clause (ii) of this

sentence, (ii) create or suffer to exist any lien, security interest or other charge or encumbrance upon or with respect to any of the Collateral to secure debt of any person or entity, except for the security interest created by this Agreement and except for purchase money security interests in any Equipment, or (iii) merge or consolidate with any other company, including any other company directly or indirectly controlled by, controlling or under common control with the Indemnitors.

Assignment

6. In addition to the security interest granted hereunder, the Indemnitors hereby assign, transfer and convey to the Surety, subject to the trust created under Paragraph 11 of this Agreement, all of the rights and property which constitute the Collateral. The foregoing assignment is for the purpose of enabling the Surety to take immediate possession of and to use any Collateral to complete the performance of the obligations of the Principal under the contract covered by a Bond and the payment of obligations incurred by the Principal in the performance of such contract and is intended as an absolute assignment effective, as to Collateral relating to each contract and without notice or any other action by the Surety, (i) as of the date of the execution and delivery of this Agreement as to each unbonded contract and each contract covered by Bonds executed prior to such date and (ii) as of the effective date of any Bond executed and delivered on or after the date and execution of this Agreement, in either case if any Event of Default (as hereinafter defined) occurs. The possession and use by the Surety for the purposes set forth in the preceding sentence of any assets assigned to the Surety shall not be deemed to be a foreclosure, or a retention in lieu of foreclosure, under the security interest granted to the Surety under Paragraph 5 of this Agreement.

Events of Default

7. Each of the following shall constitute Events of Default hereunder (hereinafter called "Events of Default"):

(a) Any abandonment forfeiture or breach by the Principal of, or failure, refusal or inability of the Principal to perform, this Agreement or the Declarations hereto, any contract (whether or not covered by a Bond) or any Bond liability; the failure, delay, refusal or inability of the Principal to pay bills or other obligations incurred in connection with the performance of any contract (whether or not covered by a Bond); or the commencement or continuation of any proceeding which deprives the Principal of, or interferes with, his use of any of the supplies, tools, plant, machinery, equipment or materials in, on or around the work site under the contract (whether or not covered by any Bond) (collectively, the "Contract Defaults");

(b) The Indemnitors' failure to perform or comply with any of the covenants contained in this Agreement or the Declarations hereto or any of the Obligations;

(c) Any breach by any Indemnitor of, or default by any Indemnitor under, any Bond or any insurance policy or other obligation due or owing to the Surety or any affiliate of the Surety;

(d) A payment by the Surety on any Bond;

(e) Any warranty, representation or statement contained in this Agreement or the Declarations hereto or made or furnished to the Surety (whether orally or in writing) by or on behalf of the Indemnitors in connection with this Agreement, any Bond or any claims thereunder proves to have been false or misleading in any material respect when made or furnished;

(f) Any levy on or seizure or attachment of any of the Indemnitors' assets.

(g) (i) Application by an Indemnitor for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, conservator, liquidator, or the like of itself or of all or a substantial part of its property, (ii) the general assignment by an Indemnitor for the benefit of its creditors, (iii) the commencement by an Indemnitor of a voluntary case under the Bankruptcy Code, (iv) the filing by an Indemnitor of a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts, (v) failure by an Indemnitor to controvert in a timely and appropriate manner, or acquiescence in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, (vi) the commencement of dissolution proceedings by an Indemnitor, (vii) any board of directors action by an Indemnitor for the purpose of effecting any of the foregoing, (viii) the commencement of a proceeding or case without the application or consent

of any Indemnitor, in any court of competent jurisdiction, seeking (1) such Indemnitor's liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (2) the appointment of a trustee, receiver, custodian, conservator, liquidator or the like of such Indemnitor or of all or any substantial part of its assets, or (3) similar relief in respect of such Indemnitor under any law relating to bankruptcy, insolvency, dissolution, reorganization, winding-up, or composition or adjustment of debts, if such proceeding or case shall continue undismissed for a period of sixty (60) days, or an order, judgment or decree approving or ordering any of the foregoing shall be entered; or (ix) the entry of an order for relief against any Indemnitor in an involuntary case under the Bankruptcy Code,

(h) Any Indemnitor shall admit in writing its inability, or be generally unable (within the meaning of the Bankruptcy Code), to pay its debts as such debts become due; and

(i) If any Indemnitor is an individual, the Indemnitor's death, disappearance, incompetence, conviction of a felony or imprisonment; and if any Indemnitor is not an individual, any change in the identity, control or existence of the Indemnitor.

Remedies Upon Default

8. Upon the happening of an Event of Default, the Surety, or any person or persons designated by the Surety, shall have the right (to the extent applicable to the undertakings by the Principal covered by the Bonds), at its option and in its sole discretion, and is hereby authorized, with or without exercising any other right or option conferred upon it by law or by the terms of this Agreement and without notice except as may be otherwise required by law:

(a) To execute in the name of the Principal any instruments deemed necessary or desirable by the Surety to provide the Surety with absolute title to the Collateral, to take immediate possession of the assigned funds, property and rights included in the Collateral, to collect such sums as may be due to, and to endorse in the name of, the Principal, and collect any checks, drafts, warrants and other instruments made and issued in payment of any such funds;

(b) To take immediate possession of any assigned Equipment and to use and consume the same if necessary in the performance of any contract by itself or by others;

(c) To take possession of all or any part of the work under any contract covered by a Bond and to complete or arrange for the completion of the same;

(d) To assert and prosecute any right or claim hereby assigned, transferred or conveyed in the name of the Principal and to compromise and settle any such right or claim on such terms as it considers reasonable under the circumstances;

(e) To exercise any and all rights of a secured party under the Code with respect to any property held by or pledged to the Surety as Collateral; and

(f) (i) To take such measures as the Surety may deem necessary or advisable to preserve, process, develop, maintain, protect and care for the Collateral or any portion thereof, (ii) to require each Indemnitor to, and each Indemnitor hereby agrees that it will at its expense and upon request of the Surety forthwith, assemble all or part of the Collateral as directed by the Surety and make it available to the Surety, at a place to be designated by the Surety which is reasonably convenient to both parties, and (iii) without notice except as specified below, to sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Surety's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Surety may deem commercially reasonable. Each Indemnitor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice (or such longer time as may be required by law) to such Indemnitor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Surety shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Surety may adjourn any public or private sale from time to time; in the case of a public sale, such adjournment may be by announcement at the time and place fixed therefore, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

All cash proceeds received by the Surety in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Surety, be held by the Surety as Collateral for and/or then or at any time thereafter applied in whole or in part by the Surety against all or any part of the Obligations in such order as the Surety shall elect any surplus of such cash or cash proceeds held by the Surety and remaining after payment in full of all Obligations shall be paid over to the Indemnitors or to whosoever may be whomever may be lawfully entitled to receive such surplus

Further Assurances

9. Upon an Event of Default, the Surety shall have, without limiting or waiving any other rights otherwise available, the right to the following further assurances:

(a) The Indemnitors shall provide information and documents requested by the Surety, or at the Surety's option, retain a designated third party to review the Indemnitors' operations and to make recommendations to cure any Event of Default.

(b) If the Indemnitors fail to cure an Event of Default within ten (10) days after the occurrence thereof, or in the Surety's opinion are unable to cure the Event of Default or fail within ten (10) days after demand for further assurances to satisfy the Surety that they meet and will continue to meet all requirements and financial standards as stated herein or in the Declarations, upon demand, the Indemnitors shall grant, assign, pledge and transfer unto the Surety a security interest in additional collateral (hereinafter, "Additional Collateral"), as herein described, to secure the performance and payment of all Obligations, or at the Surety's option, furnish to the Surety one or more letters of credit (the "Letters of Credit") in form and substance satisfactory to the Surety pursuant to a Letter of Credit Agreement in form and substance satisfactory to the Surety. The amount of the Additional Collateral and the face amount of the Letters of Credit shall not be less than the full penalty amount of all outstanding Bonds. The Additional Collateral shall consist of U.S. Treasury Bills, other cash or cash equivalents acceptable to the Surety and shall be deemed part of the Collateral.

Financing Statement

10. This Agreement constitutes a security agreement and a financial statement in accordance with the provisions of the Code. The Surety may make such additions to this Agreement as may be necessary or desirable to permit its filing as a financing statement under the Code, and the Indemnitors shall execute and deliver such further instruments as may be necessary or desirable to permit either the filing of this Agreement as a financing statement or the filing of a financing statement based upon this Agreement in such states, counties and other places as the Surety may deem necessary or desirable.

The Surety may, at its option, file or record this Agreement or any other document executed by any or all of the Indemnitors, individually or jointly, in connection with the application, issuance or execution of any Bond, as a security agreement or as part of a financing statement or as notice of its prior interest and assignment under the provisions of the Code or any other statute or regulation of any jurisdiction or agency. The filing or recording of such document shall be solely at the option of the Surety and the failure to do so shall not release or impair any of the obligations of the Indemnitors under this Agreement. Any copy of this Agreement certified as such by the Surety shall be considered an original for purposes of filing as a financing statement.

Trust Funds

11. The Principal agrees and hereby expressly declares that all funds due or to become due under any contract covered by a Bond are trust funds, whether in the possession of the Principal or another and whether designated as trust funds or not, for the benefit and payment of all persons to whom the Principal incurs obligations in the performance of such contract, for which the Surety would be liable under the Bond. If the Surety discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds. Principal shall, upon demand of the Surety and in implementation of the trust hereby created, open an account or accounts with a bank or similar depository designated by the Surety, which account or accounts shall be designated as a trust account or accounts for deposit of such trust funds, and shall deposit therein all monies received pursuant to such contract. Withdrawals from such account shall be by check or similar instrument signed by the Principal and countersigned by a representative of the Surety. Said trust or trusts shall terminate on the payment by the Principal of all the contractual

obligations for the payment of which the trust or trusts are hereby created or upon the expiration of twenty (20) years from the date hereof, whichever shall first occur.

The Principal agrees and hereby expressly declares that title to all materials and supplies specially ordered or fabricated for any contract covered by a Bond shall be held in trust for the benefit of the owner of the improvement being constructed, or the Surety, as their interests may appear, and that possession of such material shall be subject to the direction of such owner and the Surety.

Attorney of Record

12. The Indemnitors hereby authorize the Surety in its sole discretion to do the following: (a) if any bond is given in an action or proceeding in any court, to recognize any attorney of record in such action or proceeding for any party thereto at the date of the execution of such Bond (or such other attorney of record as may be substituted therefore after execution of such Bond) as the authorized representative of such party until the Surety shall have been fully discharged from liability under such Bond; and (b) to take such steps as the Surety may deem necessary or proper to obtain release from liability from any such Bond.

Surety Defined; Indemnitors' Representation and Protection of Other Sureties

13. The word "Surety" as used herein shall mean any surety company or companies issuing Bond(s) in favor of the Indemnitors, including but not limited to the Allegheny Surety Company and the Allegheny Casualty Company.

THE INDEMNITORS REPRESENT THAT THEY HAVE KNOWLEDGE THAT THE AGENTS AND PRODUCERS ACTING ON BEHALF OF THE VARIOUS SURETY COMPANIES THAT MAY ISSUE ONE OR MORE BONDS FOR THE BENEFIT, AND AT THE REQUEST OF THE INDEMNITOR; THAT THE SURETY COMPANIES REQUIRE AND ARE RELYING UPON THE EXECUTION AND DELIVERY OF THIS AGREEMENT AS A CONDITION OF BONDING THE INDEMNITOR THAT THIS AGREEMENT IS BEING GIVEN BY THE INDEMNITORS FOR THE BENEFIT OF ANY AND ALL SURETY COMPANIES PROCURED THROUGH THE SURETY'S AGENTS AND PRODUCERS TO BOND THE INDEMNITOR THE INDEMNITORS HEREBY WAIVE ANY AND ALL LEGAL OR EQUITABLE DEFENSE TO THE ENFORCEMENT OF THIS AGREEMENT BY ONE OR MORE OF SAID SURETIES FOR THE REASON THAT THE SAID SURETIES WERE NOT SPECIFICALLY NAMED IN THIS AGREEMENT.

If the Surety shall procure any other company or companies to execute or join with it in executing or reinsuring any Bond, this Agreement shall inure to the benefit of such other company or companies and its or their successors and assigns, so as to give to it or them a direct right of action against the Indemnitors to enforce this Agreement and, in that event, the word "Surety", wherever used herein, shall be deemed to include such company or companies, as its or their respective interests may appear.

Suretyship Waivers

14. The Indemnitors hereby agree that they shall at all times keep themselves cognizant of the financial condition of the Principal and with the status of all projects bonded by the Surety.

The Indemnitors, with respect to such Bond, hereby waive notice of the execution of any Bond and of any act fact or information concerning or affecting the rights or liabilities of the Surety or the rights or liabilities of the Indemnitors.

With respect to any Bond executed on behalf of the Principal, the Surety is authorized, without notice to the Indemnitors, to assent to any change whatsoever in such Bond and any contract covered by such Bond, including but not limited to any change in the time for the completion of the contract and for payments or advances thereunder, to assent to or take any assignment, to execute or consent to the execution of any continuations, extensions, renewals, enlargements, modifications, changes or alterations of any Bond and to execute any substitute or substitutes therefore, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties, and the other Indemnitors shall remain bound under the terms of this Agreement even though any such assent by the Surety does or may substantially increase the liability of the other Indemnitors.

The other Indemnitors shall have no rights of indemnity or subrogation against the Principal or his property until all Obligations have been satisfied in full. Failure of the Surety to pursue any remedy against any one or more of the Indemnitors shall not release or waive any right against any other Indemnitor.

The Surety is not required to exhaust its remedies or rights against the Principal or to await receipt of any dividends from the legal representatives of the Principal before asserting its rights under this Agreement against any other Indemnitor.

The liability of any Indemnitor hereunder shall not be affected by the failure of such Indemnitor or any other Indemnitor to sign any Bond, or by the failure of any other Indemnitor to sign this Agreement, or by the failure to obtain any other indemnity or security that any person claims should have been obtained, or by the release of any indemnity or any other Indemnitor under this Agreement or any other indemnity, or the return or exchange of any collateral that may have been obtained. If any party signing this Agreement is not bound for any reason, the obligations hereunder shall nevertheless be binding on each and every other Indemnitor.

Separate suits may be brought on this Agreement against any or all Indemnitors and the bringing of a suit or the recovery of a judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action whether theretofore or thereafter arising.

The Surety is hereby expressly authorized to settle any claim based upon this Agreement with any one or more of the Indemnitors individually, and such settlement or compromise shall not affect the liability of any of the other Indemnitors except to reduce the amount of the Obligations by the amount of the settlement received.

Declination of Suretyship

15. The parties agree that the Surety, in its sole and absolute discretion, may decline to execute or participate in or procure the execution of any bond applied for by the Principal or any other Indemnitor without incurring any liability whatsoever to the Principal or to any other Indemnitor. If the Surety shall execute a bid or proposal bond or any similar undertaking, it may nevertheless decline to execute any and all bonds that may be required in connection with any award made on the proposal for which the bond or undertaking is given, and the Principal shall have the right, but not the obligation, to procure from another surety any bonds that may be required in connection with any award under the proposal for which the bond or undertaking is given.

Attorney-in-Fact

16. The Indemnitors hereby irrevocably nominate, constitute, appoint and designate the Surety or its designee as their Attorney-in-Fact with the right, but not the obligation, to exercise all of the rights of the Indemnitors or any of them to make, execute and deliver any and all additional assignments, documents or papers deemed necessary and proper by the Surety to give full effect not only to the intent and meaning of the assignments provided herein, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement, including but not limited to the right to execute the instruments referred to in Paragraph 8, to endorse checks and other instruments representing payment of contract monies and to execute any financing statements as contemplated in Paragraph 10. The Indemnitors hereby ratify and affirm all acts and actions taken and done by the Surety or its designee as such Attorney-in-Fact.

Continuing Obligations after Termination

17. The obligations of the Indemnitors hereunder shall continue in full force and effect until terminated by one or more Indemnitors. Any Indemnitor may give the Surety written notice by registered mail of his desire to terminate this Agreement, in accordance with Paragraph 31, entitled Notice, but any such notice of termination shall not operate to modify, bar, discharge, limit, affect or impair any obligations of the Indemnitors hereunder with respect to Bonds executed prior to the termination of the 30-day period beginning on the date of the receipt of such notice or with respect to Bonds executed after the date of the termination of such 30-day period (i) upon the award of a contract to the Principal on a bid or proposal with respect to which the Surety has executed a bid or proposal bond or similar undertaking prior to such date, or (ii) which the Surety has otherwise become obligated to execute prior to such date. Any notice of termination given hereunder shall operate only with respect to the Indemnitors on

whose behalf such notice of termination shall have been given. Additionally, the Principal and the Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Principal and/or the Indemnitors, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the Principal or Indemnitors or others, it being expressly understood and agreed by the Principal and the Indemnitors that any and all other rights which the Surety may have or acquired against the Principal and the Indemnitors and/or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

Information

18. At any time, until such time as the liability of the Surety under any and all said Bonds is terminated, the Indemnitors will promptly furnish to the Surety such information as it may request from time to time concerning their financial condition, the status of work under any contract (whether or not covered by a Bond), the condition of the performance of any such contract and the payment of obligations incurred in connection therewith. The Indemnitors shall provide quarterly reports to the Surety regarding all construction or service contracts (whether or not bonded by the Surety) in such detail and in such format as may be reasonably requested by the Surety. Each Indemnitor represents, warrants and covenants that all information provided in, or in connection with any application for any Bond or in connection with this Agreement is complete and accurate. The Surety may at reasonable times and places and from time to time examine and copy the books, records and accounts of the Indemnitors and inspect the work at any project (whether or not covered by any Bond).

The Surety may obtain information concerning the affairs and operations of the Indemnitors and any transaction between or among them from any banks, depositories, obligees of the Bonds, material men, supply houses, credit reporting agencies and any other person.

Each Indemnitor represents and warrants that any financial statement submitted by or on its behalf to the Surety, whether prior to the date of the Agreement or in the future, is (or will be) complete and correct and fairly presents (or will fairly present) the financial condition of such Indemnitor as of the date of such financial statement and the results of the operations of such Indemnitor for the periods covered by such statements, all in accordance with generally accepted accounting principles consistently applied.

Governing Law

19. THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA. NO OTHER SOVEREIGN, STATE OR COMMONWEALTH'S LAW WILL BE DEEMED TO HAVE CONTROLLING OR PRECEDENTIAL VALUE OF ANY KIND IN RELATION TO THIS AGREEMENT. If any proceeding is brought against the Surety and the Surety desires to join any Indemnitor by reason of the undertakings in this Agreement, each Indemnitor agrees that he will, upon written notice of the Surety to do so, voluntarily appear in such proceedings and accept service of process and other papers either personally or by an attorney of such Indemnitor's choice. If any Indemnitor fails upon such a notice to so appear, such Indemnitor hereby designates the Secretary of the State for the Commonwealth of Pennsylvania as agent for the service of process in any such proceeding. With respect to any action brought by the Surety on this Agreement in a jurisdiction in which one or more Indemnitors reside, are domiciled, are doing business or are found, each Indemnitor who is not in the jurisdiction hereby designates each Indemnitor who is in such jurisdiction as his agent to receive on his behalf service of process in such action.

Scope of Agreement; Prior Indemnities

20. This Agreement applies to all Bonds executed or procured by the Surety for the Principal, in his own name or as co-adventurer with others, whether before or after the execution and delivery of this Agreement, and from time to time until this Agreement is terminated in accordance with its terms. The Indemnitors waive any defense that this Agreement was executed after the date of any Bond and admit and acknowledge that such Bond was executed pursuant to the Indemnitors' request and in reliance on the Indemnitors' promise to execute this Agreement.

The Bonds have been or will be issued for the purpose of providing assurances to the obligees under the Bonds concerning performance or fulfillment of certain contractual, statutory or other undertakings by the Principal,

all as described in more detail in each individual Bond. This Agreement is intended to cover the full range of different types of Bonds, which might be issued by the Surety, and nothing in this Agreement shall be construed to limit the types of Bonds covered by the Agreement. To the extent that particular provisions of this Agreement are applicable only to certain types of Bonds, the inclusion of such provisions in this Agreement is for the purpose of specifying in more detail the parties' rights and obligations with respect to such types of bonds and their inclusion shall not limit the applicability of other provisions of this Agreement to other types of Bonds

The Indemnitors acknowledge that they have a substantial material and beneficial interest in obtaining bonds on behalf of various related companies. Accordingly, this Agreement shall apply to any bonds executed on behalf of any subsidiary, affiliated partnership, joint venture, affiliate or corporation of the Indemnitors, now existing or hereafter formed or acquired, and whether partially or wholly owned or controlled, as fully as if the names and signatures of such subsidiaries or affiliates appeared herein as Principal.

Remedies Cumulative; No Waiver

21. All rights and remedies of the Surety under this Agreement shall be cumulative, and the exercise of or failure to exercise any right or remedy at any time shall not be an election of remedy or a waiver of any other right or remedy. In addition, the security interest granted herein and all other rights, powers and remedies given to the Surety by this Agreement shall be and are an addition to, and not in derogation of, any and all other rights, powers and remedies which the Surety may have or acquire against the Indemnitors or others, whether by the terms of any other agreement (including without limitation any other indemnity agreement previously or hereafter entered into by any Indemnitor), by operation of law or otherwise, including without limitation the Surety's rights of equitable subrogation.

No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the Surety or the Indemnitors may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement or any document delivered pursuant hereto, nor shall any waiver by the Surety or the Indemnitors, respectively, of any breach or default of the Indemnitors or the Surety, respectively, hereunder be deemed a waiver of any default or breach subsequently occurring.

Waiver of Homestead Rights

22. The Indemnitors hereby waive and abandon, so far as their respective obligations under this Agreement are concerned, all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any state, territory or possession of the United States.

Interest

23. All sums payable to the Surety under this Agreement shall bear interest if not paid on or before the tenth (10th) day after demand therefore made by the Surety at an annual rate equal to the greater of (i) three (3%) percent plus the prime rate as set forth in the then current issue of the Wall Street Journal or (ii) the maximum rate permitted by applicable law.

Definitions

24. In this Agreement, the plural term shall include the singular and the singular shall include the plural, as the circumstances require. The masculine pronoun shall be read as feminine or neuter, as circumstances require. The word "person" shall include individuals, partnerships, corporations and associations.

Effect of Partial Invalidity

25. If any part of this Agreement shall be void under the law of the place governing the construction hereof, then such part only shall be considered as deleted and the remainder of this Agreement shall endure in full force and effect.

Integration; Modification

26. This writing (including the Declaration) and the Bonds constitute the entire agreement among the Principal, the Indemnitors and the Surety regarding the execution of the Bonds and the rights and obligations of the parties hereto with respect to the Bonds. This Agreement and the rights and remedies of the Surety hereunder may not be waived, changed or modified orally. No written waiver, change or modification shall be effective unless signed by an officer or other authorized representative of the Surety. To the extent that there may be other agreements relating to the Bonds which have been executed by persons other than the Indemnitors, this Agreement shall not supersede such previous agreements as to such other persons, and such previous agreements shall remain in full force and effect as to such other persons.

Assignment

27. Without the consent of the Principal or the Indemnitors, but subject in all cases to any consents required of obligees or by applicable law, the rights and obligations of the Surety under this Agreement and the Bonds may be assigned to any financially responsible entity licensed to issue bonds in the jurisdiction in which the assigned Bonds were issued. In addition, the Surety may assign all or any part of its rights under this Agreement to any person, including but not limited to affiliates of the Surety.

Representations

28. PRINCIPAL AND EACH INDEMNITOR REPRESENTS AND WARRANTS TO THE SURETY THAT EACH OF THEM HAS CAREFULLY READ THE ENTIRE AGREEMENT, HAS HAD OR WAIVED THE OPPORTUNITY TO CONFER WITH AN ATTORNEY CONCERNING THIS AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN, OR TO THE EXTENT SUCH OTHER AGREEMENTS OR UNDERSTANDINGS EXIST, THEY ARE HEREBY SUPERSEDED BY THIS AGREEMENT.

Notice of Execution

29. Notwithstanding any provision to the contrary contained herein, the Principal and Indemnitors hereby waive notice of the execution of said Bonds and of the acceptance of this Agreement and the Principal and the Indemnitors hereby waive all notice of any default or any other act or acts giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability hereunder, notwithstanding any notice of any kind to which they might have been or be entitled, and notwithstanding and defenses that they might have been entitled to make.

Suits

30. Separate suits may be brought hereunder as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether theretofore or thereafter arising.

Notice

31. Notices hereunder shall be in writing and shall be deemed given if delivered by certified or registered mail return receipt requested to the addresses set forth below the signature of the Principal and each Indemnitor below and notices to Surety shall be addressed as follows:

c/o Allegheny Surety Company
P.O. Box 44110
4217 Steubenville Pike
Pittsburgh, PA 15205-9931
Phone: (412) 921-4249
Fax: (412) 921-4277

and

Stuart E. Savage, Esquire
Corporate Counsel
1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Phone: (412) 281-7788

Confession of Judgment

32. WITHOUT LIMITING THE GENERALITY OF ANY OTHER PROVISION OF THIS AGREEMENT, THE UNDERSIGNED PRINCIPAL AND INDEMNITORS HEREBY JOINTLY AND SEVERALLY IRREVOCABLE AUTHORIZE AND EMPOWER ANY ATTORNEY OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COURT IN ANY JURISDICTION TO APPEAR FOR ANY OR ALL OF THEM AT ANY TIME OR TIMES IN ANY COURT WITH RESPECT TO ANY SUMS DUE UNDER THIS AGREEMENT, WITH OR WITHOUT DECLARATION FILED AS OF ANY TERM, AND TO CONFESS OR ENTER JUDGMENT AGAINST ANY OR ALL OF THEM FOR ALL SUCH SUMS PAYABLE UNDER THIS AGREEMENT AS EVIDENCED BY AN AFFIDAVIT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SURETY SETTING FORTH SUCH AMOUNT DUE, PLUS REASONABLE ATTORNEYS' FEES, COST OF SUIT, INTEREST, WITH RELEASE OF PROCEDURAL ERRORS AND WITHOUT RIGHT OF APPEAL. IF A COPY OF THIS AGREEMENT, VERIFIED BY AFFIDAVIT, SHALL BE FILED, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY. THE UNDERSIGNED JOINTLY AND SEVERALLY WAIVE THE RIGHT OF ANY STAY OF EXECUTION AND THE BENEFIT OF ANY AND ALL EXEMPTIONS TO WHICH THEY MAY NOW HAVE OR MAY HEREINAFTER BE ENTITLED UNDER LAW. NO SINGLE EXERCISE OF THE FOREGOING WARRANT AND POWER TO BRING AN ACTION OR CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER BUT THE POWER SHALL BE CONTINUED UNDIMINISHED AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS SURETY SHALL ELECT, WHETHER BEFORE OR AFTER DEMAND IS MADE, UNTIL ALL SUMS PAYABLE TO SURETY UNDER THIS AGREEMENT HAVE BEEN PAID IN FULL.

Venue

33. The venue for all original civil actions arising out of, under, pursuant to or because of this Agreement shall be within the Commonwealth of Pennsylvania in Allegheny County or in any county in Pennsylvania, at Surety's sole option.

Personal Jurisdiction

34. The Principal and the Indemnitors hereto acknowledge and submit to the jurisdiction of the Courts of the Commonwealth of Pennsylvania and HEREBY FOREVER WAIVE ANY DEFENSES AS TO THE LACK OF PERSONAL JURISDICTION OF THE COMMONWEALTH OF PENNSYLVANIA COURTS, in any action arising out of, under, pursuant to or because of this Agreement.

Transfer of Judgment

35. Should civil judgment arising out of, under, pursuant to or because of this Agreement, be entered against Principal or any Indemnitor hereto, the Principal and Indemnitors forever waive and discharge each and every legal and equitable defense they may have or have had to the transfer and entry of such judgment, without limitation, to any other Commonwealth, State, Territory, District, or Holding of the United States of America as well as to any other Country anywhere in the world.

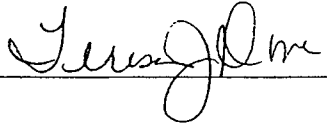
Counterparts

36. This Agreement, may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Indemnitors, intending to be legally bound hereby, have hereunder set their hands and affixed their seals as of the 30th day of January, 2007 .

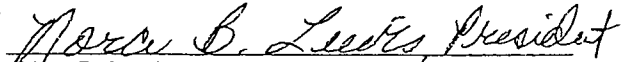
ATTEST/WITNESS.



Corp Tax ID # 58-2538792

Corporation or Limited Liability Company
(Principal and Indemnitor):

Netmoco, Inc.

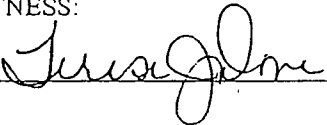
By 
Nora B. Lewis, President

Corporate Address: 198 Lewis Drive

Jonesville, SC 29353

(SEAL)

WITNESS:



Individual Indemnitor:

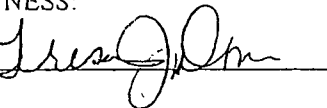
✓ Signature: 

Name: Nora B. Lewis, individually

Address: 198 Lewis Drive, Jonesville, SC 29353

Indemnitor's SS#: 223-44-2219

WITNESS:



Individual Indemnitor:

✓ Signature: 

Name: Harold L. Lewis, individually

Address: 198 Lewis Drive, Jonesville, SC 29353

Indemnitor's SS#: 248-72-9190

WITNESS:

Individual Indemnitor:

Signature: _____

Name: _____, individually

Address: _____

Indemnitor's SS#: _____

CORPORATE/LLC ACKNOWLEDGEMENT(S)

STATE OF South Carolina)
) Ss:
COUNTY OF Union)

On this 30th day of January, 2007, personally came before me, Nora B. Lewis,
President of Netmoco, Inc. known to me to be the person who executed the foregoing and
acknowledged that she had the authority to execute the same as the act of said corporation/company

Clarence M. Ellerbe Jr. (SEAL)
Notary Public

My Commission Expires:

February 26, 2013

INDIVIDUAL ACKNOWLEDGEMENT(S)

STATE OF South Carolina)
) Ss:
COUNTY OF Union)

On this 30th day of January, 2007, personally came before me, Nora B. Lewis to me known,
and known to me to be the individual(s) who executed the foregoing instrument, and acknowledged that she
executed the same.

Clarence M. Ellerbe Jr. (SEAL)
Notary Public

My Commission Expires:

February 26, 2013

STATE OF _____)
) Ss:
COUNTY OF _____)

On this _____ day of January, 2007, personally came before me, Harold L. Lewis to me known,
and known to me to be the individual(s) who executed the foregoing instrument, and acknowledged that he
executed the same.

Notary Public (SEAL)

My Commission Expires:

STATE OF _____)
) Ss:
COUNTY OF _____)

On this _____ day of _____, _____, personally came before me,
to me known, and known to me to be the individual(s) who
executed the foregoing instrument, and acknowledged that he executed the same.

Notary Public (SEAL)

My Commission Expires:

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ALLEGHENY CASUALTY COMPANY,
A Pennsylvania Insurance Corporation,

Plaintiff,

Vs.

NETMOCO, INC., NORA B. LEWIS and
HAROLD L. LEWIS, her husband,

Defendants.

CIVIL DIVISION

No.

CONFESSION OF JUDGMENT

Filed on behalf of Plaintiff,
ALLEGHENY CASUALTY COMPANY

Counsel of Record for this Party:

STUART E. SAVAGE, ESQUIRE
PA ID #00966

GOLDBERG, KAMIN & GARVIN
PA FIRM #497

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

(412) 281-1119

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALLEGHENY CASUALTY COMPANY,
A Pennsylvania Corporation,

Plaintiff,

vs.

NETMOCO, INC., NORA B. LEWIS and
HAROLD L. LEWIS, her husband,

Defendants.

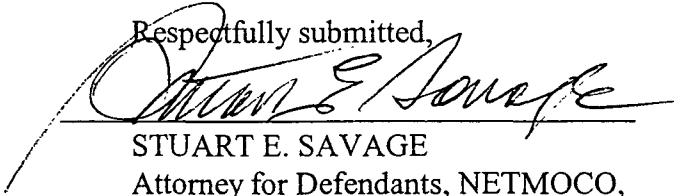
No. :

CONFESSION OF JUDGMENT

Pursuant to the authority contained in the warrant of attorney, a copy of which is contained in the General Indemnity Agreement attached as Exhibit "B" to the Complaint in Confession of Judgment filed in this action, I appear for the Defendants, NETMOCO, INC., and NORA B. LEWIS and HAROLD L. LEWIS, her husband, and confess judgment in favor of the Plaintiff, ALLEGHENY CASUALTY COMPANY, and against the named Defendants jointly, and jointly and severally, as follows:

(a)	Counsel fees to Elmore & Wall, P.A.	\$38,117.27
(b)	Mediator's Fees	\$ 859.18
(c)	Loss adjustment expense for Allegheny Surety Company, acting on behalf of Allegheny Casualty Company	\$ 1,889.61
(d)	Reasonable attorneys' fees pursuant to Paragraph 32 of the Agreement 15% of \$199,160.64	<u>\$29,874.09</u>
	Total Due	\$70,740.15

Respectfully submitted,


STUART E. SAVAGE
Attorney for Defendants, NETMOCO,
INC. and NORA B. LEWIS and
HAROLD L. LEWIS, her husband

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF YORK } COURT OF COMMON PLEAS NONJURY

3
4 ALLEGHENY CASUALTY COMPANY,)
5 PLAINTIFF,) TRANSCRIPT
6 VS.) OF
7) RECORD
8 NETMOCO, INC., NORA B LEWIS)
AND HAROLD L. LEWIS,) 2009-CP-44-200
9 DEFENDANTS.)

10
11 May 16th, 2011
12 York, South Carolina

13
14 B E F O R E :

15 THE HONORABLE JOHN C. HAYES, III, Judge.

16 A P P E A R A N C E S :

17 KIMILA LYNN WOOTEN
18 ESQ.
Attorney for the Plaintiff

19
20 JASON MICHAEL IMHOFF
21 ESQ.
Attorney for the Defendant

22
23 JANET RICH
Circuit Court Reporter

24
25 Transcribed by Pamela E. Green, Circuit Court Reporter

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I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: This says motion for summary judgment.

4 MS. WOOTEN: Your Honor, there are actually a couple of
5 motions pending. There's a motion for summary judgment by
6 us, motion for summary judgment by the defendants. There's
7 also a motion to quash a subpoena that I had issued in the
8 case. I believe all of them are set for today.

9 THE COURT: All right. Since you represent the
10 plaintiffs, I'm going to ask you to tell exactly what order
11 to do these in.

12 MS. WOOTEN: All right, Your Honor. The -- probably
13 the easiest thing to do would be to do the motion to quash
14 first because it's a simple issue.

15 THE COURT: All right.

16 MS. WOOTEN: We issued a subpoena for the accountants
17 for the defendants. This is an indemnity case, Your Honor,
18 on a surety bond that was issued on behalf of Netmoco.

19 THE COURT: Yeah, I heard some motions on this I
20 believe. I don't, don't remember everything about it, but I
21 do recall the case.

22 MS. WOOTEN: Okay. It's an indemnity case, and in
23 connection therewith, we have asked for financial documents.
24 Our indemnity contract, which we have attached to the brief
25 that we sent over -- would Your Honor like a copy of that

1 brief?

2 THE COURT: Brief, yes. Well, actually I think I got
3 it in the mail. I got a fax this morning.

4 MS. WOOTEN: All right, Your Honor. Attached to the
5 brief as an exhibit is the contract of indemnity that's at
6 issue.

7 THE COURT: Well, actually I don't. If you'll hand it
8 up. I---

9 MS. WOOTEN: I got it.

10 THE COURT: It may be in this file somewhere.

11 MR. IMHOFF: Your Honor, I'm gonna hand my brief up to
12 you also at the same time also if you don't mind.

13 THE COURT: All right. Okay.

14 MS. WOOTEN: Your Honor, what we've asked for in our
15 subpoena to the accountant is all the financial documents of
16 the indemnitors. All of the defendants are indemnitors on
17 the general indemnity agreement. The general indemnity
18 agreement is attached at the back of the brief. The general
19 indemnity agreement, Exhibit C, and under that agreement, on
20 Paragraph 2 of the first page of the indemnity agreement,
21 Your Honor.

22 THE COURT: All right.

23 MS. WOOTEN: Paragraph 2, the indemnitors, meaning all
24 the individuals and the company, shall indemnify the surety
25 against any and all liability, loss, cost, damages,

1 attorneys fees, and other expenses. It goes on to state
2 including, but not limited to, sums paid or liabilities
3 incurred in connection with the bond, expenses paid or
4 incurred in enforcing the terms thereof in procuring or
5 attempting to go procure the surety's release from
6 liability.

7 In this case, Your Honor, what happened is the South
8 Carolina Department of Transportation had a contract with
9 Netmoco for mowing and clipping and maintaining roadsides in
10 the State, and the SCDOT defaulted with Netmoco and made a
11 claim against our bond for \$75,000, and Netmoco denied
12 liability on the claim because there was a dispute and
13 neither party would give. SCDOT said we're not giving up
14 our claim for \$75,000. Netmoco said we don't owe it. So,
15 we filed this declaratory judgment action.

16 In connection with that, we filed it in Federal Court.
17 We actually, through discovery, investigation, mediation,
18 obtained dismissals of the claim for Netmoco. They're still
19 refusing to pay our costs and attorneys fees for getting
20 them off the hook. Okay. That's basically what this is all
21 about. So, in connection with that, this is an indemnity
22 suit to recover what we paid out in costs and fees as
23 required by the agreement.

24 we sent a subpoena to their accountant to get their
25 financial records. As you can see, those types of costs

1 that we've incurred are coverable under the contract.

2 If you look at Page Number 9 of the contract of
3 indemnity, it requires that the surety make -- I'll wait
4 till Your Honor gets there. It's Page 9 of the agreement.
5 Paragraph 18.

6 THE COURT: Okay.

7 MS. WOOTEN: The surety may, at reasonable times and
8 places, and from time to time, examine and copy the books,
9 records, and accounts of the indemnitors and inspect the
10 work at any project. So, this contract gives us the right
11 to see, at any time, at any time that we reasonably request,
12 their books and records of all the indemnitors. The
13 individuals and the company are indemnitors on this
14 agreement.

15 That's all we've asked to do. They've refused to
16 produce any financial records in this case. So, we believe
17 that we're entitled to those books, and we sent the
18 subpoena. Mr. Imhoff quashed the subpoena, and we just
19 don't think there's any grounds to quash it.

20 THE COURT: well, before I hears -- before I hear his
21 argument, why do you need this information?

22 You know what your costs and attorneys fees are.

23 what, what information, what information is in these
24 records that may have a value in your case?

25 MS. WOOTEN: They have indicated to us, Your Honor,

1 that one of the reasons they're not paying us is because
2 they can't, and we need to discover if they can or they
3 can't pay it.

4 THE COURT: You can get a, you can get a judgment
5 against them whether they can or cannot pay it.

6 MS. WOOTEN: We could. We could indeed, but, again,
7 under the terms of the contract, they're required to produce
8 them when we request them.

9 THE COURT: All right. Thank you.

10 MS. WOOTEN: Thank you.

11 THE COURT: Mr. Imhoff.

12 MR. IMHOFF: Okay. Thank you, Your Honor.

13 Obviously (inaudible) disagrees (inaudible) with the
14 characterization of the facts as Ms. Wooten has set them
15 forth. However, I think, on the motion to quash and request
16 for protective order, I think the law in South Carolina is
17 clear and, and I've fought this issue on both sides. The
18 ability of the defendant to pay is not relevant and
19 discoverable during discovery because it doesn't matter, and
20 I've, I've brought an Am Jur citation here if you'd like to
21 look at it.

22 So, that's, that's what I think the law is. If you are
23 able to get relevant discovery, it doesn't matter whether or
24 not the defendant is able to pay a judgment. That's
25 irrelevant and doesn't lead to admissible evidence, and I'll

1 show you that Am Jur citation.

2 On the second point, you're looking at Page 9 of the
3 general indemnity agreement at, at -- the first sentence at
4 Paragraph 18, which was read to you by Ms. Wooten, says to
5 you at any time, until such time as the liability of the
6 surety under any and all said bonds is terminated, they get
7 this information. As Ms. Wooten just told you, the claim by
8 the South Carolina Department of Transportation has been
9 terminated.

10 Netmoco -- I'm sorry. Allegheny's responsibility, or
11 as this says, the liability of the surety under that bond,
12 has been terminated. Therefore, Section 18 of this general
13 indemnity agreement does not apply. That liability has been
14 terminated.

15 So, I think -- I don't think this is relevant to this
16 at all. I think the issue of these defendant's ability to
17 pay is not relevant at all. We're putting the cart before
18 the horse. They want to know what these, the financial
19 status ability to pay the judgment is of Netmoco and Mr. and
20 Mrs. Lewis. And obviously -- if you would like it, Your
21 Honor, I'll hand up the Am Jur citation. I couldn't find a
22 case in South Carolina, but I've had many judges refuse to
23 order a defendant to provide their financial information on
24 ability to pay.

25 It's not relevant to what the jury's going to hear

1 about the facts of the case, whether they're entitled to
2 indemnity or whether they're entitled to a breach of
3 contract counterclaim. It's not relevant to that.

4 THE COURT: All right.

5 MS. WOOTEN: May I respond?

6 THE COURT: Yeah, I, I -- yeah, I'm looking at that
7 sentence. Tell me about that first---

8 MS. WOOTEN: The first sentence---

9 THE COURT: ---about, about how---

10 MS. WOOTEN: ---of the paragraph.

11 THE COURT: Cause I -- you know, his first point just
12 was sort of echoed what I said---

13 MS. WOOTEN: All right.

14 THE COURT: ---and the, and the.

15 MS. WOOTEN: The first sentence doesn't, doesn't relate
16 to the rest of the paragraph. If you look at the second
17 paragraph, Paragraph 18, in other words, that sentence
18 stands alone. The surety may, at reasonable times and
19 places and times, examine and copy the books. Then you go
20 on to the next paragraph, which isn't related to the top
21 paragraph. The surety may obtain information concerning the
22 affairs and operation of the indemnitors and any transaction
23 between or among them from any banks, depositors, obligees,
24 material and supply houses, credit reporting agencies, and
25 any other person. That sentence stands completely

1 independent from sentence number one.

2 Part of the reason that surety's give these -- these
3 are credit agreements for companies that cannot obtain
4 credit. That's essentially what South Carolina Courts have
5 held that they are.

6 In order to do that, part of the reason that surety's
7 require that indemnitors do this is because they can check,
8 from time to time, to see if these indemnitors have the
9 ability to pay claims such as the one we have here.
10 Obviously, under South Carolina law, it isn't normally
11 relevant to what a person's financial condition is or what a
12 company's financial condition is until judgment unless a
13 contract makes it so.

14 Under general rules of discovery, this contract makes
15 it relevant and gives us the right to inspect these books at
16 any reasonable time, and we believe that the subpoena that
17 we've given is a reasonable request in a reasonable time.

18 THE COURT: All right. Well, I'll -- we'll follow up.
19 I'm gonna take this under advisement.

20 MR. IMHOFF: May I -- it's just simply this. First of
21 all, if that sentence were to apply, it's completely open
22 ended. In 2000 -- if the -- Allegheny could use that
23 sentence to ask what the financial status of these
24 defendants are, and they're also trying to overcome or do an
25 end run around the, the South Carolina precedence, South

1 Carolina Rules of Civil Procedure and evidence by citing to
2 a contract that says that Pennsylvania law applies.

3 In this case, it's not, it's not. It's just not
4 relevant. My, my question would be what is she gonna do
5 with the information at trial, and her answer is going to be
6 absolutely nothing. They're not gonna use that information
7 at trial, and the discovery process is for information which
8 will be admissible at trial and this simply won't be.

9 THE COURT: well, if the -- I think the rules don't say
10 it has to be admissible. So, it's stuff that could lead to
11 admissible evidence, and I, and I, I know the same argument
12 applies. But I think that's a little -- not, not exactly --
13 but anyway, I'm gonna take this under advisement.

14 All right. What's the second one?

15 MS. WOOTEN: Thank you, Your Honor.

16 Your Honor, the next motion that we have is our motion
17 for summary judgment on some of the counterclaims that have
18 been brought by Netmoco in this case. If Your Honor looks
19 at our memorandum that we filed, again, this is an indemnity
20 case and the defendants have sought here to interpose
21 counterclaims that are, in no way and under no scenario,
22 enforceable under South Carolina law. There's no theory
23 under which these may be brought.

24 We have additionally moved for summary judgment on all
25 counts. Mr. Imhoff and I have discussed the breach of

1 contract claim. We're going to withdraw our motion for
2 summary judgment on that at this time because there is a
3 provision in the contract that requires good faith and
4 Mr. Imhoff needs to take a deposition on the breach of
5 contract claim. However, no amount of depositions can make
6 their claims for, any of the tort claims that they have in
7 this case survive.

8 The first claim that they brought is a bad faith claim
9 against Allegheny, and that is seeking a permanent recovery.
10 What damages they can seek I have no idea, but they have
11 brought a claim for bad faith. There is a case, Your Honor,
12 that disposes of bad faith claims against sureties, first
13 party bad faith claims against sureties. It's Master Claim
14 versus Stark Insurance.

15 May I hand it up?

16 THE COURT: Please.

17 MS. WOOTEN: The Master Claim case was decided back in
18 2001 as sort of a, an attempt by plaintiff's attorneys to
19 get bad faith claims against sureties on first party
20 actions. It arose out of the Nichols case and its progeny
21 allowing bad faith claims in insurance cases. And in this
22 case, if Your Honor looks at the last page of the case, the
23 holding is abundantly clear. Nobody's even challenged the
24 Master Claim holding since it was, since it was implemented
25 in 2001.

1 Paragraph 11, on the last page of the case, says while
2 a principal may not use bad faith as a sword to extract
3 damages from a surety in tort, a principal is not precluded
4 from using bad faith as a shield in contract against a
5 surety seeking indemnification. Mr. Imhoff is entitled, in
6 this case, to say Allegheny, you were in bad faith as a
7 defense to the contract claim, but in no way, shape, or form
8 are they allowed to bring a tort claim against a surety in
9 this scenario.

10 This case is very clear. We've asked the Court to
11 order summary judgment and to award our attorney fees on it
12 because there simply isn't any basis in law or fact for the
13 claim.

14 Now, in Mr. Imhoff's brief, he tries to make the
15 distinction where the Court says at the top of Paragraph 11
16 that in holding that a principal cannot sue a surety in tort
17 for a bad faith refusal to pay a first party claim, while
18 this is not a claim in part against us for failing to pay a
19 claim, it is a first party bad faith claim covered by that
20 last sentence. The Court clearly says while a principal may
21 not use bad faith as a sword to extract damages from a
22 surety in tort period.

23 Whether this particular case happened to be a bad faith
24 claim for refusal to pay, this applies to any type of bad
25 faith first party claims against a surety. There simply

1 isn't any room for argument otherwise. I think that some of
2 the language in the case is instructive as well because the
3 Court draws a distinction between suretyship and insurance.

4 In doing so, the Court says South Carolina law treats a
5 surety agreement as a credit arrangement where the surety
6 lends credit to the principal who otherwise has insufficient
7 credit to contract with whatever entity. In this case,
8 South Carolina DOT. The plaintiff tried to assert that
9 surety agreements are like insurance cases. The Court said
10 that is not the case and draws several distinctions between
11 insurance and suretyship. A surety agreement, agreement,
12 the Court says, is an insurance contract -- is not an
13 insurance contract. It does not subject the surety to a
14 Nichols claim.

15 It goes on to say that plaintiff attempts to create a
16 common law duty by arguing a public policy reason
17 articulated in Nichols. The Court disposed of that. The
18 Court goes on to say surety agreements in public
19 construction projects, which is what we have here, involve
20 commercial entities and do not involve the public's interest
21 as do insurance contracts. In essence, these are guardian
22 powers are largely absent in a surety context because the
23 obligee, not the surety, usually dictates the bonding
24 requirements, and that's true here. The State dictates what
25 the bonding company is required to do in the bonds on these

1 SCDOT projects.

2 Then the Court goes on to distinguish, to make a
3 distinction between the obligations of the parties in
4 insurance contracts and sureties. So, every possible
5 scenario of bad faith in the first party context is
6 discussed in Master Claim and disposed of, and there simply
7 isn't any basis for any tort claim for bad faith.

8 Now, what Mr. Imhoff has done is he is alleged, in
9 his -- it's, it's not in his sixth cause of action. It's
10 actually the first counterclaim cause of action. He's
11 alleged bad faith/negligence.

12 All right. And, so, the allegations that he's made in
13 the complaint on the bad faith/negligence claim is our
14 failure to review contract provision between Netmoco and
15 South Carolina DOT, failure to review and investigate the
16 SCDO, SCDOT's claims, failure to review materials provided
17 in connection with the claim, properly investigate the
18 claim, notify and communicate with the defendants, and
19 train, supervision, and/or prepare employees to investigate
20 claims.

21 Those are the Nichols bad faith claim factors that one
22 has to prove under a bad faith claim. Whether he
23 denominates it negligence or bad faith simply doesn't exist
24 in the context in the surety/principal relationship in this
25 State.

1 If you go on, he also has a separate claim in his
2 eighth cause of action for negligence. It's the same cause,
3 the same allegations that he made as far as failure to
4 properly investigate the claim, review the claim, review the
5 contract, et cetera. It's still a bad faith claim. Anyway
6 you slice it, it's a bad faith claim. It is not permissible
7 under South Carolina law.

8 Even if there were some sort of independent basis for
9 negligence, it's barred in this case by the Economic Loss
10 Doctrine. Economic Loss Doctrine would require the
11 plaintiff to state, or the defendant in this case,
12 counterclaim plaintiff, to state a duty, some sort of
13 special relationship duty under the Tommy L. Griffith case
14 whereby it's like either maybe an attorney that -- some of
15 the cases that have been decided under the Economic Loss
16 Rule have to do with professional duties arising between an
17 attorney and client, an architect and an owner, an architect
18 and a contractor, engineer and contractor, professional
19 duties.

20 Not only is there no duty alleged here, there's no duty
21 alleged at all in the pleadings and there can be no such
22 duty arising here. This is a arm's length commercial
23 transaction between two companies who do not have any
24 unequal bargaining power. Again, it's a credit arrangement
25 that allowed Netmoco to bid on jobs that it otherwise

1 wouldn't have been able to bid on without the bond. So, the
2 Economic Loss Doctrine would bar any negligence claim even
3 if it weren't just a bad faith claim disguised as a
4 negligence claim.

5 So, we believe that the negligence claims in Count 6
6 and Count 8 of the defendant's counterclaims should be, we
7 should be entitled to summary judgment on those.

8 The final thing that we're entitled to summary judgment
9 we believe, Your Honor, is the two claims for cost and
10 attorneys fees. These are again claims that there's no
11 legal basis for. We believe they're -- and we've asked the
12 Court to award our attorneys for having to bring all this
13 motion and argue the motion and prepare the brief, et
14 cetera. There are two causes of action under which the
15 defendants have sought to recover their attorneys fees.

16 In their seventh cause of action, the defendant sought
17 their fees and costs under South Carolina Code Section
18 38-59-40. This statute is inapplicable. Although some of
19 the insurance statutes have been held to be applicable to
20 sureties, this particular one is not, and if you look at
21 Page 7 of our brief, Your Honor, we've quoted the statute.

22 The statute says that attorneys fee may be recovered in
23 the event of a claim, loss, or damage which is covered by a
24 policy of insurance or a contract of a non-profit hospital
25 service plan or medical service corporation. Obviously we

1 don't have either a policy of insurance here or a non-profit
2 hospital service plan or medical service corporation. That
3 statute doesn't apply here.

4 Some of the insurance statutes, as I say, have been
5 explicitly extended to sureties. This is not one of them.
6 So, there's no basis under which Netmoco can recover under
7 their counterclaim for attorneys fees under that section.

8 The final claim that Netmoco has alleged for attorneys
9 fees is found in their tenth cause of action. In that cause
10 of action there's no statutory or contractual basis alleged
11 for the claim. There is none. There's no statutory basis
12 under which they can recover and there's nothing in their
13 contract that would allow them to recover attorneys fees
14 either, and obviously it's well settled here and in South
15 Carolina that a party cannot recover attorneys fees unless
16 it's authorized by contract or statute. Not only is there
17 not a contract or statute, they haven't even attempted to
18 plead one in their tenth cause of action.

19 So, Your Honor, for these reasons, we would submit that
20 for the sixth, eighth, seventh, and tenth counts of the
21 counterclaim, which is all the counterclaims except breach
22 of contract, we would be entitled to summary judgment and we
23 would request that you grant that to us.

24 THE COURT: All right. Mr. Imhoff, before you get up,
25 let me make sure I get all the parties right.

1 You, you represent the corporation and the Lewis'?

2 MR. IMHOFF: Yes, Your Honor.

3 THE COURT: All right. I did, flipping through here, I
4 thought I saw a separate answer on behalf of the Lewis'.

5 Did, did they file one at one point and then you filed
6 a subsequent one?

7 MR. IMHOFF: That's right, Your Honor.

8 THE COURT: Okay. That's fine.

9 MR. IMHOFF: Judge, Judge Mark Hayes---

10 THE COURT: That's fine.

11 Go ahead.

12 MR. IMHOFF: Thank you, Your Honor.

13 Before I go into the analysis of all the arguments made
14 by Ms. Wooten, I think it's important, and I know you've
15 heard some of it before and may remember some of it, but I
16 think it's important for the Court to hear what the facts
17 are again.

18 It is correct that Netmoco did mowing for the
19 Department of Transportation in numerous counties in the
20 State. To get those contacts, the Department of
21 Transportation, they were required by the State to get a
22 bond. They did that with Allegheny in Chester County
23 specifically where this issue arose. There was a contract
24 dispute between the Department of Transportation and Chester
25 County and Netmoco. It was a serious contract dispute where

1 the Department of Transportation allegedly was not paying
2 fully, was shorting them, was making them do things outside
3 of the contract.

4 There was a three month period of time where the
5 Department of Transportation was completely nonresponsive to
6 Netmoco before -- apparently they do it every couple of
7 months, go out and mow, before the next mow would happen,
8 and, at that point, that disagreement ended their
9 relationship where Netmoco could no longer pay to do the
10 work without the Department of Transportation reimbursing
11 them.

12 So, it was a legitimate contract dispute between the
13 Department of Transportation and Netmoco. It wasn't where
14 these, where Netmoco was unable financially to continue, the
15 company was falling apart. It was a legitimate contract
16 dispute.

17 The Department of Transportation sent the claim up to
18 Allegheny for \$75,00. Still haven't figured out what
19 exactly \$75,000 is for. I don't think the Department of
20 Transportation could ever show how they arrived at \$75,000.
21 Netmoco and Mr. and Mrs. Lewis did everything that they
22 could to tell Allegheny of the contract dispute, that it was
23 a frivolous and meritless claim, and then two or three
24 months later, Allegheny, relying on this very one sided
25 indemnity agreement, decided to bring a Federal Court

1 lawsuit against both Netmoco and the Department of
2 Transportation. In, in a year, without any deposition,
3 spent \$35,000 proving that Netmoco and Mr. and Mrs. Lewis
4 were right originally, and that's what this case is about.

5 They want to now come back and have a new, Mr. and Mrs.
6 Lewis's money, Netmoco's money, they want these folks to
7 reimburse them for their failure to do any investigation or
8 analysis at the beginning of, of this matter instead of
9 trying to now attach \$35,000 to prove that they were right.
10 That's what this case is about.

11 And, so, we did file an improper claims practice, a bad
12 faith claim, and Ms., Ms. Wooten sites the Master Claim
13 case. If you look at the Master Claim case, which she says
14 prevents that bad faith completely, it is important to note
15 that the Master Claim case is simply a response to a
16 certified question, a very narrow issue from the Federal
17 District Court of South Carolina in which our Supreme Court
18 expressly ruled that a principal cannot sue a surety in tort
19 for a bad faith refusal to pay a first party claim. If you
20 look at Page 7 of that opinion, the Court goes on to say it
21 is important to note we do not preclude a principal from
22 using a surety's bad faith in all instances.

23 So, on the one hand they make a very narrow ruling on
24 what is not allowed. Then, in the second half of that
25 sentence, they said we're not ruling on everything. I agree

1 with Ms. Wooten. They spent a lot of time analyzing that
2 question in here. But the answer isn't clear from our
3 Supreme Court whether this particular case can go forward
4 under a bad faith or improper claims practice, and the
5 reason why is this case is distinguishable from those where,
6 where the principal in those cases is suing the surety for
7 bad faith refusal to pay a first party claim. This case is
8 about a surety's obligation and duty to analyze,
9 investigate, and do some due diligence before immediately
10 filing suit and incurring costs that are taxable to the
11 principal.

12 That's what this case is about and, and there isn't any
13 law in this State. Whether or not a surety has a duty and
14 obligation to exercise some thought, some investigation,
15 some analysis, before incurring costs, and, essentially -- I
16 was, I was shocked by this general indemnity agreement.
17 Essentially what it says is we get to do whatever we want
18 with your money, and then you're going to pay us for
19 whatever we, we want to do.

20 There's two, there's two responses to that. As you
21 heard Ms. Wooten say, she's leaving the, she's leaving the
22 breach of contract cause of action. The reason she's
23 leaving the breach of contract cause of action is because
24 Allegheny itself, in the contract, requires itself to act in
25 good faith, and Allegheny's general indemnity agreement,

1 they say we must act in good faith while spending your
2 money.

3 So, we've alleged that they haven't. That's where the
4 breach of contract action comes from. We've also alleged
5 that they haven't acted in good faith or, conversely, they
6 acted in bad faith in alleging these tort causes of action.
7 There hasn't been a decision that decides whether or not a
8 surety has a duty or obligation in tort to do an
9 investigation, analysis before filing suit against a surety
10 or against the principal and obligee and that's why we filed
11 that.

12 We think that the Supreme Court would find that a
13 surety, much like a fiduciary, has a duty and responsibility
14 to look out for the interest of the parties involved
15 especially when they're gonna turn around and use an
16 agreement to tax the costs back, and essentially what it
17 boils down to, Your Honor, they were playing with house
18 money.

19 I'm curious what Allegheny would have done if they were
20 paying their own money and they weren't able to come back
21 and attempt to tax costs against Netmoco or Mr. Lewis and
22 Mrs. Lewis, who told them from the very beginning that South
23 Carolina Department of Transportation's claims was
24 meritless. They had many other options. If it was
25 Allegheny's money they were spending, they spent \$35,000 to

1 file a Federal lawsuit. That's what this case is about.
2 That's why we think that these tort causes of action are
3 appropriate.

4 I don't think that -- Master Claim, it absolutely rules
5 on this issue. It's different than the other surety cases.
6 This doesn't have to do with paying or not paying or taking
7 time to pay. It has to do with investigating it before,
8 before incurring costs.

9 Let me talk about, just briefly, some of the other
10 causes of action. The attorneys fees statements throughout
11 our pleadings and throughout Allegheny's pleadings, what the
12 entire case is about. That's all it's about. All we're
13 talking about are the, their attorneys fees, our attorneys
14 fees. Again, these people got -- not only do they have to
15 pay Allegheny, they had to pay their own attorney because
16 Allegheny sued them. So, they had to pay the attorney that
17 was suing them and the attorney that was defending them.
18 That's what the case is about.

19 So, we're asking for attorney fees. It's not like
20 we're asking for attorneys fees in a, in a wreck case or a
21 slip and fall case. It's the damages in this case. That's
22 what the damages are.

23 Secondly, the refunds owed, I'm not sure if Ms. Wooten
24 addressed that particular cause of action.

25 MS. WOOTEN: No.

1 MR. IMHOFF: Okay. All right. So, she's not asking --
2 so, so, I won't address that. So, I, I think it's important
3 that you know the background of the facts, why we pled it
4 the way did. The costs, we can, we can remove it, but it
5 would just be incorporated in our other ones. The costs are
6 the damages.

7 I think she said the seventh cause of action, improper
8 (inaudible), I think I've handled that. The eighth,
9 negligence, I think I've talked about that and the sixth.

10 So, I think, I think they all are legitimate causes of
11 action. I don't think that our Supreme Court has decided
12 whether this cause of action would go. I certainly don't
13 think they're frivolous. I think they're legitimate. I
14 think that, that if this Court was to allow it to go
15 forward, at some point our Supreme Court will address
16 whether a surety has a, an obligation in good faith or a
17 duty in negligence to do some investigation before
18 immediately filing a Federal lawsuit.

19 And, and, so, that's why I pled it. I don't think it's
20 barred by Master Claim, and I, I would ask that this Court
21 allow it to go forward.

22 MS. WOOTEN: May I respond briefly, Your Honor?

23 I'm sorry.

24 MR. IMHOFF: Thank you, Your Honor.

25 MS. WOOTEN: Your Honor, I think it's, first of all,

1 our Supreme Court, I don't believe, would rule on this
2 because the Supreme Court has ruled on this. The very short
3 portion of the Master Claim opinion that Mr. Imhoff cites
4 where he says we do preclude a principal from using a
5 surety's bad faith in all instances, it does say that. The
6 Supreme Court, after that, says several courts, including
7 those not recognizing a principal's right to sue on bad
8 faith and tort, allow the principal to assert the surety's
9 bad faith as a defense to indemnification. While the
10 principal may not use bad faith as a sword to extract
11 damages from a surety in tort, the principal is not
12 precluded from using bad faith as a shield.

13 The Court has, has clearly spoken that, that, under any
14 circumstances, a principal may not use bad faith as a sword
15 to extract damages from a surety in a tort case. But it
16 doesn't say certain tort cases it can, certain it can't. In
17 a tort case, it may not be used.

18 Master Claim has been or has been the law in this state
19 since 2001. There simply isn't any argument otherwise.
20 There isn't any good faith argument otherwise.

21 As far as the facts of this case, with all due respect,
22 Your Honor, and Your Honor had, had indicated that he
23 remembered the facts, so I didn't take the Court's time to,
24 to re-recite them, but with all due respect to Mr. Imhoff
25 and his client, that's absurd.

1 what happened in this case was the SCDOT declared
2 Netmoco in default because they weren't performing their
3 contract. Then, after they were declared in default, SCDOT
4 had to pay somebody else to finish their work. That's what
5 a bond's for.

6 So, when they paid somebody else to finish the work,
7 \$75,000, SCDOT communicated to us, as a surety, and said you
8 guys got to pay up. Netmoco said we don't owe it. So, we
9 said okay, South Carolina's DOT is not gonna release their
10 claim, you guys are saying you don't owe it.

11 So, what do we do?

12 We bring a declaratory judgment action. That's what's
13 done. That's the only option that there is at that point.

14 So, we brought the declaratory judgment action. We did
15 discovery. We ended up doing a mediation, a long mediation,
16 an expensive mediation at the end of which we got them off
17 the bond claim, and now they're refusing to pay. So, the
18 interpretation of the facts, from their standpoint, is, is
19 quite frankly just appalling, and, and I don't understand,
20 you know, how they can think that way.

21 The other -- the one last thing is that, and Mr. Imhoff
22 says he's shocked by the general indemnity agreement. This
23 is, this is a standard general indemnity agreement that
24 every surety enters into with every principal. This general
25 indemnity agreement is the same type that's used by

1 Travelers and St. Pauls and FD and every other surety
2 company in the country.

3 That's how surety agreements work. There's nothing
4 shocking about it. People -- when people need a bond and
5 need to get bonding on construction projects, that's what
6 they give up. They give up basically, you know, any right
7 that they have not to pay the indemnity when the claim is
8 settled, and that's what happened here. There is been no
9 bad faith. If there has been any, Mr. Imhoff is certainly
10 entitled to assert that as a defense, but not as to a claim.

11 THE COURT: All right. What's the last -- you said
12 there were three issue, three things to hear.

13 MS. WOOTEN: Yes, Your Honor. We had a -- the last
14 motion that we had in front of you, you had issued an order
15 and we were clear on every part of it except for the last
16 part, which was---

17 THE COURT: All right. Let me find it. I just saw it
18 in here a minute ago.

19 MS. WOOTEN: Okay. All right, Your Honor. It has to
20 do with their attempts to discover our attorney/client
21 privilege materials on our attorney work product and
22 attorney/client privilege on our attorney bills. In Your
23 Honor's order, as I understood it, said you could not make a
24 ruling at the time because you did not have the documents
25 produced in camera or you did not have a privilege log,

1 correct?

2 THE COURT: I'm looking at the (inaudible).

3 MS. WOOTEN: That's exactly -- that's exactly what I
4 can remember of it. So, Jason and I have talked about it,
5 and just for clarification, I think now he would like me to
6 do that.

7 Would Your Honor prefer a privilege log or in camera or
8 does it really matter?

9 THE COURT: Well, I think probably both. I think I
10 need a privilege log to see what, to, to, what is argued,
11 what are you arguing is subject to privilege and why,
12 whether it's work product or attorney/client, and I need to
13 look at it in, in camera. So, kind of the answer is yes and
14 yes.

15 MS. WOOTEN: All right. Your Honor, if we could, could
16 we request twenty days to get that information to you?

17 THE COURT: Well, it's not the kind of thing I'm always
18 anxious and in a hurry to do. So -- but I'll give you forty
19 or fifty. No, twenty days will be fine.

20 MS. WOOTEN: Thank you, Your Honor.

21 THE COURT: We will be getting into the summer with
22 vacations and things like that, and my law clerk's leaving
23 me. So, I mean I've got some stand in law clerk. So,
24 between us, we'll be able to do it. But, yeah, twenty days
25 will be fine.

1 MS. WOOTEN: Thank you, Your Honor. We appreciate it.

2 MR. IMHOFF: Your Honor, may I ask, are we going to
3 re-argue on that issue?

4 THE COURT: Well, here's, here's the way that's usually
5 done, and it gets to be a little sticky because if it falls
6 in the Court's lap to determine what is attorney/client and
7 what is work product and make that decision. And, you know,
8 my recollection is the things I determined to be protected
9 aren't divulged.

10 And, so, I don't know what you would argue if I just
11 say the report of September 4th, 2002, is protected by the
12 attorney work client privilege, then you don't see that
13 report. So, I don't know what there is to argue. I don't
14 know how you could come in and argue it's not protected. I
15 hadn't seen it, but I know it's not protected. So---

16 MR. IMHOFF: Your Honor, you, you've identified the
17 problem we have. We've alleged bad faith, either
18 offensively as a sword as Ms. Wooten has said, or
19 defensively to their indemnity cause of action, and,
20 frankly, I don't know how to prove that they didn't engage
21 in good faith if their entire file in the underlying case is
22 work product and attorney/client privilege, and I have no
23 idea what they did because surely the claims adjustor just
24 said well, I relied on the advice of my attorney or the
25 advice of what your attorney said and he says that's what

1 works.

2 THE COURT: Well, I'm not -- that's fine. I may be a
3 little more liberal than some in, in, for excluding stuff.
4 In fact, I'll look and see if something truly falls within
5 the parameters of the thing -- I had a bad taste of it I
6 guess when I was practicing law with (inaudible) in a
7 medical malpractice case where some matters where they try
8 to stuff everything in one of the little pocket so that
9 nobody in the world can see it even though it had work
10 product or attorney/client privilege.

11 So, I look over it very close, and it's really got to
12 fall into one of those two categories before I will protect
13 it. If it's just general stuff that they want to say is
14 work product or attorney/client privilege, I usually don't
15 buy that. But I don't have an answer to your dilemma
16 because once I say it's protected, then it's protected. The
17 only option then, I guess, would be appeal, and, of course,
18 that would be an interlocutory order, order. So, I guess --
19 so, it's a Catch 22. I don't, I don't have an answer.

20 MR. IMHOFF: Well, Your Honor, if I, if I may. Just
21 one brief thing.

22 I would say that everything that they're gonna produce
23 to you is likely work product or attorney/client privilege
24 in the underlying case. So, I think you will determine it's
25 a work product or attorney/client privilege.

1 The question is is it discovery, is it discoverable in
2 this second case where we're arguing about their conduct in
3 the first case, and that's why I would ask you to---

4 THE COURT: Well, I see it's a once removed kind of
5 thing, but it's sort of like a rose is a rose or I don't
6 know. I'll have to think through that, but it either is or
7 it ain't. And if it's attorney/client privilege, it's
8 attorney/client privilege regardless of who's litigating.

9 MR. IMHOFF: I think it's discoverable in a bad faith
10 insurance claim, and obviously you can get the adjustor's
11 file and, and attorney's file.

12 MS. WOOTEN: Your Honor, we, we, we submitted a brief
13 on this before. We'll brief the issue again in the twenty
14 days---

15 THE COURT: All right.

16 MS. WOOTEN: ---to show why we think -- we've, we've
17 produced a lot of our files. It's not like we've withheld
18 our other files. We've produced all our files except the
19 attorney/client privilege and the work product privilege
20 stuff. So, we'll, we'll brief that if, if that's all right
21 with Your Honor.

22 THE COURT: Yeah, that's fine cause it's, it's kind of
23 sticky wicky, but I'll do my best to, to deal with it. I'm
24 not -- I don't know that I've actually had this where you're
25 seeking the attorney/client work product is purportedly in

1 another case, not the one we're tied up in. But it's a
2 straight line from one to the other.

3 MR. IMHOFF: Your Honor, my, my client has asked that
4 she be allowed to say something.

5 THE COURT: She's an attorney. So, I'll be---

6 MRS. LEWIS: Your Honor, MS. Wooten was not in the
7 original case. It was one of the same firms I think handled
8 it, Mr. Elmore, and, therefore, she doesn't know the facts
9 as well and she misstated the facts several times. The --
10 Allegheny did not get us off of a claim that the State was
11 making that we owe, that -- the State never paid -- she said
12 something about the State -- it cost the State \$75,000 and
13 that's part of that. The State never paid the \$75,000.

14 That is the whole problem. When we -- when this case
15 first arose, there was a meeting in Columbia with the
16 surety, Mr. Elmore. All of us met down there. The State
17 could not show that we were in default or that we, it had
18 cost them anything, and that's why we've been here from the
19 beginning saying this whole thing shouldn't have come up and
20 they should pay our attorneys fees.

21 MR. IMHOFF: Your Honor, if I may, and please don't
22 infer anything from this, we haven't heard our motion for
23 summary judgment yet, and I've forgotten. I apologize.
24 Don't infer anything like we weren't, we weren't serious
25 about this.

1 May we proceed with that, Your Honor?

2 THE COURT: Yeah, let's take a short break and then---

3 MR. IMHOFF: Okay.

4 THE COURT: Let's take a short break then we'll come
5 back. I know everybody is anxious to take care of this
6 first.

7 (WHEREUPON, a short recess was taken at this time.)

8 THE COURT: We're back on the record in Allegheny and
9 Netmoco, and both parties are standing. So---

10 MS. WOOTEN: Well, Your Honor, I just -- since Mrs.
11 Lewis was allowed to talk about the previous case, for Your
12 Honor's benefit, because we thought some things like this
13 might be said, we've attached the claim letter and her
14 response to our brief.

15 THE COURT: Okay.

16 MS. WOOTEN: That tells that the DOT had, indeed, paid
17 money to do the work at a cost of \$75,000, and her response
18 saying things like there was no contract, this sort of
19 thing. Just so you know, there is some factual material on
20 that that's attached.

21 THE COURT: All right. Mr. Imhoff.

22 MR. IMHOFF: Your Honor, I believe my argument on my
23 motion for summary judgment is very very brief. Essentially
24 it is this, as you know, the case was mediated. At that
25 mediation, the South Carolina Department of Transportation

1 agrees to walk away from the claim, dismiss their claim.
2 There was a release agreement or a settlement agreement
3 which was signed on that date. It is attached to my brief.

4 As you know, Allegheny, the entire motivation for this
5 lawsuit is Allegheny's attorneys fees. Those are the
6 damages that they're claiming in this lawsuit. At Paragraph
7 or Section 3 of that lease agreement, as it was understood
8 by my client, and it is, it is abundantly clear on that
9 release agreement, it states each party will separately pay
10 their own attorneys fees and costs incurred in this matter.

11 I think, I think that resolved the issue. Allegheny,
12 at that time, waived their right to seek costs and attorneys
13 fees, and it would completely dispose of this case. I
14 understand that Allegheny's position on that likely would be
15 that it's ambiguous because they were trying to reserve
16 indemnity rights above.

17 I don't think it's ambiguous. I think that that had to
18 do with all of the other bombs that that motel had purchased
19 from Allegheny. This particular clause is unequivocal and
20 is clear and is unambiguous and Allegheny's costs and
21 attorneys fees are clearly released, settled, and barred in
22 this case.

23 Your Honor, if you don't have -- if you've lost that
24 copy, I can hand up another copy.

25 THE COURT: Yeah, I don't know if I've lost it. I

1 don't know if I've ever found it. So, if you'll -- yeah, it
2 would be nice. The file is getting a little thick.

3 MR. IMHOFF: Sorry about that, Your Honor.

4 THE COURT: No, no, don't -- okay. Thank you.

5 MR. IMHOFF: I believe it's on the -- I've given you my
6 copy now, but I believe it's Paragraph 3, which is maybe on
7 the second page.

8 THE COURT: I've got it, yeah.

9 MR. IMHOFF: And that is it's own paragraph. There are
10 no limited or other qualification to it. In that paragraph,
11 it's clear and unambiguous and I think it stands and it bars
12 this claim.

13 MS. WOOTEN: Your Honor, again, with all due respect to
14 Mr. Imhoff, his argument doesn't have any merit at all. I
15 have, for the Court, the current motion for dismissal and
16 the settlement agreement, and if you look at the -- well,
17 first let's look at the settlement agreement. I don't know
18 if it's in the complaint or dismissal.

19 THE COURT: I've got the settlement agreement. Not the
20 dismissal.

21 MS. WOOTEN: Look at -- if you look at the settlement
22 agreement in Paragraph 1, it indicates that the parties are
23 executing this release, and at the bottom of the page it
24 says except as hereinafter set forth.

25 So, you see that in the---

1 THE COURT: I see it.

2 MS. WOOTEN: All right. Then if you go to the next
3 page, it says any claims which Allegheny may have against
4 Netmoco or Nora Lewis or Nora B. Lewis for indemnity, under
5 the terms of the contract, GIA, between Allegheny as a party
6 and Netmoco and Nora Lewis and Harold Lewis and the other
7 party to any claims that Netmoco and Harold Lewis and Nora
8 Lewis have against Allegheny are excluded from this
9 settlement agreement.

10 So, all of the indemnity claims are excluded through
11 this agreement by operation of that paragraph. Whether it's
12 attorneys fees, whatever, all of the indemnity agreements
13 are excluded from this.

14 THE COURT: Well, how do you reconcile that with what
15 he just read?

16 MS. WOOTEN: Your Honor?

17 THE COURT: I mean that's pretty affirmative. Each
18 party will separately pay their own attorneys fees and costs
19 incurred in this manner and it's signed by Allegheny's
20 attorney and everybody else.

21 MR. WOOTEN: Except for---

22 THE COURT: No, it doesn't say, it doesn't say except
23 for. That's, that's -- you're, you're putting language in
24 there.

25 MS. WOOTEN: I understand, Your Honor. However, if

1 the, the language in the paragraph that I read specifically
2 includes all indemnity agreements from anything else that is
3 in this settlement agreement. That paragraph says that all
4 the indemnity claims are not subject to the settlement
5 agreement. So, it's not subject to Paragraph 3. Any
6 indemnity claims are not subject to this settlement or
7 anything that's in it. That's what it says.

8 THE COURT: well, it doesn't say that -- it just says
9 they're excluded from the settlement agreement.

10 MS. WOOTEN: Yes, Your Honor. That means there are no
11 indemnity claims in this settlement agreement. Every one of
12 the indemnity claims are, are excluded from the settlement
13 agreement.

14 THE COURT: well, what does Paragraph 3 mean?

15 MS. WOOTEN: I'm sorry?

16 THE COURT: What does Paragraph 3 mean?

17 MS. WOOTEN: Your Honor, as far as I know, it means
18 that everything---

19 THE COURT: No, I don't want, I don't want as far as
20 you know. I want you to tell me what it means as far as I
21 ought to know.

22 MS. WOOTEN: Okay. Right, Your Honor. What it means
23 is that, other than attorneys fees incurring, incurring and
24 pursuing the indemnity action, everything's released.
25 That's what it means. Other than what's excluded

1 specifically from this settlement agreement, each party pays
2 their own fees, and that's -- I don't, I don't -- I think
3 that's pretty clear and I don't think that that's ambiguous
4 if you look in addition at the dismissal -- do you have a
5 copy of that?

6 THE COURT: Yeah, I'll need a copy of that.

7 MS. WOOTEN: I underlined -- oh, I'm sorry, Your Honor.
8 It's attached to the settlement agreement. So, you see it
9 says that in the dismissal agreement. Indemnity claims are
10 clearly not contemplated as part of any settlement documents
11 in the dismissal. It was -- the entire indemnity claim was
12 kept alive.

13 THE COURT: What do you have to say about that, Mr.
14 Imhoff, cause it also, it also seems to keep alive any
15 claims Netmoco may have against Allegheny.

16 MR. IMHOFF: Well, Your Honor, that, that, that's what
17 it says in these agreements, but that's not what these
18 clients say they understood, and that's not what it says in
19 Paragraph 3. Their understanding of that, and as if you
20 read it, it says, in that first sentence on the second page,
21 any claims which Allegheny may have against Netmoco or
22 indemnity under, under the terms of a contract. Again, they
23 had numerous bonds with Allegheny, and that was their
24 understanding.

25 But as to this case, it was completely settled at that

1 settlement conference, and it is clear and unambiguous that
2 each separately is to pay their own attorneys fee. And,
3 Your Honor, if, if it says what Ms. Wooten wants you to
4 believe it says, what's the point of having that?

5 The entire indemnity claim is attorneys fees, and what
6 they're saying is this applies to everybody else, but not to
7 us.

8 THE COURT: what she's kind of saying is -- well, I,
9 I---

10 MR. IMHOFF: who are all the parties that are paying
11 their own attorneys fees?

12 MS. WOOTEN: SCDOT had to pay their own attorneys fees
13 as well as Netmoco, and we excluded that specifically
14 because we planned to pursue this.

15 THE COURT: All right. I'll take a look at this one
16 too and take it under advisement.

17 MR. IMHOFF: Thank you, Your Honor.

18 THE COURT: Thank you.

19

20 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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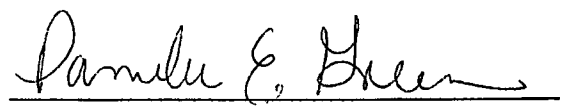
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the
Seventh Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
York County, South Carolina, on the 16th day of May, 2011,
as reported by Janet Rich and transcribed by myself to the
best of my ability.

I do further certify that I am neither of kin, counsel
nor interest to any party hereto.

November 5th, 2011



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

SETTLEMENT AGREEMENT

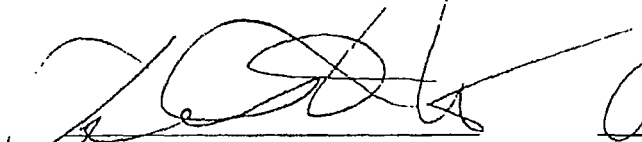
This agreement has been entered into between and among Allegheny Casualty Company (Allegheny), its successors and assigns, hereinafter referred to as "Plaintiff" and Netmoco, Inc. (Netmoco), South Carolina Department of Transportation (SCDOT), and Nora B. Lewis and Harold L. Lewis (Lewis), their heirs, personal representatives, employees, agents, successors, and assigns, hereinafter referred to as "Defendants", as follows:

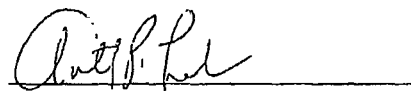
1. The parties will execute a mutual Release, satisfactory to the Parties, releasing any and all claims which they may have against each other, their heirs, personal representatives, employees, agents, successors and assigns, arising out of any damages sustained by the parties resulting directly or indirectly from a Vegetation Management contract, Lot 4, Chester County, Contract number A00237014D, between SCDOT and Netmoco and Performance Bond issue by Allegheny to SCDOT in connection with work to be done by Netmoco in Chester County, South Carolina, including, but not limited to, all claims set forth or which could have been set forth in a lawsuit (including cross claims of Netmoco and Harold and Nora B. Lewis against SCDOT and any counterclaims or cross claims that SCDOT could have brought in this action) by Allegheny Casualty Company against Netmoco, Inc., South Carolina Department of Transportation, Nora B. Lewis and Harold L. Lewis, in the United States District Court for South Carolina, Spartanburg Division, under civil action # 7:08-CV-1689-GRA, except as hereinafter set forth. This settlement includes all claims, both known and unknown, which Netmoco and Lewis and SCDOT now have and which may arise in the future from

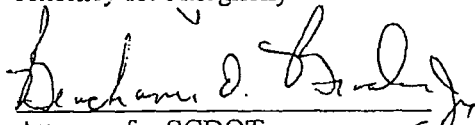
the matter in question against each other. Any claims which Allegheny may have against Netmoco, Inc, Harold Lewis and Nora B. Lewis for indemnity under the terms of a contract ("GIA") between Allegheny, as a party, and Netmoco and Harold Lewis and Nora B. Lewis, as the other party and any claims that Netmoco and Harold Lewis and Nora B. Lewis have against Allegheny are excluded from this Settlement Agreement. The cross claims of Netmoco and Lewis against SCDOT will be dismissed with prejudice and any claims between Allegheny and Netmoco and Lewis that are reserved will either be dismissed without prejudice, with the right to re file those claims in the county where Netmoco and the Lewis' reside or those claims shall be remanded by U.S. District Court to the County where Netmoco and the Lewis' reside. at the option of Allegheny.

2. Netmoco and the Lewis' agree that they will not bid on any SCDOT contracts in the future.
3. Each party will separately pay their own attorneys and the costs incurred in this matter.
4. PLAINTIFF AND DEFENDANTS ACKNOWLEDGE THAT THE ABOVE REPRESENTS THE TERMS OF THEIR AGREEMENT AND IS A FULL AND COMPLETE SETTLEMENT OF THE CASE.

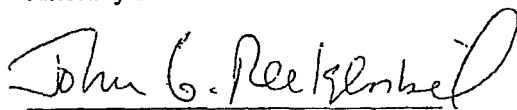
Done this 20th day of April 2009.


Attorney for Allegheny

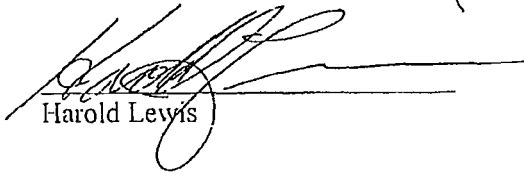

For Allegheny

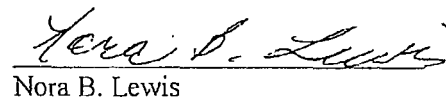

Attorney for SCDOT


For SCDOT


Attorney for Netmoco and Lewis'


For Netmoco


Harold Lewis


Nora B. Lewis

GENERAL INDEMNITY AGREEMENT

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), is made this 30th day of January, 2007, by the person or persons identified on the signature pages hereof as "Principal" (hereinafter, together with the persons described in the last sentence of Paragraph 20, the "Principal") and the persons identified on the signature pages hereof as "Additional Signatories" (collectively, and together with the Principal, the "Indemnitors") in favor of the Surety, or any other present or future subsidiary or affiliate of the Surety, which may issue Bonds (as defined below), as the case may be (any one or all of which, together with the companies described in Paragraph 13, are hereinafter referred to as the "Surety").

WHEREAS, Principal, solely or as co-adventurer with others, has requested and does hereby request the Surety to execute or procure the execution of such bonds, undertakings and recognizances (all of which, together with the bonds described in the last sentence of Paragraph 20, are hereinafter referred to as the "Bonds") as have been or may hereafter be applied for directly or through an agent, attorney or other representative by the Principal or by one or more of the Indemnitors; and

WHEREAS, the Indemnitors understand that the Surety expressly requires the delivery of this Agreement as part of the consideration for the Surety's execution of the Bonds or the Surety's refraining from canceling the Bonds; and

WHEREAS, the Indemnitors have a substantial, material and beneficial interest in the execution and continuation of the Bonds.

NOW, THEREFORE, in consideration of the premises and of the execution and continuation of the Bonds, the Principal and the other Indemnitors for themselves, their heirs, executors, administrators, successors and assigns, intending to be legally bound, do hereby jointly and severally covenant and agree with the Surety, its successors and assigns, as follows:

The recitals set forth above are an integral part of this Agreement are incorporated herein by reference as if set forth in their entirety.

Payment of Premiums

1. The Indemnitors will pay, when due, all premiums for each Bond in accordance with the Surety's rate filings or manual of rates or as otherwise may be agreed between the Surety and the Principal, as long as any liability of the Surety thereunder shall continue, and until the Surety is furnished with evidence satisfactory to the Surety that it has been discharged or released from such Bond and from all liability by reason thereof.

Indemnification

2. The Indemnitors shall indemnify the Surety against any and all liability, loss, costs, damages, attorney's fees and other expenses which the Surety may sustain or incur by reason of or in connection with the execution, renewal, continuation or replacement of the Bonds, including but not limited to (i) sums paid or liabilities incurred in connection with the Bonds or claims, suits or judgments under the Bonds, (ii) expenses paid or incurred in enforcing the terms hereof, in procuring or attempting to procure the Surety's release from liability and (iii) expenses paid or incurred in recovering or attempting to recover losses or expenses paid or incurred. The Indemnitors shall indemnify the Surety against any and all liability, loss, damages, attorney's fees and other expenses which the Surety may sustain or incur from relying upon representations made by the Indemnitors regarding defenses to claims made against any Bond that may be available to the Principal or the Surety.

The Surety shall have the exclusive right to determine whether any claim, liability, suit or judgment made or brought against the Surety or the Indemnitors or any one of them on any Bond shall or shall not be paid, compromised, resisted, defended, tried or appealed, and the Surety's decision thereon, if made in good faith, shall be final and binding upon the Indemnitors. The Surety shall also have the right to prepay the obligee on any Bond any amounts which the Surety, in good faith but in its sole and absolute discretion, (i) determines may become ultimately due on any Bond or (ii) deems may be necessary or advisable to protect any of the Surety's rights hereunder, even though a claim, suit or judgment has not yet been made or brought against the Surety on such Bond.

An itemized statement of payments made by the Surety for any of the purposes specified in this Agreement, sworn to by an officer of the Surety, or a voucher or vouchers for such payments, shall be prima facie evidence of the liability of the Indemnitors under this Paragraph 2.

Without limiting the Surety's exclusive right with respect thereto, if the Indemnitors desire that a claim or demand against the Surety be resisted and litigated, the Indemnitors shall satisfy any conditions specified by the Surety, including without limitation, any conditions for the Indemnitors to (i) give notice to the Surety to this effect, (ii) simultaneously deposit with the Surety, at the Surety's option, cash or collateral satisfactory to the Surety in an amount sufficient to cover the claim or demand and interest thereon to the probable date of disposition and (iii) at the Surety's option, either deposit simultaneously with the Surety cash or collateral satisfactory to the Surety in an amount sufficient to cover the expenses and fees of defense, including but not limited to the judgement or judgements amounts rendered or that might be rendered, with interest, costs, expenses and attorneys' fees, including those of the Surety, or take over the resistance and litigation of the claim.

The Indemnitors shall, at any time upon the request of the Surety, procure the discharge of the Surety from any Bond and from all liability by reason thereof.

Reserve Deposit; Obligations

3. If the Surety shall establish a reserve to cover any actual or potential liability, claim, suit or judgment under any Bond, the Indemnitors, immediately upon demand and whether or not the Surety shall have made any payment therefore, shall deliver to the Surety a sum of money equal to such reserve and any increase thereof to be used, at the option of the Surety, to prepay such liability, claim, suit or judgment or as cash collateral to secure the Obligations (as defined below). The Surety shall have the right to use such deposit, or any part thereof, in payment or settlement of any liability, loss or expense for which the Indemnitors would be obligated to indemnify the Surety under the terms of this Agreement.

The Indemnitors expressly agree that any sums remaining, if any, in the Surety's possession after payment or prepayment of any liability or claim reserved for, at the discretion of the Surety, may be applied to the payment or prepayment and satisfaction of any other Obligations. Such deposit may be commingled with any other funds of the Surety and otherwise handled in any manner deemed appropriate by the Surety. The surety shall have no obligation to invest or to provide a return on the deposit.

The "Obligations" shall mean any actual or potential liability, claim, suit or judgment under any Bond, and any loss, costs, damages and attorney's fees covered by the indemnification provisions of this Agreement, and any other obligations of the Indemnitors to the Surety or any affiliate of the Surety, now or hereafter existing, whether under this Agreement or the Declarations attached hereto and incorporated herein (including without limitation the payment of all interest fees and expenses) or any other agreement with the Surety or any affiliate of the Surety or otherwise.

Changes in Contract and/or Bond

4. If any Bond is given with respect to the Principal's obligations under a contract, the Surety in its sole discretion is hereby authorized, but not required, without notice to or knowledge of the Indemnitors (a) to consent to any change in such contract or in the plans and specifications relating thereto, or issue any substitute for or renewal of any Bond; (b) to make or guarantee advances or loans to or for the account of the Principal to be used in the performance of obligations of the Principal under any contract covered by a Bond, without being required to see to the application of the proceeds of such advances and regardless of the actual use of such proceeds, the amount of all such advances or loans being conclusively presumed to be a loss hereunder for which the Indemnitors are liable; (c) in the event of any Contract Default (as hereinafter defined in Paragraph 7), to exercise any of the rights and remedies available to it under this Agreement or otherwise to complete the contract, cause the same to be completed or consent to the completion thereof and to take any other action which the Surety may deem appropriate. The Indemnitors hereby release and discharge the Surety from all liability for its actions and omissions in taking possession of any work under a contract, except for liability resulting from the Surety's deliberate malfeasance. It is expressly understood and agreed that the Indemnitors shall remain bound under the terms of this Agreement even though any such consent to change by the Surety does or might substantially increase the liability of said Indemnitors.

Security Interest

5. This Agreement shall constitute a Security Agreement, subject to the trust created under Paragraph 11, in accordance, with the provisions of the Uniform Commercial Code, (the "Code") of every jurisdiction wherein such Code is in effect and may be used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under the Agreement or under the law, or in equity. The Principal and the other Indemnitors hereby assign, transfer, pledge and grant to the Surety, subject to the trust created under Paragraph 11 of this Agreement, a security interest in their right, title and interest in and to (a) all contracts in which any or all of the Indemnitors have an interest (whether or not bonded by the Surety), including without limitation (1) all monies due or to become due to the Principal under or as a result of such contracts, including but not limited to progress payments, deferred payments, retained percentages, compensation for extra work and proceeds of damage claims, and (2) all actions, causes of action, claims and demands whatsoever which the Principal may have in any way arising out of or relating to the Bonds or any contract (b) with respect to contracts bonded by the Surety, all machinery, plant, equipment, tools, materials and supplies (the "Equipment") now or hereafter owned by the Indemnitors, whether or not located at the work site, for use in the performance of such contracts and including all materials ordered or purchased for such contracts, whether in process or construction, in transit to the site or in storage elsewhere, and all subcontracts let or to be let in connection with such contracts and such subcontractors' surety bonds, (c) any deposit made pursuant to any provision of this Agreement and any other money, general intangibles, instruments or other property which has been or shall hereafter be pledged to the Surety, and all accounts and other obligations owed to the Indemnitors by the Surety or any affiliate of the Surety from time to time, and (d) all proceeds of the foregoing. The rights and property described in the foregoing clauses (a) through (d), together with the Additional Collateral (as hereinafter defined), are hereinafter referred to as the "Collateral". The foregoing security interest secures the payment and performance of all Obligations. For purposes of the security interest granted herein, the Surety be designated the "Secured Party" (as such term is used in the Code) on behalf of itself and as agent for any of its present or future subsidiaries or affiliates who may be Sureties under this Agreement.

Despite anything that might be stated to the contrary in this Agreement (a) the Indemnitors shall remain liable under all contracts included in the Collateral to the extent set forth therein to perform all of their duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Surety or any of the rights hereunder shall not release the Indemnitors from any of their duties or obligations under such contracts, and (c) the Surety shall have no obligation or liability under such contracts by reason of this Agreement, nor shall the Surety be obligated to perform any of the obligations or duties of the Indemnitors thereunder.

The Indemnitors represent and warrant that, except as otherwise disclosed to the Surety in writing:

(a) the chief place of business and chief executive office of each Indemnitor and the office where each Indemnitor keeps its records concerning the Collateral, and all originals of all chattel paper which evidence Collateral, are located at the address set forth below the signature of such Indemnitor; (b) all originals of all chattel paper which evidence Collateral have been delivered to the Surety; (c) none of the Collateral is evidenced by a promissory note or other instrument; (d) the Indemnitors have exclusive possession and control of the Equipment; (e) there is no currently effective financing statement on file with respect to any assets of the Indemnitors, and the Indemnitors own the Collateral free and clear of any lien, security interest, charge or encumbrance, except for the security interest created by this Agreement and except for purchase money security interest in any Equipment; and (f) the tax identification number and name of each Indemnitor set forth in the signature pages hereof are complete and correct, and the Indemnitors have used no names other than the names so set forth.

The Indemnitors shall notify the Surety at least sixty (60) days in advance of any change in any Indemnitor's name, tax identification number, chief place of business, chief executive office or the office where it keeps its records concerning the Collateral and all originals of all documents, instruments and chattel paper which evidence Collateral. The Indemnitors shall hold and preserve such records, documents, instruments and chattel paper and will permit representatives of the Surety at any time during normal business hours to inspect and make abstracts from such records, documents, instruments and chattel paper.

Without the Surety's prior written consent, which shall not be unreasonably withheld, the Indemnitors shall not, nor permit any of their subsidiaries to: (i) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the assets (whether or not constituting Collateral) of their respective businesses, including but not limited to shares representing stock in their respective businesses and subsidiaries, either in whole or in part, or any interest therein except in the ordinary course of business and except for security interests not prohibited by clause (n) of this

sentence, (ii) create or suffer to exist any lien, security interest or other charge or encumbrance upon or with respect to any of the Collateral to secure debt of any person or entity, except for the security interest created by this Agreement and except for purchase money security interests in any Equipment, or (iii) merge or consolidate with any other company, including any other company directly or indirectly controlled by, controlling or under common control with the Indemnitors.

Assignment

6. In addition to the security interest granted hereunder, the Indemnitors hereby assign, transfer and convey to the Surety, subject to the trust created under Paragraph 11 of this Agreement, all of the rights and property which constitute the Collateral. The foregoing assignment is for the purpose of enabling the Surety to take immediate possession of and to use any Collateral to complete the performance of the obligations of the Principal under the contract covered by a Bond and the payment of obligations incurred by the Principal in the performance of such contract and is intended as an absolute assignment effective, as to Collateral relating to each contract and without notice or any other action by the Surety, (i) as of the date of the execution and delivery of this Agreement as to each unbonded contract and each contract covered by Bonds executed prior to such date and (ii) as of the effective date of any Bond executed and delivered on or after the date and execution of this Agreement, in either case if any Event of Default (as hereinafter defined) occurs. The possession and use by the Surety for the purposes set forth in the preceding sentence of any assets assigned to the Surety shall not be deemed to be a foreclosure, or a retention in lieu of foreclosure, under the security interest granted to the Surety under Paragraph 5 of this Agreement.

Events of Default

7. Each of the following shall constitute Events of Default hereunder (hereinafter called "Events of Default").

(a) Any abandonment forfeiture or breach by the Principal of, or failure, refusal or inability of the Principal to perform, this Agreement or the Declarations hereto, any contract (whether or not covered by a Bond) or any Bond liability; the failure, delay, refusal or inability of the Principal to pay bills or other obligations incurred in connection with the performance of any contract (whether or not covered by a Bond); or the commencement or continuation of any proceeding which deprives the Principal of, or interferes with, his use of any of the supplies, tools, plant, machinery, equipment or materials in, on or around the work site under the contract (whether or not covered by any Bond) (collectively, the "Contract Defaults"),

(b) The Indemnitors' failure to perform or comply with any of the covenants contained in this Agreement or the Declarations hereto or any of the Obligations;

(c) Any breach by any Indemnitor of, or default by any Indemnitor under, any Bond or any insurance policy or other obligation due or owing to the Surety or any affiliate of the Surety;

(d) A payment by the Surety on any Bond;

(e) Any warranty, representation or statement contained in this Agreement or the Declarations hereto or made or furnished to the Surety (whether orally or in writing) by or on behalf of the Indemnitors in connection with this Agreement, any Bond or any claims thereunder proves to have been false or misleading in any material respect when made or furnished;

(f) Any levy on or seizure or attachment of any of the Indemnitors' assets.

(g) (i) Application by an Indemnitor for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, conservator, liquidator, or the like of itself or of all or a substantial part of its property, (ii) the general assignment by an Indemnitor for the benefit of its creditors, (iii) the commencement by an Indemnitor of a voluntary case under the Bankruptcy Code, (iv) the filing by an Indemnitor of a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts, (v) failure by an Indemnitor to controvert in a timely and appropriate manner, or acquiescence in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, (vi) the commencement of dissolution proceedings by an Indemnitor, (vii) any board of directors action by an Indemnitor for the purpose of effecting any of the foregoing, (viii) the commencement of a proceeding or case without the application or consent

of any Indemnitor, in any court of competent jurisdiction, seeking (1) such Indemnitor's liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (2) the appointment of a trustee, receiver, custodian, conservator, liquidator or the like of such Indemnitor or of all or any substantial part of its assets, or (3) similar relief in respect of such Indemnitor under any law relating to bankruptcy, insolvency, dissolution, reorganization, winding-up, or composition or adjustment of debts, if such proceeding or case shall continue undismissed for a period of sixty (60) days, or an order, judgment or decree approving or ordering any of the foregoing shall be entered; or (ix) the entry of an order for relief against any Indemnitor in an involuntary case under the Bankruptcy Code;

(h) Any Indemnitor shall admit in writing its inability; or be generally unable (within the meaning of the Bankruptcy Code), to pay its debts as such debts become due; and

(i) If any Indemnitor is an individual, the Indemnitor's death, disappearance, incompetence, conviction of a felony or imprisonment; and if any Indemnitor is not an individual, any change in the identity, control or existence of the Indemnitor.

Remedies Upon Default

8. Upon the happening of an Event of Default, the Surety, or any person or persons designated by the Surety, shall have the right (to the extent applicable to the undertakings by the Principal covered by the Bonds), at its option and in its sole discretion, and is hereby authorized, with or without exercising any other right or option conferred upon it by law or by the terms of this Agreement and without notice except as may be otherwise required by law:

(a) To execute in the name of the Principal any instruments deemed necessary or desirable by the Surety to provide the Surety with absolute title to the Collateral, to take immediate possession of the assigned funds, property and rights included in the Collateral, to collect such sums as may be due to, and to endorse in the name of, the Principal, and collect any checks, drafts, warrants and other instruments made and issued in payment of any such funds;

(b) To take immediate possession of any assigned Equipment and to use and consume the same if necessary in the performance of any contract by itself or by others;

(c) To take possession of all or any part of the work under any contract covered by a Bond and to complete or arrange for the completion of the same;

(d) To assert and prosecute any right or claim hereby assigned, transferred or conveyed in the name of the Principal and to compromise and settle any such right or claim on such terms as it considers reasonable under the circumstances;

(e) To exercise any and all rights of a secured party under the Code with respect to any property held by or pledged to the Surety as Collateral; and

(f) (i) To take such measures as the Surety may deem necessary or advisable to preserve, process, develop, maintain, protect and care for the Collateral or any portion thereof, (ii) to require each Indemnitor to, and each Indemnitor hereby agrees that it will at its expense and upon request of the Surety forthwith, assemble all or part of the Collateral as directed by the Surety and make it available to the Surety, at a place to be designated by the Surety which is reasonably convenient to both parties, and (iii) without notice except as specified below, to sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Surety's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Surety may deem commercially reasonable. Each Indemnitor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice (or such longer time as may be required by law) to such Indemnitor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Surety shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Surety may adjourn any public or private sale from time to time; in the case of a public sale, such adjournment may be by announcement at the time and place fixed therefore, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

All cash proceeds received by the Surety in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Surety, be held by the Surety as Collateral for and/or then or at any time thereafter applied in whole or in part by the Surety against all or any part of the Obligations in such order as the Surety shall elect any surplus of such cash or cash proceeds held by the Surety and remaining after payment in full of all Obligations shall be paid over to the Indemnitors or to whosoever may be whomever may be lawfully entitled to receive such surplus.

Further Assurances

9. Upon an Event of Default, the Surety shall have, without limiting or waiving any other rights otherwise available, the right to the following further assurances.

(a) The Indemnitors shall provide information and documents requested by the Surety, or at the Surety's option, retain a designated third party to review the Indemnitors' operations and to make recommendations to cure any Event of Default.

(b) If the Indemnitors fail to cure an Event of Default within ten (10) days after the occurrence thereof, or in the Surety's opinion are unable to cure the Event of Default or fail within ten (10) days after demand for further assurances to satisfy the Surety that they meet and will continue to meet all requirements and financial standards as stated herein or in the Declarations, upon demand, the Indemnitors shall grant, assign, pledge and transfer unto the Surety a security interest in additional collateral (hereinafter, "Additional Collateral"), as herein described, to secure the performance and payment of all Obligations, or at the Surety's option, furnish to the Surety one or more letters of credit (the "Letters of Credit") in form and substance satisfactory to the Surety pursuant to a Letter of Credit Agreement in form and substance satisfactory to the Surety. The amount of the Additional Collateral and the face amount of the Letters of Credit shall not be less than the full penalty amount of all outstanding Bonds. The Additional Collateral shall consist of U.S. Treasury Bills, other cash or cash equivalents acceptable to the Surety and shall be deemed part of the Collateral.

Financing Statement

10. This Agreement constitutes a security agreement and a financial statement in accordance with the provisions of the Code. The Surety may make such additions to this Agreement as may be necessary or desirable to permit its filing as a financing statement under the Code, and the Indemnitors shall execute and deliver such further instruments as may be necessary or desirable to permit either the filing of this Agreement as a financing statement or the filing of a financing statement based upon this Agreement in such states, counties and other places as the Surety may deem necessary or desirable.

The Surety may, at its option, file or record this Agreement or any other document executed by any or all of the Indemnitors, individually or jointly, in connection with the application, issuance or execution of any Bond, as a security agreement or as part of a financing statement or as notice of its prior interest and assignment under the provisions of the Code or any other statute or regulation of any jurisdiction or agency. The filing or recording of such document shall be solely at the option of the Surety and the failure to do so shall not release or impair any of the obligations of the Indemnitors under this Agreement. Any copy of this Agreement certified as such by the Surety shall be considered an original for purposes of filing as a financing statement.

Trust Funds

11. The Principal agrees and hereby expressly declares that all funds due or to become due under any contract covered by a Bond are trust funds, whether in the possession of the Principal or another and whether designated as trust funds or not, for the benefit and payment of all persons to whom the Principal incurs obligations in the performance of such contract, for which the Surety would be liable under the Bond. If the Surety discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds. Principal shall, upon demand of the Surety and in implementation of the trust hereby created, open an account or accounts with a bank or similar depository designated by the Surety, which account or accounts shall be designated as a trust account or accounts for deposit of such trust funds, and shall deposit therein all monies received pursuant to such contract. Withdrawals from such account shall be by check or similar instrument signed by the Principal and countersigned by a representative of the Surety. Said trust or trusts shall terminate on the payment by the Principal of all the contractual

obligations for the payment of which the trust or trusts are hereby created or upon the expiration of twenty (20) years from the date hereof, whichever shall first occur.

The Principal agrees and hereby expressly declares that title to all materials and supplies specially ordered or fabricated for any contract covered by a Bond shall be held in trust for the benefit of the owner of the improvement being constructed, or the Surety, as their interests may appear, and that possession of such material shall be subject to the direction of such owner and the Surety

Attorney of Record

12. The Indemnitors hereby authorize the Surety in its sole discretion to do the following: (a) if any bond is given in an action or proceeding in any court, to recognize any attorney of record in such action or proceeding for any party thereto at the date of the execution of such Bond (or such other attorney of record as may be substituted therefore after execution of such Bond) as the authorized representative of such party until the Surety shall have been fully discharged from liability under such Bond; and (b) to take such steps as the Surety may deem necessary or proper to obtain release from liability from any such Bond.

Surety Defined; Indemnitors' Representation and Protection of Other Sureties

13. The word "Surety" as used herein shall mean any surety company or companies issuing Bond(s) in favor of the Indemnitors, including but not limited to the Allegheny Surety Company and the Allegheny Casualty Company.

THE INDEMNITORS REPRESENT THAT THEY HAVE KNOWLEDGE THAT THE AGENTS AND PRODUCERS ACTING ON BEHALF OF THE VARIOUS SURETY COMPANIES THAT MAY ISSUE ONE OR MORE BONDS FOR THE BENEFIT, AND AT THE REQUEST OF THE INDEMNITOR; THAT THE SURETY COMPANIES REQUIRE AND ARE RELYING UPON THE EXECUTION AND DELIVERY OF THIS AGREEMENT AS A CONDITION OF BONDING THE INDEMNITOR THAT THIS AGREEMENT IS BEING GIVEN BY THE INDEMNITORS FOR THE BENEFIT OF ANY AND ALL SURETY COMPANIES PROCURED THROUGH THE SURETY'S AGENTS AND PRODUCERS TO BOND THE INDEMNITOR THE INDEMNITORS HEREBY WAIVE ANY AND ALL LEGAL OR EQUITABLE DEFENSE TO THE ENFORCEMENT OF THIS AGREEMENT BY ONE OR MORE OF SAID SURETIES FOR THE REASON THAT THE SAID SURETIES WERE NOT SPECIFICALLY NAMED IN THIS AGREEMENT.

If the Surety shall procure any other company or companies to execute or join with it in executing or reinsuring any Bond, this Agreement shall inure to the benefit of such other company or companies and its or their successors and assigns, so as to give to it or them a direct right of action against the Indemnitors to enforce this Agreement and, in that event, the word "Surety", wherever used herein, shall be deemed to include such company or companies, as its or their respective interests may appear

Suretyship Waivers

14. The Indemnitors hereby agree that they shall at all times keep themselves cognizant of the financial condition of the Principal and with the status of all projects bonded by the Surety.

The Indemnitors, with respect to such Bond, hereby waive notice of the execution of any Bond and of any act fact or information concerning or affecting the rights or liabilities of the Surety or the rights or liabilities of the Indemnitors

With respect to any Bond executed on behalf of the Principal, the Surety is authorized, without notice to the Indemnitors, to assent to any change whatsoever in such Bond and any contract covered by such Bond, including but not limited to any change in the time for the completion of the contract and for payments or advances thereunder, to assent to or take any assignment, to execute or consent to the execution of any continuations, extensions, renewals, enlargements, modifications, changes or alterations of any Bond and to execute any substitute or substitutes therefore, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties, and the other Indemnitors shall remain bound under the terms of this Agreement even though any such assent by the Surety does or may substantially increase the liability of the other Indemnitors.

The other Indemnitors shall have no rights of indemnity or subrogation against the Principal or his property until all Obligations have been satisfied in full. Failure of the Surety to pursue any remedy against any one or more of the Indemnitors shall not release or waive any right against any other Indemnitor.

The Surety is not required to exhaust its remedies or rights against the Principal or to await receipt of any dividends from the legal representatives of the Principal before asserting its rights under this Agreement against any other Indemnitor.

The liability of any Indemnitor hereunder shall not be affected by the failure of such Indemnitor or any other Indemnitor to sign any Bond, or by the failure of any other Indemnitor to sign this Agreement, or by the failure to obtain any other indemnity or security that any person claims should have been obtained, or by the release of any indemnity or any other Indemnitor under this Agreement or any other indemnity, or the return or exchange of any collateral that may have been obtained. If any party signing this Agreement is not bound for any reason, the obligations hereunder shall nevertheless be binding on each and every other Indemnitor.

Separate suits may be brought on this Agreement against any or all Indemnitors and the bringing of a suit or the recovery of a judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action whether theretofore or thereafter arising.

The Surety is hereby expressly authorized to settle any claim based upon this Agreement with any one or more of the Indemnitors individually, and such settlement or compromise shall not affect the liability of any of the other Indemnitors except to reduce the amount of the Obligations by the amount of the settlement received.

Declination of Suretyship

15 The parties agree that the Surety, in its sole and absolute discretion, may decline to execute or participate in or procure the execution of any bond applied for by the Principal or any other Indemnitor without incurring any liability whatsoever to the Principal or to any other Indemnitor. If the Surety shall execute a bid or proposal bond or any similar undertaking, it may nevertheless decline to execute any and all bonds that may be required in connection with any award made on the proposal for which the bond or undertaking is given, and the Principal shall have the right, but not the obligation, to procure from another surety any bonds that may be required in connection with any award under the proposal for which the bond or undertaking is given.

Attorney-in-Fact

16. The Indemnitors hereby irrevocably nominate, constitute, appoint and designate the Surety or its designee as their Attorney-in-Fact with the right, but not the obligation, to exercise all of the rights of the Indemnitors or any of them to make, execute and deliver any and all additional assignments, documents or papers deemed necessary and proper by the Surety to give full effect not only to the intent and meaning of the assignments provided herein, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement, including but not limited to the right to execute the instruments referred to in Paragraph 8, to endorse checks and other instruments representing payment of contract monies and to execute any financing statements as contemplated in Paragraph 10. The Indemnitors hereby ratify and affirm all acts and actions taken and done by the Surety or its designee as such Attorney-in-Fact.

Continuing Obligations after Termination

17. The obligations of the Indemnitors hereunder shall continue in full force and effect until terminated by one or more Indemnitors. Any Indemnitor may give the Surety written notice by registered mail of his desire to terminate this Agreement, in accordance with Paragraph 31, entitled Notice, but any such notice of termination shall not operate to modify, bar, discharge, limit, affect or impair any obligations of the Indemnitors hereunder with respect to Bonds executed prior to the termination of the 30-day period beginning on the date of the receipt of such notice or with respect to Bonds executed after the date of the termination of such 30-day period (i) upon the award of a contract to the Principal on a bid or proposal with respect to which the Surety has executed a bid or proposal bond or similar undertaking prior to such date, or (ii) which the Surety has otherwise become obligated to execute prior to such date. Any notice of termination given hereunder shall operate only with respect to the Indemnitors on

whose behalf such notice of termination shall have been given. Additionally, the Principal and the Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Principal and/or the Indemnitors, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the Principal or Indemnitors or others, it being expressly understood and agreed by the Principal and the Indemnitors that any and all other rights which the Surety may have or acquired against the Principal and the Indemnitors and/or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

Information

18. At any time, until such time as the liability of the Surety under any and all said Bonds is terminated, the Indemnitors will promptly furnish to the Surety such information as it may request from time to time concerning their financial condition, the status of work under any contract (whether or not covered by a Bond), the condition of the performance of any such contract and the payment of obligations incurred in connection therewith. The Indemnitors shall provide quarterly reports to the Surety regarding all construction or service contracts (whether or not bonded by the Surety) in such detail and in such format as may be reasonably requested by the Surety. Each Indemnitor represents, warrants and covenants that all information provided in, or in connection with any application for any Bond or in connection with this Agreement is complete and accurate. The Surety may at reasonable times and places and from time to time examine and copy the books, records and accounts of the Indemnitors and inspect the work at any project (whether or not covered by any Bond).

The Surety may obtain information concerning the affairs and operations of the Indemnitors and any transaction between or among them from any banks, depositories, obligees of the Bonds, material men, supply houses, credit reporting agencies and any other person.

Each Indemnitor represents and warrants that any financial statement submitted by or on its behalf to the Surety, whether prior to the date of the Agreement or in the future, is (or will be) complete and correct and fairly presents (or will fairly present) the financial condition of such Indemnitor as of the date of such financial statement and the results of the operations of such Indemnitor for the periods covered by such statements, all in accordance with generally accepted accounting principles consistently applied.

Governing Law

19. THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA. NO OTHER SOVEREIGN, STATE OR COMMONWEALTH'S LAW WILL BE DEEMED TO HAVE CONTROLLING OR PRECEDENTIAL VALUE OF ANY KIND IN RELATION TO THIS AGREEMENT. If any proceeding is brought against the Surety and the Surety desires to join any Indemnitor by reason of the undertakings in this Agreement, each Indemnitor agrees that he will, upon written notice of the Surety to do so, voluntarily appear in such proceedings and accept service of process and other papers either personally or by an attorney of such Indemnitor's choice. If any Indemnitor fails upon such a notice to so appear, such Indemnitor hereby designates the Secretary of the State for the Commonwealth of Pennsylvania as agent for the service of process in any such proceeding. With respect to any action brought by the Surety on this Agreement in a jurisdiction in which one or more Indemnitors reside are domiciled, are doing business or are found, each Indemnitor who is not in the jurisdiction hereby designates each Indemnitor who is in such jurisdiction as his agent to receive on his behalf service of process in such action.

Scope of Agreement; Prior Indemnities

20. This Agreement applies to all Bonds executed or procured by the Surety for the Principal, in his own name or as co-adventurer with others, whether before or after the execution and delivery of this Agreement, and from time to time until this Agreement is terminated in accordance with its terms. The Indemnitors waive any defense that this Agreement was executed after the date of any Bond and admit and acknowledge that such Bond was executed pursuant to the Indemnitors' request and in reliance on the Indemnitors' promise to execute this Agreement.

The Bonds have been or will be issued for the purpose of providing assurances to the obligees under the Bonds concerning performance or fulfillment of certain contractual, statutory or other undertakings by the Principal,

all as described in more detail in each individual Bond. This Agreement is intended to cover the full range of different types of Bonds, which might be issued by the Surety, and nothing in this Agreement shall be construed to limit the types of Bonds covered by the Agreement. To the extent that particular provisions of this Agreement are applicable only to certain types of Bonds, the inclusion of such provisions in this Agreement is for the purpose of specifying in more detail the parties' rights and obligations with respect to such types of bonds and their inclusion shall not limit the applicability of other provisions of this Agreement to other types of Bonds.

The Indemnitors acknowledge that they have a substantial material and beneficial interest in obtaining bonds on behalf of various related companies. Accordingly, this Agreement shall apply to any bonds executed on behalf of any subsidiary, affiliated partnership, joint venture, affiliate or corporation of the Indemnitors, now existing or hereafter formed or acquired, and whether partially or wholly owned or controlled, as fully as if the names and signatures of such subsidiaries or affiliates appeared herein as Principal.

Remedies Cumulative; No Waiver

21. All rights and remedies of the Surety under this Agreement shall be cumulative, and the exercise of or failure to exercise any right or remedy at any time shall not be an election of remedy or a waiver of any other right or remedy. In addition, the security interest granted herein and all other rights, powers and remedies given to the Surety by this Agreement shall be and are an addition to, and not in derogation of, any and all other rights, powers and remedies which the Surety may have or acquire against the Indemnitors or others, whether by the terms of any other agreement (including without limitation any other indemnity agreement previously or hereafter entered into by any Indemnitor), by operation of law or otherwise, including without limitation the Surety's rights of equitable subrogation

No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the Surety or the Indemnitors may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement or any document delivered pursuant hereto, nor shall any waiver by the Surety or the Indemnitors, respectively, of any breach or default of the Indemnitors or the Surety, respectively, hereunder be deemed a waiver of any default or breach subsequently occurring.

Waiver of Homestead Rights

22. The Indemnitors hereby waive and abandon, so far as their respective obligations under this Agreement are concerned, all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any state, territory or possession of the United States.

Interest

23. All sums payable to the Surety under this Agreement shall bear interest if not paid on or before the tenth (10th) day after demand therefore made by the Surety at an annual rate equal to the greater of (i) three (3%) percent plus the prime rate as set forth in the then current issue of the Wall Street Journal or (ii) the maximum rate permitted by applicable law.

Definitions

24. In this Agreement, the plural term shall include the singular and the singular shall include the plural, as the circumstances require. The masculine pronoun shall be read as feminine or neuter, as circumstances require. The word "person" shall include individuals, partnerships, corporations and associations.

Effect of Partial Invalidity

25. If any part of this Agreement shall be void under the law of the place governing the construction hereof, then such part only shall be considered as deleted and the remainder of this Agreement shall endure in full force and effect.

Integration; Modification

26. This writing (including the Declaration) and the Bonds constitute the entire agreement among the Principal, the Indemnitors and the Surety regarding the execution of the Bonds and the rights and obligations of the parties hereto with respect to the Bonds. This Agreement and the rights and remedies of the Surety hereunder may not be waived, changed or modified orally. No written waiver, change or modification shall be effective unless signed by an officer or other authorized representative of the Surety. To the extent that there may be other agreements relating to the Bonds which have been executed by persons other than the Indemnitors, this Agreement shall not supersede such previous agreements as to such other persons, and such previous agreements shall remain in full force and effect as to such other persons.

Assignment

27. Without the consent of the Principal or the Indemnitors, but subject in all cases to any consents required of obligees or by applicable law, the rights and obligations of the Surety under this Agreement and the Bonds may be assigned to any financially responsible entity licensed to issue bonds in the jurisdiction in which the assigned Bonds were issued. In addition, the Surety may assign all or any part of its rights under this Agreement to any person, including but not limited to affiliates of the Surety.

Representations

28. PRINCIPAL AND EACH INDEMNITOR REPRESENTS AND WARRANTS TO THE SURETY THAT EACH OF THEM HAS CAREFULLY READ THE ENTIRE AGREEMENT, HAS HAD OR WAIVED THE OPPORTUNITY TO CONFER WITH AN ATTORNEY CONCERNING THIS AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN, OR TO THE EXTENT SUCH OTHER AGREEMENTS OR UNDERSTANDINGS EXIST, THEY ARE HEREBY SUPERSEDED BY THIS AGREEMENT.

Notice of Execution

29. Notwithstanding any provision to the contrary contained herein, the Principal and Indemnitors hereby waive notice of the execution of said Bonds and of the acceptance of this Agreement and the Principal and the Indemnitors hereby waive all notice of any default or any other act or acts giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability hereunder, notwithstanding any notice of any kind to which they might have been or be entitled, and notwithstanding any defenses that they might have been entitled to make.

Suits

30. Separate suits may be brought hereunder as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether theretofore or thereafter arising.

Notice

31. Notices hereunder shall be in writing and shall be deemed given if delivered by certified or registered mail return receipt requested to the addresses set forth below the signature of the Principal and each Indemnitor below and notices to Surety shall be addressed as follows

c/o Allegheny Surety Company
P.O. Box 44110
4217 Steubenville Pike
Pittsburgh, PA 15205-9931
Phone: (412) 921-4249
Fax: (412) 921-4277

and

Stuart E. Savage, Esquire
Corporate Counsel
1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Phone: (412) 281-7788

Confession of Judgment

32. WITHOUT LIMITING THE GENERALITY OF ANY OTHER PROVISION OF THIS AGREEMENT, THE UNDERSIGNED PRINCIPAL AND INDEMNITORS HEREBY JOINTLY AND SEVERALLY IRREVOCABLE AUTHORIZE AND EMPOWER ANY ATTORNEY OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COURT IN ANY JURISDICTION TO APPEAR FOR ANY OR ALL OF THEM AT ANY TIME OR TIMES IN ANY COURT WITH RESPECT TO ANY SUMS DUE UNDER THIS AGREEMENT, WITH OR WITHOUT DECLARATION FILED AS OF ANY TERM, AND TO CONFESS OR ENTER JUDGMENT AGAINST ANY OR ALL OF THEM FOR ALL SUCH SUMS PAYABLE UNDER THIS AGREEMENT AS EVIDENCED BY AN AFFIDAVIT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SURETY SETTING FORTH SUCH AMOUNT DUE, PLUS REASONABLE ATTORNEYS' FEES, COST OF SUIT, INTEREST, WITH RELEASE OF PROCEDURAL ERRORS AND WITHOUT RIGHT OF APPEAL. IF A COPY OF THIS AGREEMENT, VERIFIED BY AFFIDAVIT, SHALL BE FILED, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY. THE UNDERSIGNED JOINTLY AND SEVERALLY WAIVE THE RIGHT OF ANY STAY OF EXECUTION AND THE BENEFIT OF ANY AND ALL EXEMPTIONS TO WHICH THEY MAY NOW HAVE OR MAY HEREINAFTER BE ENTITLED UNDER LAW. NO SINGLE EXERCISE OF THE FOREGOING WARRANT AND POWER TO BRING AN ACTION OR CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER BUT THE POWER SHALL BE CONTINUED UNDIMINISHED AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS SURETY SHALL ELECT, WHETHER BEFORE OR AFTER DEMAND IS MADE, UNTIL ALL SUMS PAYABLE TO SURETY UNDER THIS AGREEMENT HAVE BEEN PAID IN FULL.

Venue

33. The venue for all original civil actions arising out of, under, pursuant to or because of this Agreement shall be within the Commonwealth of Pennsylvania in Allegheny County or in any county in Pennsylvania, at Surety's sole option.

Personal Jurisdiction

34. The Principal and the Indemnitors hereto acknowledge and submit to the jurisdiction of the Courts of the Commonwealth of Pennsylvania and HEREBY FOREVER WAIVE ANY DEFENSES AS TO THE LACK OF PERSONAL JURISDICTION OF THE COMMONWEALTH OF PENNSYLVANIA COURTS, in any action arising out of, under, pursuant to or because of this Agreement.

Transfer of Judgment

35. Should civil judgment arising out of, under, pursuant to or because of this Agreement, be entered against Principal or any Indemnitor hereto, the Principal and Indemnitors forever waive and discharge each and every legal and equitable defense they may have or have had to the transfer and entry of such judgment, without limitation, to any other Commonwealth, State, Territory, District, or Holding of the United States of America as well as to any other Country anywhere in the world.

Counterparts

36. This Agreement, may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

THE REMAINDER OF THIS PAGE IS PURPOSELY LEFT BLANK

IN WITNESS WHEREOF, the Indemnitors, intending to be legally bound hereby, have hereunder set their hands and affixed their seals as of the 30th day of January, 2007.

ATTEST/WITNESS:

[Signature]

Corp. Tax ID # 58-2538792

Corporation or Limited Liability Company
(Principal and Indemnitor):

Netmoco, Inc.

By: Nora B. Lewis, President
Nora B. Lewis, President

Corporate Address: 198 Lewis Drive

Jonesville, SC 29353

(SEAL)

WITNESS:

[Signature]

Individual Indemnitor:

✓ Signature: Nora B. Lewis

Name: Nora B. Lewis, individually

Address: 198 Lewis Drive, Jonesville, SC 29353

Indemnitor's SS#: 223-44-2219

WITNESS:

[Signature]

Individual Indemnitor:

✓ Signature: Harold L. Lewis

Name: Harold L. Lewis, individually

Address: 198 Lewis Drive, Jonesville, SC 29353

Indemnitor's SS#: 248-72-9190

WITNESS:

Individual Indemnitor:

Signature: _____

Name: _____, individually

Address: _____

Indemnitor's SS#: _____

CORPORATE/LLC ACKNOWLEDGEMENT(S)

STATE OF South Carolina)
) Ss:
COUNTY OF Union)

On this 30th day of January, 2007, personally came before me, Nora B. Lewis,
President of Nefmoco, Inc. known to me to be the person who executed the foregoing and
acknowledged that she had the authority to execute the same as the act of said corporation/company.

Clarence M. Ellerbe, Jr. (SEAL)
Notary Public

My Commission Expires:
February 26, 2013

INDIVIDUAL ACKNOWLEDGEMENT(S)

STATE OF South Carolina)
) Ss:
COUNTY OF Union)

On this 30th day of January, 2007, personally came before me, Nora B. Lewis to me known,
and known to me to be the individual(s) who executed the foregoing instrument, and acknowledged that she
executed the same

Clarence M. Ellerbe, Jr. (SEAL)
Notary Public

My Commission Expires:
February 26, 2013

STATE OF _____)
) Ss:
COUNTY OF _____)

On this _____ day of January, 2007, personally came before me, Harold L. Lewis to me known,
and known to me to be the individual(s) who executed the foregoing instrument, and acknowledged that he
executed the same.

Notary Public (SEAL)

My Commission Expires:

STATE OF _____)
) Ss:
COUNTY OF _____)

On this _____ day of _____, _____, personally came before me,
to me known, and known to me to be the individual(s) who
executed the foregoing instrument, and acknowledged that he executed the same.

Notary Public (SEAL)

My Commission Expires:

PITTSBURGH REGIONAL OFFICE

Paul Read, Assistant Vice President
Tony Lekse, Claims Manager



Allegheny
Casualty Company

Incorporated in 1936

February 11, 2008

Netmoco, Inc.
198 Lewis Drive
Jonesville, SC 29353

Nora B. Lewis
198 Lewis Drive
Jonesville, SC 29353

Harold Lewis
198 Lewis Drive
Jonesville, SC 29353

Re: Surety Allegheny Casualty Company
Bond No.: 2000-1771-ACC-2838
Principal: Netmoco, Inc.
Claimant: South Carolina Department of Transportation
Project: Contract #A00237014D – Vegetation Management, Lot 4, Chester County, SC
Obligee: South Carolina Department of Transportation

Dear Ms. Lewis:

Allegheny Casualty Company ("Allegheny"), as performance and payment bond surety for Netmoco, Inc. ("Netmoco") on Contract #A00237014D – Vegetation Management, Lot 4, Chester County, SC Project ("Project") has been presented with a performance bond claim from the Obligee – South Carolina Department of Transportation ("SCDOT"). SCDOT asserts Netmoco has defaulted on the above-mentioned contract based upon their notification to the SCDOT regarding their intent not to fulfill the remaining term of the contract (per letter dated 10/25/07). SCDOT has requested Allegheny pay for the remaining portion of the contract amounting to \$76,127.04 within 30 days. I am forwarding copies of the claim notification letter and supporting documentation that has been received to date.

Based upon our conversation on February 7th, 2008, you acknowledged that your firm did walk off of the above mentioned project. You indicated that the acreage on the project was inaccurate and that Netmoco had tried to get the SCDOT to acknowledge the discrepancy. Further, because SCDOT was unresponsive to your requests for a change order on the acreage, Netmoco decided to not finish the last mowing & cleanup cycle. SCDOT asserts based upon Purchase Order #342774 that they are owed \$76,127.04 as this was the value of the mowing & cleanup cycle that was missed.

On or about January 30th, 2007, Nora Lewis, both individually and as President of Netmoco, and Harold Lewis (collectively referred hereinafter as "you" or "Indemnitors") executed an Agreement of Indemnity ("Indemnity Agreement") in favor of Allegheny in which, among other things, you agreed to indemnify and keep indemnified Allegheny from and against any and all liability for losses, costs and/or expenses of whatsoever kind or nature (including, but not limited to, interest, court costs and counsel fees) which Allegheny may sustain or incur: by reason of having executed bonds in favor of Netmoco. A copy of the Indemnity Agreement is attached for your reference

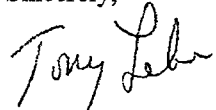
Allegheny, as surety, demands that you exonerate Allegheny and do all things necessary and take all steps required to be taken to that end so that Allegheny will not sustain or become exposed to any loss, cost, expense or fee, including liability for counsel fees, in connection with the bonds ("Bonds") issued in favor of Netmoco, securing the Project.

Pursuant to the Indemnity Agreement, Allegheny has the right to receive from you, both jointly and severally, collateral security as required from time to time by Allegheny. Therefore, on behalf of Allegheny, and pursuant to the Indemnity Agreement, please take notice that we hereby demand that each of you, as Indemnitors, deposit with Allegheny the aggregate sum of \$85,000.00 as collateral security. If Allegheny fails to receive collateral in this amount from you within twenty (20) days from the date of this letter, we will take such further as we deem advisable and necessary in these circumstances to protect Allegheny and we will continue to look to you for full indemnification. Furthermore, Allegheny reserves the right to demand additional collateral from you as conditions merit.

The foregoing is without prejudice to any and all rights or remedies, at law and in equity, which Allegheny has or may have on the referenced Bonds, Project, Indemnity Agreement or otherwise, whether mentioned herein or not, all of which are expressly reserved. Additionally, all prior or subsequent communications and/or investigative efforts are made with the express reservation of all rights and defenses which Allegheny has or may have at law, equity or under the terms and provisions of the Agreement of Indemnity, the Bond and related contract documents. This reservation of rights shall remain in full force and effect unless expressly revoked by Allegheny in writing.

Should you have questions in regards to any aspect of this matter, please feel free to call me at (412) 921-3077.

Sincerely,

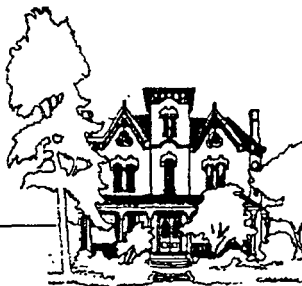


Tony Lekse
Claims Manager

Enclosures

PITTSBURGH REGIONAL OFFICE

Paul Read, Assistant Vice President
Tony Lekse, Claims Manager



Allegheny
Casualty Company

Incorporated in 1936

February 29, 2008

Law Office of John G. Reckenbeil
215 Magnolia St.
P.O. Box 1633
Spartanburg, SC 29306

Attn: John Reckenbeil

Re: Surety Allegheny Casualty Company ('Allegheny')
Bond No.: 2000-1771-ACC-2838
Principal: Netmoco, Inc.
Claimant: South Carolina Department of Transportation
Project: Contract #A00237014D - Vegetation Management, Lot 4, Chester County, SC
Obligee: South Carolina Department of Transportation

Dear Mr. Reckenbeil:

Per our conversation yesterday, I have attached a copy of the General Indemnity Agreement signed by your clients as well as the letter demanding \$85,000.00 in collateral security from the Indemnitors. You will note as you read the General Indemnity Agreement that we are within our rights to request such funds. Further, we are within our rights to settle, defend, let Netmoco defend, etc. this claim.

I will be contacting the obligee via phone today or Monday in order to see where they are at in responding to my February 11th letter. In the meantime, I request that you discuss the collateral security matter with your client. We are looking to receive the collateral (preferably by certified check) by March 7th, 2008.

The foregoing is without prejudice to any and all rights or remedies, at law and in equity, which Allegheny has or may have on the referenced Bonds, Project, Indemnity Agreement or otherwise, whether mentioned herein or not, all of which are expressly reserved. Additionally, all prior or subsequent communications and/or investigative efforts are made with the express reservation of all rights and defenses which Allegheny has or may have at law, equity or under the terms and provisions of the Agreement of Indemnity, the Bond and related contract documents. This reservation of rights shall remain in full force and effect unless expressly revoked by Allegheny in writing.

I thank you in advance for your prompt attention to this matter. Should you have any questions, please feel free to call me at (412) 921-3077 (ext. 110).

Sincerely,

Tony Lekse
Claims Manager

Enclosures

4217 Steubenville Pike • P.O. Box 44110 • Pittsburgh, PA 15205 • (412) 921-3077

ALLCL 0058

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-44-200

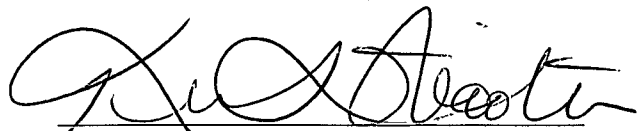
Allegheny Casualty Company, ...Appellant,

v.

Netmoco, Inc., Nora B. Lewis, and Harold L. Lewis, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.



Kimila L. Wooten
ELMORE GOLDSMITH, PA
Post Office Box 1887
Greenville, South Carolina 29602
(864) 255-9500-Telephone
(864) 255-9505-Facsimile
Counsel for Appellant

May 2, 2012