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IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
20th JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, ex rel. PAULA A. FLOWERS, in her official capacity as COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE,	
Petitioner,	**No.** 03-1104-I
vs.	
TRAVELERS CASUALTY & SURETY INSURANCE COMPANY; INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,	
Respondents.	
In re Bonds held by the Commissioner for Birmingham Steel Corporation for Self-Insured Workers' Compensation Liability in Tennessee for Covered Injuries from 9-1-1998 to 3-14-2002	

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VERIFIED PETITION FOR TURN-OVER OF BOND PROCEEDS FOR WORKERS' COMPENSATION SELF-INSURANCE OF BIRMINGHAM STEEL CORPORATION UNDER TENN. CODE ANN. § 50-6-405, FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF; FOR APPOINTMENT OF A RECEIVER TO ADMINISTER BOND FUNDS; FOR NOTICE TO POTENTIAL CLAIMANTS; REQUEST FOR EXPEDITED HEARING AND RELIEF

Paula A. Flowers, in her official capacity as Commissioner of the Tennessee Department of Commerce and Insurance, as her verified petition to obtain the proceeds of bonds for the outstanding self-insured Tennessee workers' compensation liability of Birmingham Steel Corporation, a former Memphis, Tennessee employer that has been dissolved through bankruptcy reorganization ("BSC"), and to establish related injunctions and claims procedures, states as follows:

SUMMARY OF THE ACTION

1. This action is brought by the Commissioner of the Tennessee Department of Commerce and Insurance, Paula A. Flowers, ("Commissioner" and "Department"), in her official capacity and for her successors in office, to obtain monetary proceeds of two bonds in favor of the State and Commissioner in a fiduciary capacity under Tenn. Code Ann. § 50-6-405 and to furnish these proceeds for the outstanding Tennessee workers compensation liability of the self-insured employer, BSC. The Commissioner seeks the penalty sums of both these bonds, for $350,000.00 each, to be held by her during the pendency of this action for the benefit of the employees and payments authorized by this Court. This action also establishes a court supervised system for claims to be brought by the employees of BSC pursuant to Tenn. Code Ann. § 50-6-405 directly against the bond proceeds. BSC was dissolved through a plan of reorganization, and has discontinued making payments on its self-insured workers' compensation claims as of December 9, 2002. (*See* Exhibit A, Letter from Kim Whatley, Corporate Risk Manager of BSC to Mark Brothers, Department Self-Insurance Director dated December 6, 2002.) This regulatory action by the Commissioner is permitted so that the bond proceeds can be paid to the State and made available through this Davidson County equitable action. (*See* Exhibit B, March 11, 2003 Letter Agreement with Liquidating Trustee for BSC). The Commissioner also asks to be appointed in her official capacity as a receiver to carry out, together with Department staff, the orders of this Court to notify BSC's prior employees that had workers compensation claims, to receive proofs of claims, and to ascertain the total claims liability of this fund for further workers compensation benefits and medical payments and to administer such workers compensation payments, which would be paid out under the supervision

of this Court. The Commissioner is informed and believes based on information from BSC or the Tennessee Department of Labor and Workforce Development that three employees may have unresolved claims. But, other persons with previously closed claims may be entitled to further benefits under workers' compensation law, so this Court must prescribe notice to other employees injured during the self-insured period to determine if they have claims.

JURISDICTION AND VENUE

2. The Davidson County Chancery Court has jurisdiction for purposes of granting an injunction and affording equitable relief related to administering these funds to be held by the Commissioner. This Court has power to grant an injunction under Tenn. Code Ann. § 29-1-101 and §§ 29-1-105-106 to enjoin multiple lawsuits and to grant a receiver for the safekeeping, collection, management and disposition of property in litigation, whenever necessary to the ends of substantial justice. Tenn. Code Ann. § 29-1-103. Under Tenn. Code Ann. § 50-6-405, the bonds which are subject of this suit may be enforced by employees of BSC directly in actions in their name against the Bond Companies and the Commissioner. Venue is proper in Davidson County because the bonds are in favor of the state, and the Commissioner's official residence is in this county. For purposes of administration, one county must be chosen as the situs of this suit where claimants have different counties of residence. Davidson County also provides the most economical venue for the Commissioner's recommended administration of these bonds and the Chancery Court has experience with these actions.

THE PARTIES

3. The Petitioner is Paula A. Flowers, the duly appointed Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"), in her official capacity.

The Commissioner is responsible under state workers' compensation statutes pertaining to the regulation of employers' workers' compensation insurance to review proof of employers' financial ability to pay workers' compensation obligations and to take security filed by self-insured employers for the benefit of workers' compensation claimants under the provisions of Tenn. Code Ann. § 50-6-405. The Department's insurance division, self-insurance section, receives proof to document any security filed by the Tennessee employers under this statute.

4. Birmingham Steel Corporation ("BSC") owned and operated steel manufacturing plants, regional warehouses and distribution facilities. As relevant to this action, BSC formerly owned a mini-mill melt shop in Memphis, Tennessee which began operating in November 1997, and ceased operating sometime in January, 2000. BSC and other related debtors Birmingham Southeast, LLC, Port Everglades Steel Corporation, Birmingham Recycling Investment Company and American Steel and Wire Corporation, filed a voluntary petition for relief under Chapter 11 of the bankruptcy code in bankruptcy court in Delaware (No. 02-11586) and filed a plan of reorganization that was confirmed. Under the plan, BSC sold substantially all its assets on December 9, 2002 and was dissolved. A liquidating trustee is administering BSC's and the other debtors' remaining assets. BSC is consequently ***not*** a party hereto. The liquidating trustee for the debtors has agreed that any automatic stay under the bankruptcy code and injunction provision under BSC's plan of reorganization are not in effect with regard to the regulatory authority of the Commissioner to administer the bonds held by the State of Tennessee. (*See*, Letter Agreement of March 10-11, 2003 between counsel for Liquidating Trustee and State, Exhibit B hereto). Counsel for the Liquidating Trustee shall continue to receive pleadings in this case. BSC qualified and was self-insured for workers' compensation liability pursuant to Tenn.

Code Ann. § 50-6-405 from September 1, 1998 to March 14, 2002.

5. The Respondents in this action (collectively "Bonding Companies") are as follows:

5-1. Respondent Travelers Casualty & Surety Insurance Company ("Travelers") is an insurance company with principal offices at One Tower Square, Hartford, Connecticut, 06183-6014 and licensed to do business in Tennessee at the times relevant to this action. Travelers issued fidelity bond no. 76S103072888 for $350,000.00, effective September 1, 1998, canceled effective January 14, 2000, ("the Travelers Bond") for BSC which is the subject of this action. (See Exhibit C, Travelers Bond attached hereto.) The Commissioner is informed based on BSC claims information that employees with injuries dating from the effective period of the Travelers Bond may have outstanding workers' compensation claims. Respondent Travelers may be served through Bob Boldt, Manager, Surety. Travelers has been notified that the Commissioner is going to call the bond through this action and to Petitioner's knowledge, has made no payments to date to the Department or directly to any insureds under the performance bond. In addition, in an action instituted on behalf of the Commissioner, Travelers may be served by summons on the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by Tenn. Code Ann. § 56-2-504(d).

5-2. Respondent Insurance Company of the State of Pennsylvania ("ICSP") is an insurance company incorporated in the State of New York, with principal offices in New York, New York and licensed to do business in Tennessee at the times relevant to this action. ICSP issued fidelity bond No. 104325 for $350,000.00, effective as of September 1, 1998 and still in effect ("ICSP Bond") for BSC which is the subject of this action. (See Exhibit D, ICSP Bond

hereto.) The Commissioner is informed based on BSC claims information that employees with injuries dating from the effective period of the ICSP Bond may have outstanding workers' compensation claims. Respondent ICSP may be served through Attention: Salvatore Ferraro, 175 Water Street, New York 10038. ICSP has been notified that the Commissioner is going to call the bond through this action and has made no payments to date to the Department or directly to any insureds under the performance bond. In addition, in an action instituted on behalf of the Commissioner, ICSP may be served by summons on the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by Tenn. Code Ann. § 56-2-504(d).

6. The Tennessee employees who are potentially able to make a claim against the Bonds have not been named as individual Respondents in this action. Claims records so far made available from BSC administrators are not complete, due to the cessation of business of one administrator, and thus last known addresses were not yet provided for some of the prior employee claimants. Based on information from the Tennessee Department of Labor and Workforce Development, plus information from BSC, the Commissioner is informed and believes that three known employees had unresolved claims from the self-insurance period. Because of their immediate and clear interest in this proceeding, they will receive copies of this petition and all pleadings by mail service to their last known address. They are Michael Kenefick, date of injury shown as 6-7-1999, Ricky Blanchard, dates of injury shown as 6-22-1999 and 9-24-1999, and Steven Echols, date of injury shown as 10-17-1998, with last known addresses as indicated on the service list attached to this petition. Mr. Kenefick is represented by counsel and has a case pending in Shelby County Circuit Court against BSC and Reliance Insurance Company (through the Tennessee Insurance Guaranty Association, "TIGA") with

respect to his workers compensation claim. Mr. Blanchard is represented by counsel and has a case pending against BSC. Other employees listed by those records furnished to the Department had "closed claims" and it is asserted that the closed claims group should receive notice of any claims procedure only once it is established by this case. The Department does not have addresses for all such persons. The identified individuals with closed claims have been listed by either BSC administrator Sedgwick CMS (relating to injuries dated after 6-30-99) as shown on Exhibit E-1 (*See* Sedgwick CMS attachment) with an address provided, (these persons have closed claims and have been reported as having no outstanding liabilities), or are shown in the Department of Labor list, as indicated on the service list.[1] It is unknown whether the individuals would attempt to seek further benefits. Sedgwick CMS records report settlement of certain future medical entitlements by lump sum. Later on, as directed by the Court, the Commissioner intends that upon the grant of the administration, the Commissioner as Receiver shall be responsible for publishing a notice of this action to unknown, potential claimants, because the name or current address of such claimants cannot be ascertained on the records available to the State at this time, and for sending out proof of claim forms to all persons who contact the receiver, in order to meet the claims deadline. The State does not require them to plead an answer to this Petition, but to file their claims on the Bonds with the Commissioner as Receiver in this suit when an administration is established.

7. Any other persons and entities which would ultimately make a claim on the Bonds

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[1] Claimants with dates of injury listed prior to 6-30-99 were identified to the Department previously by BSC. Their names are identified in Exhibit E-2 hereto. Addresses were not supplied at that time and the claims administrator affiliated with Reliance Insurance for that time period has stopped doing business. Attempts to recover such records are ongoing. Addresses for some individuals listed are available because of overlap with the record at the Department of Labor.

are unknown at this time. So as to gain finality and the ability to prudently disburse bond proceeds to claimants, this action should limit claims against the Bonds to those filed in this action and bar all other such actions or claims against the State of Tennessee, or the Bonding Companies with respect to claims under Tenn. Code Ann. § 50-6-405 under the Bonds. The Commissioner's proposed Order in this case contemplates that the Commissioner as Receiver, with the aid of the BSC claims files that may be available, will identify and give notice to those persons and entities who may need notice of this action, its injunctions, and the opportunity for filing claims. As proposed, the Receiver shall show the Court the steps taken to identify such potential claimants, and may seek further orders of the Court to determine who reasonably is entitled to notice. The Commissioner reserves any position as to the validity or payability of claims out of the Bonds to other types of workers' compensation creditors of the employer.

COUNT I

DECLARATION OF DEFAULT BY EMPLOYER AND MAXIMUM LIABILITY OF THE BONDS TO BE TENDERED TO COMMISSIONER

8. Tenn. Code Ann. § 50-6-405 permits direct lawsuits in the name of employees of BSC to enforce Tennessee workers' compensation claims directly against the security when their self-insured employer is not paying covered claims. The Commissioner is the holder and obligee of the security, for the State of Tennessee.

9. **The Self-Insurance Security** - The subject Bonds, Exhibits C and D, were filed with the Department as the Commissioner's condition under Tenn. Code Ann. § 50-6-405(a)(2), enabling a Tennessee employer, BSC to qualify to self-insure for its workers' compensation liability in Tennessee effective September 1, 1998. BSC qualified as a self-insured entity from

September 1, 1998 to March 14, 2002 (hereinafter, the "Self-Insured Period"), although the plant in Tennessee closed in January 2000. To the Petitioner's knowledge, BSC subsequently obtained workers' compensation coverage in the voluntary insurance market before it went out of business. Tenn. Code Ann. § 50-6-405, states in relevant part:

> (a) Every employer under and affected by the Workers' Compensation Law shall: [Insure]...; or (2) Furnish to the commissioner of commerce and insurance satisfactory proof of such employer's financial ability to pay all claims that may arise against such employer under [Tenn. Code Ann. title 50, chapter 60 and guarantee the payment of the same in the amount and manner and when due as provided for in this chapter.
> (b) **If the employer elects to proceed under subdivision (a)(2), the [Commissioner] shall require the applicant to file with the department of commerce and insurance and maintain the following:**
> (1) **A deposit of acceptable negotiable securities with a market value of not less than one hundred twenty-five thousand dollars ($125,000.00)** ***or a bond in the same amount.*** **The securities or bond shall be held by the [Commissioner] and** ***be conditioned to run directly for the benefit of the employees subject to the Workers' Compensation Law and may be enforced by them directly in an action in their name.*** All indemnity bonds filed under this provision of law must be issued by an insurance company authorized to do business in Tennessee and must contain a provision requiring the issuer to give the [Commissioner] thirty (30) days' written notice of intention to revoke or cancel such bond. (Emphasis added.)

This statute, and its predecessor statutes since 1919, have long permitted employers to insure, or to show financial ability to self-insure, for workers' compensation liability in Tennessee, upon providing the Commissioner security against default. During its Self-Insured Period, BSC was permitted by the Commissioner to furnish proof of its financial ability to pay all claims that might arise against the employer under Tenn. Code Ann. § 50-6-101 *et. seq.* and to guarantee the payment of the claims in the amount, manner and when due as provided in that chapter.

10. The employer and its workers' compensation insurer are each principals jointly and severally liable to the employee. *Collins v. Murray,* 164 Tenn. 580, 51 S.W.2d 834 (1932).

An employee's action under the Workers' Compensation Law may be against the employer and the insurer jointly. *American Mut. Liability Ins. Co. v. Patrick,* 157 Tenn. 618, 11 S.W.2d 872 (1928); *Douglas v. Sharp,* 194 Tenn. 11, 249 S.W.2d 999 (1952). Similarly, the Tennessee Supreme Court held that the guarantor or surety of a self-insured employer to be the same as the employer. *Malkiewicz v. R.R. Donnelley & Sons Co.,* 794 S.W.2d 728 (Tenn. 1990) (conferring the employer's immunity from tort liability on the guarantor). Thus, under Tenn. Code Ann. § 50-6-405, the surety bond Respondents are amenable to suit.

11. BSC satisfied the requirement under Tenn. Code Ann. § 50-6-405(b)(1) of securities or bond by providing statutory Bonds effective for the Self-Insured Period. The Bonds issued by all the Bonding Companies have a maximum penal sum, and recite that they are a:

> ...direct obligation by the principal and surety herein either jointly or severally, to the person who may be entitled to such sum for medical, surgical and other services, funeral expenses or compensation and may be sued upon and enforced in the name or names of such person or persons.

(See Exhibits C and D). The bonds required by the Department further recite that upon cancellation,

> ...the liability of the surety shall, at the expiration of the said thirty days, cease and determine, except as to such liability of the principal on account of injury or death to any of its employees, as may have accrued prior to the expiration of said thirty days, ***it being understood that the surety shall be liable, within the penal sum mentioned herein, for the default of the principal in fully discharging any liability on its part accruing during the life of this obligation.***

(Emphasis added.) (See Exhibits C and D). This language required by the Commissioner in Tennessee imposes continuing liability to the surety for all outstanding obligations arising out of injuries or death of employees which occurred during the period of time covered by the surety

bond, upon the default of the employer.[2] These Bonds furnish pools of funds that cover their respective *and in this case, overlapping* effective time periods for BSC's outstanding self-insured workers' compensation liability. It is unknown whether the Bonds will fully discharge the liabilities of BSC for which they were posted. However, currently available reserve information suggests that the Bond amounts will exceed the outstanding and future liability. This Petition seeks to determine that liability. It may be necessary to have a pro rata equitable distribution out of these Bonds. BSC supplied the Commissioner with proof of obtaining excess insurance coverage for workers' compensation liabilities in excess of a self-insured retention. This excess insurance or any other insurance, if available, could be pertinent to and reduce the liability of the bond for certain claims. However, one of BSC's excess carriers is presently in liquidation.

12. As set forth in the foregoing paragraphs, the Commissioner alleges that an event of default has occurred and is continuing on BSC's liability for self-insured benefits. The Department was notified by BSC, in a letter dated December 6, 2002, that BSC assets had been acquired by Nucor Corporation, and as BSC no longer existed, it would be making no more payments on its self-insured workers' compensation claims as of December 9, 2002.[3] (See Exhibit A). BSC ceased reimbursing its workers compensation claims administrator. Further medical appointments and other treatments would not be occurring or could be going unpaid, if the employees had continued any treatments. The event of default triggers direct liability of the

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[2] *St. Paul Fire & Marine Insurance Co. v. Industrial Commission of Ohio*, 30 Ohio St.3d 17, 506 N.E.2d 202 (1987) (holding surety company bound under the same bond language for compensation payable after the expiration of the last bond issued to the employer, for injuries occurring within the life of the bond.)

[3]Kim Whatley, Corporate Risk Manager for BSC notified the Department accordingly: "As the result of a sale of the company's assets to Nucor Corporation on Monday, December 9, 2002, Birmingham Steel will no longer exist and will therefore discontinue making payments on its self-insured workers' compensation claims."

sureties, and makes direct suits against the Bonds pursuant to Tenn. Code Ann. § 50-6-405 likely, if this action is not commenced to organize such claims. Thus, the administration of the Bonds of the Bond companies is appropriate in this action.

13. The Commissioner requests this Court to declare the total liability of the ICSP and Travelers Bonds to the State for the use and benefit of the employees as the maximum penal sum of such bonds, pursuant to the language of the Bonds and the statute. (See *Fourth & First Bank & Trust Co. v. Fidelity & Deposit Co. of Maryland,* 153 Tenn. 176, 281 S.W. 785 (1926) establishing the penal sum as the limitation of the bond liability.)

14. With respect to Respondent Travelers, the Commissioner requests that this Court declare that the maximum aggregate liability of Travelers be limited to the maximum penal sum of its bond in the amount of $350,000.00 for injuries occurring during the period September 1, 1998 to January 14, 2000.

15. With respect to Respondent ICSP, the Commissioner requests that this Court declare that the maximum aggregate liability of ICSP be limited to the maximum penal sum of its bond in the amount of $350,000.00 for injuries occuring during the period September 1, 1998 to date. This bond has never been cancelled.

16. The Commissioner demands that the penal sum of both the Travelers Bond and the ICSP Bond be paid over to the Commissioner pending payout to claimants under the supervision of this Court. After such payout, remaining amounts shall be paid back to the Bonding Companies in accordance with an order of the Court specifying such amounts.

COUNT II
ESTABLISHMENT OF ADMINISTRATION OF
BOND FUNDS, NOTICE, BAR DATE AND RECEIVER TO ACT FOR THE COURT

17. The Commissioner realleges and incorporates by this reference paragraphs 1 through 16 above, and states further: Tenn. Code Ann. § 29-1-103, the general authority for receivership in the Courts of this State, vests all courts of record with power to appoint receivers for the safekeeping, collection, management, and disposition of property within the subject matter of litigation in such court, whenever necessary to the ends of substantial justice, in like manner as receivers are appointed by courts of chancery. A receivership is an equitable proceeding over which Chancery Court exercises substantial discretionary authority. A receiver holds the funds of an insolvent as if a trustee for the benefit of claimants of the estate and has the duty to make an accounting to the court and the creditors and claimants of the insolvent's estate. *Matter of Liquidation of United American Bank,* 743 S.W.2d 911, 916 (Tenn. 1987). Likewise, under long standing equity principles, securities deposited under the requirements of statute with a state officer by an insurance company for the security and benefit of policyholders and creditors were not subject to attachment at law, but they could have been impounded in chancery. *Pennebaker v. Tomlinson,* 1 Cooper's Tenn. Ch. 111 (1873); *Pennebaker v. Tomlinson,* 1 Cooper's Tenn. Ch. 594 (1874). In the case of insolvency of the insurance company, such deposits must be shared by the statutory beneficiaries pro rata, and one creditor cannot acquire any prior rights over the others. *Id., Smith v. Cunningham,* 2 Cooper's Tenn. Ch. 565 (1875).

18. For the purpose of administering and distributing the assets of a corporation so as to do justice to all the parties, one chancery court may enjoin the prosecution of separate suits in that court or other chancery courts, and draw all the litigation into one case, so that it may be conducted as an insolvency proceeding. *Smith v. St. Louis Mut. Life Ins. Co.,* 3 Tenn. Ch. 502

(1877); *Baxter v. Nashville & Hillsboro Turnpike. Co.,* 78 Tenn. 488 (1882); *Voightman & Co. v. Southern Ry.Co.,* 123 Tenn. 452, 131 S.W. 982, 1912C Ann. Cas. 211 (1910); *Adams v. Chattanooga Co.,* 128 Tenn. 505, 161 S.W. 1131 (1913).

19. Because of the need to do justice to all claimants on a limited fund, the Order requested by the Commissioner invokes these equitable principles to seek an injunction barring other claims on the State or the Bonds except as allowed through this action, and to appoint a receiver to take the claims and act on behalf of the fund and its statutory purposes. Eight prior administrations of such deposits or bond funds have occurred in Tennessee at the instance of the State, six of which have been conducted in Davidson County Chancery Court, one in Hamilton County Chancery Court and another in the bankruptcy case for an employer in Chattanooga. The funds in all but one have been administered by a nominee of the Commissioner, and liquidated and administered under the supervision of the Court with payment of administrative expenses made, in each case, out of the fund being administered.[4] In keeping with prior administrations, the Commissioner has recommended procedures and a possible receiver to take charge of such receivership. In this case, due to the likely small number of claims, the Commissioner seeks to be appointed to carry out the duties of receiver, through delegation to Department staff under her direction. This request for a receiver is conditioned, as always, on the availability of funding

[4]The Department has administered workers' compensation self-insurance security through similar administration receiverships in equity jurisdiction, in the cases styled *State ex rel. Anne B. Pope v. Robert Waller, et al. (Service Merchandise)* Davidson Ch. 02-3770-III; *State ex rel. Pope etc v. Employers Reinsurance Corporation et al., (Athens Furniture),* Davidson Ch. No. 02-1701-II; *State ex rel. Pope etc. v. United States Fire Insurance Company, et al. (North American Royalties)* Hamilton Ch. No. 02-0079 Part I; *Douglas M. Sizemore etc. v. Builder's Transport, Inc. Debtor in Possession, et al.,* Davidson Ch. Docket No. 98-2962-II; *Sizemore, etc. v. Tennessee River, Inc., Debtor in Liquidation,* Docket No. 99-298-I; *Sizemore, etc. v. Scotts Hill Leisurewear, Inc. et al.,* Docket No. 98-1002-III, *State of Tennessee etc. v. Utica Mutual Insurance Company, etc. (Humboldt Express),* Docket No. 96-2042-III and *Willie Jeffery Byford, Petitioner, v. State of Tennessee etc., Defendant, Counter-Claimant and Third-Party Plaintiff, vs. Willie Jeffery Byford et al. (Baltz Brothers),* Docket No. 91-3424-II.

from the Bonds. Because it is anticipated that few claims should be made on the bond funds, and because of the relatively smaller administrative burden presented by this case compared to other workers compensation administrations, the Commissioner has changed the procedure insofar as proposing that the Commissioner be receiver in this case. The Department's associated expenses and any staff counsel time, at cost, would be sought out of the proceeds of the bonds.

20. The full terms of the order deemed necessary to accomplish this administration is pled at the conclusion of the petition. (Prayer, ¶¶4-5). Its form is based on terms employed in several other administrations initiated by the State. As part of the requested process, the Commissioner requests:

a. This Court to establish a **bar date** by which any and all claims to be made against any of the subject Bonds for the benefit of BSC employees must be made; and **to enjoin any other further** action, suits or means of making claims against the bonds.

b. This Court to require **notice of the bar date and claims filings requirements to be given through mailing and publication.** The notice would be published in Memphis, Tennessee, where BSC had its place of business, and any other reasonable locales, to notify the public of the bar date and the method by which claims must be filed in this case. Notice would also be mailed to the last known address of potential claimants, but due to the lack of complete or current records relating to any claims that might now be made other than by the three persons with open claims identified in Paragraph 6 above, and a list of addresses of a portion of the former employees with closed claims, publication is deemed by the Commissioner to be necessary and the most reasonable and economical method of soliciting any remaining claimants.

c. This Court to **order the bond proceeds to be paid to the Commissioner for**

safekeeping in an interest bearing account to be conserved pending outcome of any proceeding. Upon a bond company paying the penalty sum of its bond, the bond company should be ordered released from any further liability on account of the bond.

d. This Court to **appoint the Commissioner, in her official capacity, as receiver to receive, evaluate and administer the claims filed.** The reasonable expenses, payment of benefits, and costs of the administration shall be funded with the Bond proceeds. Upon the conclusion of this litigation, remaining bond proceeds would be returned to the Bond Companies and apportioned if necessary pursuant to order of this Court.

21. **Injunction and Centralized Administration to Avoid Irreparable Harm and Conflicting Rulings** Under Tenn. Code Ann. § 50-6-405, the Bonds which are subject of this suit may be enforced by employees of BSC directly in actions in their name against bond companies and the necessary party, the Commissioner. The Commissioner has had no requests to date for payment, but asserts such actions would be expected to occur. If the employees bring separate actions, this could lead to multiple conflicting rulings, or claims being made years in the future. The temporary injunction and order of administration prevents the lack of accountability and finality that may occur if the Bond Companies defend all the claims individually through their own litigation and settlement methods without oversight by one court. The Order avoids the irreparable harm of precluding currently unknown entitled claimants from participating in the available funds. An injunction is needed to prevent any attempted suits under Tenn. Code Ann. § 50-6-405 other than as specifically authorized by this Court. The temporary injunction conserves the Commissioner's and the Bonds' resources for their statutory purpose and for the most efficient, fair resolution of any claims on the proceeds, rather than for responding to successive

or competing litigation. The temporary injunction, the imposition of a claims bar date, and subsequent permanent injunctive relief avoid the irreparable harm of making payments and then receiving any challenge that payments were unfair, preferential or inconclusive, particularly if claimants may have to receive less than their full claims. Therefore, this Chancery Court upon taking equitable jurisdiction over the Bonds will have good cause to afford temporary and permanent injunctive relief against other lawsuits which might be filed or are pending to obtain these proceeds.

22. The Commissioner's proposed action also lessens the inconvenience and expenses to employees because they may file a claim rather than a lawsuit against the Bonds. Moreover, an administrator accountable to this Court will carry out the notice to employees and the subsequent claims litigation duties until the statutory purpose of furnishing these bonds for the use and benefits of the injured employees is fulfilled. Therefore it is appropriate under Tenn. Code Ann. § 50-6-405 that an administration be established promptly to permit the bond proceeds to be made available to establish the notice and claims process, and fund payment of valid and unpaid workers compensation claims subject to Tennessee law. The Commissioner advocates this system because it has been successfully implemented in past cases. *Alternatively*, if the Court rejects the plan of receivership and administration and no administration is funded, the Commissioner proposes that the Court order the Bonding Companies to tender any Bond proceeds made available into this Court until the Court disposes of claims against them. The Commissioner requests in such instance that appropriate equity be established by this Court and alternative means be established such as a Special Master appointment under TENN. R. CIV. P. 53.01, billed to the expense of Respondents' Bond Proceeds, to accomplish notice to claimants,

the timely receipt of claims, the holding of hearings, and the determination of appropriate payment from the Bond Proceeds, and by this Court imposing an injunction and bar against further claims against the funds.

23. **Particulars of Payments under the Administration.** All claims against the Bonds must be filed in this action, to allow the receiver, with the approval of this Court, to pay from the Bonds proceeds (1) the receiver's time, administrative costs or other expenses necessitated to fulfill the purposes of the statute and providing benefits to the employees, including administrative expenses associated with obtaining the determination of the claims administrator with respect to the valuation of the claims; and, (2) the claims of all persons who have unpaid workers' compensation benefits, pro rata if necessary from the bond covering their claims. The appropriate manner and the extent to which all such payments would be made will be ruled upon by this Court.

24. **Recommended Receiver.** The appointment of a receiver is within the discretion of this court; however the administration outlined by this action is not self-executing. For the Court's convenience, the Commissioner proposes that she be appointed as a receiver in her official capacity to carry out the overall administrative and legal evaluative duties imposed by the Order. (*See* Commissioner's Verification Affidavit attached to this petition.) The basis for the recommendation is that unlike in other self-insured workers compensation administrations, this case may involve relatively few claims but significant threshhold coverage issues, and the Department staff to whom the Commissioner would delegate her duties, and staff counsel with workers compensation experience, should be capable and adequate to receive the claims and evaluate them for recommendation to the court. Moreover, the Commissioner, together with

appropriate delegation to staff, would charge the time and expenses of this receivership at cost, and also seek reimbursement of out-of-pocket departmental expenses from the fund. The Commissioner will make efforts to assure that expenditures and staffing costs are reasonable and economical for the required tasks. The Commissioner therefore deems that she and the Department have the means and qualification to speedily, efficiently and economically carry out the proposed order, and to act as an officer under the direction of this Court. The Commissioner would anticipate that the receiver may need to obtain files to the extent that they may be available, from BSC's prior claims administrators or persons with authority over the claims files. The receiver would only compensate, if needed, at the rates and expense basis that applied to BSC. The Commissioner recognizes, however, that the appointment of a receiver lies within this Court's sound discretion and pledges the Department's cooperation with any person so appointed. The receiver shall attempt to negotiate any settlements of claims or develop any other appropriate legal position with respect to the claims. Because some of these services will be needed at the start of this case so as to send out notices and the proofs of claims, the Commissioner proposes that the Commissioner as Receiver be permitted to make expenditures without prior approval up to $2000 for the initial mailing and publication of notice and set-up of a mechanism to receive the proofs of claims.

25. **Regarding Ongoing Medical Expense Payments** The Commissioner has little information to date to indicate that ongoing medical treatments or expenditures were occurring or may be necessary. Expenditures for Mr. Kenefick, on information and belief, were being made to date by the Tennessee Insurance Guaranty Association, but it is uncertain to what extent they would continue to do so. If information that treatment was needed and was not being paid for is

brought to the receiver's attention before all claims could be resolved in this administration, the receiver will evaluate the need, and approach the court for explicit authorization to expend funds for such purposes. The receiver will report the accounts for filing with this Court. The immediate availability of that sum should not prejudice the fair and equitable treatment of claims in the final approval stage. To the extent that money is paid towards particular claimants' benefits, those amounts will be factored to produce an ultimate equitable recovery.

26. **Excess or Other Insurance for Large Claims.** For the protection of the Bond funds in this petition, the Commissioner would ask that to the extent excess or other insurance obtained by BSC is available for the relevant claims, as believed for the Michael Kenefick claim, that the Receiver should investigate the availability, and those amounts should not be recovered against the Bond funds. The purpose of SMC's Bonds is to cover liabilities that the employer did not otherwise discharge. Here, SMC provided for certain large claims through the purchase of excess insurance, whereby the excess coverage should have primary liability after BSC's self-insured retention level is reached. The Commissioner was informed by BSC's workers' compensation self-insurance administrator, which has been confirmed by information from counsel involved in the matter, that employee Michael Kenefick had injuries that were supposed to be covered by other insurance because payments by BSC had already exceeded a self-insured retention amount. On information and belief, BSC obtained excess coverage from Reliance Insurance Company ("Reliance") from July 1, 1998 to July 1, 1999 as well as certain other insurance from Reliance; and Continental Casualty Company ("Continental") from July 1, 1999 to July 1, 2001. However, Reliance is now insolvent and in liquidation, and some of its obligations have been covered to date by TIGA, an entity created under Tennessee law to provide

coverage under specified circumstances when an insurer is liquidated. Reliance's interest continues to be represented by counsel in the Michael Kenefick matter in Shelby County through TIGA. Defense counsel and counsel for TIGA will receive notice of this Petition. The Plan of Administration may take into account excess coverage availability from such other source if a claim is filed against the Bonds. It is anticipated that a resolution of Mr. Kenefick's coverage will be required, as well as possible claims from TIGA related to his benefits.

27. **Adequacy of Bonds**: The aggregate amount of the Respondent Bonds (totalling $700,000.00) is believed from information from BSC to cover the outstanding claims that might be made against the Bonds. However, the adequacy of the funds cannot be definitively stated without undertaking a claims process as requested by the Commissioner.

EXPEDITED HEARING REQUEST

28. The petitioner requests that this Court set a prompt hearing date on this Petition for a date after the Respondent Bond Companies have had an opportunity to appear and that notice of such hearing be contained in a Proposed Order Setting Hearing, (filed herewith) to be served on the parties and other interested persons at which time the prayed for Order will be considered. Because the Bonding Companies have been apprised that this Petition was contemplated, there is no reason to delay the administration beyond a short period designed to serve the Petition and Order to Show Cause on the Respondents and to permit their response. The three known potential employee claimants with unresolved claims, and certain others listed by the Department of Labor as having resolved claims, as well as TIGA, will receive notice of this action and any pleadings from its inception.

WHEREFORE THE PETITIONER PRAYS FOR THE FOLLOWING RELIEF:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 20-13-101.

2. That this Court immediately set a date and time for hearing pursuant to the proposed Order Setting Hearing, that will consider whether to grant this Petition with sufficient time for mailing notice and serving the petition and hearing order on all Respondents and potential claimants whose addresses are available to Petitioner, as set forth in the service list attached.

3. That this Court find BSC to be in default of its self-insured workers' compensation obligations from the Self Insured Period in Tennessee, necessitating resort to bond proceeds securing the discharge of its self-insured obligations.

4. That the Court declare the total liability of the Travelers and ICSP bonds to the State for the use and benefit of the employees and dependents entitled to workers compensation benefits as the maximum penal sum of Respondents' bonds. In connection therewith,

(i) That the Court order the Bond Company Respondent Travelers to turn over the penal sum of its Bond, $350,000.00, to the State of Tennessee, Commissioner of Commerce and Insurance, to be used for and pending the outcome of the claims administration in this case. That the aggregate liability of Respondent Travelers be limited to the penal sum of its bond in the amount of $350,000.00. That the maximum aggregate liability of Respondent Travelers be limited to the maximum penal sum of its bond in the amount of $350,000.00 for the period September 1, 1998 to the date.

(ii) That the Court order the Bond Company Respondent ICSP to turn over the penal sum

of its Bond, $350,000.00, to the State of Tennessee, Commissioner of Commerce and Insurance, to be used for and pending the outcome of the claims administration in this case. That the aggregate liability of Respondent ICSP be limited to the penal sum of its bond in the amount of $350,000.00. That the maximum aggregate liability of Respondent ICSP be limited to the maximum penal sum of its bond in the amount of $350,000.00 for the period September 1,1998 to January 14, 2000.

That upon Respondents paying the penal sums as aforesaid to the Commissioner, who shall place the funds in separate, interest bearing accounts, those bonds shall be fully discharged and those Respondents shall be released from any further liability. Any failure of such Respondents to make payment shall be promptly reported to the Court to make such further orders as appropriate. The Commissioner shall account and report to the Court as to the date of receipt of such sums.

5. That this Court issue the appropriate temporary injunctions set forth in the order below and order the commencement of the administration of the Bonds, so as to provide notice to potential claimants of this case and their ability, by the bar date established by the Court, to file a proof of claim seeking outstanding workers' compensation benefits under Tennessee state law, which shall be the exclusive method of making any claim on the Bond funds. That in connection with such administration, the Court appoint a receiver (hereinafter "Receiver") for the administration of the Bonds, and that the person to be appointed should be the Commissioner, in her official capacity, who has authority by law to administer the security posted in this case. The Commissioner, through delegation to appropriate members of the Department staff and staff counsel, has the ability and resources to handle efficiently and economically the receivership and

administration of the Bond funds. The Commissioner if appointed shall be paid for her or her delegees' time at the cost basis of such individual's state salary and benefits, and related administrative expenditures. The Commissioner, as Receiver, or any special deputy receiver appointed by the Commissioner, may file such reports and required accountings ordered in the Plan of Receivership as an officer of the Court. Further, that the order for administration and Plan of Receivership, if the Court appoints a Receiver, be granted on the terms that follow:

Order and Plan of Receivership and Temporary Injunction

A. The Bonds held for the use and benefit of BSC's employees entitled to the benefits of Tennessee's workers' compensation law, shall be jointly administered by the Receiver appointed by this Court, under the supervision of this Court, for the payment of due and properly owed self-insured workers' compensation claims of or relating to BSC's Tennessee employees injured in the course and scope of their employment during the period of the employers' self-insurance [(September 1, 1998 to March 14, 2002)] and for the payment of the costs of this administration.

B. The Bonds shall be and remain deposited until paid out by court order, at interest, for the Commissioner and for the Court for the duration of this receivership, together with any Deposit proceeds, in the State of Tennessee Treasury Department State Investment Pool/Local Government Investment Pool or State Investment Pool, or other fiduciary accounts available to her. The Bonds shall be the sole source of payment of any claims and expenses of this proceeding.

C. That the Receiver well and truly perform the duties described herein and duly account for all monies and properties that may come into her hands and abide by and perform all things that the Receiver shall be directed to do by this and further orders of this Court.

D. The Receiver shall diligently attempt to identify and give notice to persons who reasonably would be expected to make claim on the Bond Funds. Any third party administrators for BSC, and any attorneys representing injured workers and the workers themselves shall fully cooperate with the Commissioner and Receiver in all respects, including turnover of requested records, including workers' compensation activities and medical records. The Receiver shall assemble and determine the validity of the claims by employees who have claims and any other claims which the Receiver, through reasonable diligence, may ascertain exist against the workers' compensation self-insurance Bond Funds.

E. That the Receiver give notice of this action and of the claims filing deadline and instructions for filing such claims consistent with the Court's orders through such notice as the Receiver deems necessary in order to provide adequate and timely notice and information to all potential claimants, and that the Receiver obtain such information from BSC's former claims administrators' records with regard to identifying potential claimants as is available. The Receiver shall give written notice to claimants with open claims known as of entry of this Order within fifteen (15) days after entry, and shall mail notice to the persons identified with closed claims to their last known address at that time, and shall serve potential claimants identified thereafter with notice as soon as practicable. The Receiver may apply for interim, expedited approval of this Court for costs and expenses associated with the giving of this notice, and may seek guidance from the Court on the extent of notice to be given.

F. That any Tennessee employees of BSC, or BSC employees otherwise entitled by law to receive benefits under the Tennessee workers' compensation statutes, and any other claimants who intend to make claim on any proceeds of the Bond Funds from BSC's self-insurance period, be required to file their claims in this action to allow the Receiver, with the approval of this Court, to pay from the Bond Funds (1) the receiver's time, administrative costs or other expenses of this process, including administrative expenses associated with obtaining the determinations of the claims administrator with respect to the valuation of the claims, or any other services required of a claims administrator and (2), the valid claims of all persons who have unpaid workers' compensation benefits on a pro rata basis if necessary within any classes of claims and according to any priorities established by this Court. The employees and other claimants are relieved of the requirement to Answer this Petition except by filing these claims but may appear or file pleadings at any appropriate time to assert their legal rights.

G. **Claims Filing Deadline and Bar Date:** Further, that it be ORDERED, ADJUDGED and DECREED that all claims to be asserted against the Bond Funds to pay for workers' compensation benefits pertaining to injuries occurring from and after September 1, 1998, upon the default of BSC, must be filed and asserted exclusively in this action by delivering such claims to the Receiver at an address to be designated by the Receiver in this action with a Proof of Claim on or before the BAR DATE OF _____, [2003 at 4:30 Central Daylight Time p.m.] which Proof of Claim forms shall be furnished by the Receiver. Claimants who have previously initiated court actions will be required to file such proofs of claims, as well as on request to provide copies of all pleadings. That the failure of a claimant to file timely a claim in this case shall forever bar a claimant from collecting monies from the Bond Funds;

H. **Injunction.** That the employees of BSC and any other individuals or entities who do or could make claim on the Bond Funds, and all persons seeking workers' compensation benefits from BSC pertaining to its self-insurance period (collectively referred to as "claimants"), who receive notice of this Order, be and hereby are restrained

and enjoined from instituting any action, levy, attachment, or proceeding with any pending action, against the State, the Department, BSC, the Receiver or the Bond Funds seeking satisfaction of their claims against the Bond Funds described in this Order and the Complaint, except to file claims that are allowed in this proceeding in accordance with this order or any subsequent order. This Order accordingly affects and prohibits claimants from liquidating their workers' compensation claims under Tenn. Code Ann. § 50-6-405 on the Bond Funds in any other state court besides this Court.

I. **Publication.** That the Receiver shall publish a legal notice of this Order, the injunctions, the bar date and the claims filing procedure for (4) four consecutive weeks once per week, beginning the week after this notice is entered, in the *Commercial Appeal* of Memphis, Tennessee.

J. That the Receiver be allowed to move this Court for any further instruction, orders or modifications of this order as may be necessary to accomplish the purposes of this administration and liquidation of Bond Funds.

K. **Evaluation of Claims.** That the Receiver shall determine, with reference to Tenn. Code Ann. § 50-6-405 and in accordance with any other principles and statutes of workers' compensation law, the nature and extent of claims received by the Receiver. That the Receiver shall take into account any other sources of coverage for the claims, and specifically any other policies, in recommending claims allowable against the Bond Funds.

L. That the Receiver shall submit a Report of the Receiver to this Court within 45 days after the claims deadline seeking approval of the Receiver's determination of valid claims and listing the reasons for the denial in whole or in part of dishonored claims. A copy of that Report shall also be sent to those claimants whose claims the Receiver proposes to dishonor in whole or in part so that those individuals or entities may file written objections to such report within the time specified in the Report. Any disputes in the determination of the amount to be paid on any claim shall be ruled upon by the Court after an opportunity for hearing on the Report of the Receiver. The Receiver may enter into settlements of any claims amounts which shall be conditioned upon approval by the Court.

M. That either in conjunction with the Report of the Receiver (setting disputed claims for hearing) or as a separate filing, the Receiver shall recommend to the Court a Plan of Distribution containing an order of distribution, the amount of recommended claims figures if not previously approved by the Court, and a method of paying the claims that shall be sent to all claimants and persons who are entitled to receive the pleadings in this matter. Should the total monetary value of valid claims against the Bond Funds exceed the total Bond Funds, less the reasonable administrative expenses incurred by the Receiver and any other expenses authorized by this Court as

necessary to the benefit of this administration and liquidation of the Bond Funds, the Plan may propose priorities of payment or other classifications. Claimants may file written objections to the plan recommended by the Receiver, and the Commissioner or other notice parties may also have standing with respect to stating a position on the proposed plan. After opportunity for hearing, the court may approve or modify said plan, and order payment as the interests of justice require. The Receiver may, but is not required to recommend interim partial distributions in the interest of justice if there are funds for such partial distributions as approved by this Court.

N. **Payments.** That, upon expiration of thirty (30) days after entry of the Order of approval by this Court of the Report of the Receiver setting forth any Plan of Distribution described above and this Court's determination that no other claims against the Bond Funds should be allowed, conditioned upon the availability of the funds provided by the Bond Funds, the Receiver shall distribute payment to holders of valid approved claims against the Bond Funds as determined by this Court.

O. Discharge. That the Receiver submit to the Court a report of final payment within thirty (30) days after completion of disbursement of the proceeds of the Bond Funds to valid claimants and shall seek an order of discharge accordingly. Upon discharge, the Court's injunctions against further claims relating to the Bond Funds or their administration against the State or BSC, shall become permanent.

P. **Receiver's Activities and Expenditures.** That the assembly and determination of claims and the distribution of Bond Funds shall be performed by the Receiver or through staff under direction of the Receiver, and by consultation with the Receiver's counsel, if any. The Receiver shall be responsible for giving initial notice and publication of the claims process to potential claimants, and shall be authorized to use out of the initially available deposit funds for immediate purposes of such administration and notice the sum of $2,000.00.

Q. The Commissioner has proposed and this Court orders that the Receiver be permitted, if needed by the Receiver, to obtain services of BSC's former claims administrators, to aid in determining who reasonably should receive notice and a proof of claim form, to analyze the claims in light of the evidence provided therewith, and their existing information about such claims, and to aid the Receiver in the evaluation and resolution of workers' compensation claims. This order is made to gain the information, economic benefit and efficiency of services from any entity with prior knowledge and familiarity with the claimants. Any prior administrator will be compensated at the same or comparable rates for its reasonable services rendered to the Receiver as it charged to BSC, and shall provide evidence of such rates to the Receiver. All services shall be documented by invoice, and with the exception of any of its services that may be provided out of the initial $2,000.00 for administration, shall be paid out of the Bond Funds only after Court approval. The Receiver shall move the Court for approval to

make any other payments to administrators of BSC or for the Receiver at regular intervals, no more frequently than monthly, and shall make accounting to the Court no less than quarterly until the conclusion of this matter.

R. That the Receiver be compensated in this matter only for the reasonable administrative expenses incurred and only from the proceeds of the Bond Funds after application to and approval of this Court. The Receiver may apply for interim approvals in the discretion of the Court. Subject to actual fees and expenses submitted, the Receiver will charge the at-cost basis for her time, and that of her staff, expended on these duties, and the cost to the State for any administrative expenses.

S. That the costs of this action be paid from the proceeds of the Bond Funds.

T. That, if this Court refers any matters of claims to a special master for determination, that such costs or reasonable fees of the master be paid from the proceeds of the Bond Funds, which payment shall be established in the Order of Reference.

U. That the Receiver be permitted to recover the Receiver's reasonable attorneys' fees approved by this Court, which would be fees of state staff counsel, if such services have been found necessary to the proper administration of the Bond Funds proceeds and the aid of the Receiver in performing the Receiver's duties under this Order.

V. That the Receiver make proper and appropriate accounting of all disbursal from the Bond Funds to the Court and the Commissioner.

W. That the State's liability to claimants or any other persons with respect to the Bond Funds for payment out of the Bond funds shall be limited to those payments and administrative costs and other expenses finally approved by this Court and actually made from the Bond Funds plus any interest those proceeds may have accrued while held by the Commissioner or by the Receiver or as otherwise ordered by this Court.

X. That if the allowed claims and administrative expenses do not exceed the Bond proceeds, upon completion of the administration of the Bonds, after all claims have been fully and finally settled, any remainder of funds are to be paid back to the Bond Company Respondents as specifically ordered by this Court. If a determination of the relative entitlement to the remaining proceeds between the Respondent Bond Companies is required, it shall be determined by this Court.

Y. This Order be entered without cost bond as provided by Tenn. Code Ann. § 20-13-101.

6. Alternative Plea for Administration: That, if the Court rejects the plan of

receivership and administration and no administration is funded, the Commissioner alternatively proposes that the Court order the Bonding Companies to tender any Bond proceeds made available into this Court until the Court disposes of claims against them. The Commissioner requests in such instance that appropriate equity be established by this Court and alternative means be established such as a Special Master appointment under TENN. R. CIV. P. 53.01, billed to the expense of Respondents' Bond Proceeds, to accomplish notice to claimants, the timely receipt of claims, the holding of hearings, and the determination of appropriate payment from the Bond Proceeds, and by this Court imposing an injunction and bar against further claims against the funds.

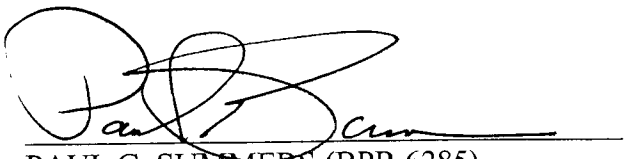
7. That copies of all pleadings and reports filed in this action shall be served on any appointed Receiver, BSC's Liquidating Trustee, the Bond Company Respondents, the undersigned Attorney General's Office, and the party involved in the particular subject matter of the pleading. The Court may direct such other service as appropriate by further order.

8. That summons issue to the Respondents in this matter; and

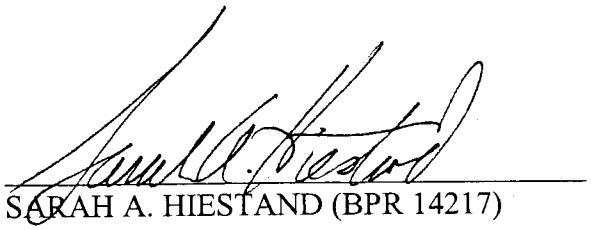
9. For the award of any and all further, general and equitable relief to which the State may be entitled.

THIS IS THE FIRST REQUEST FOR EXTRAORDINARY RELIEF

Respectfully submitted,



PAUL G. SUMMERS (BPR 6285)
Attorney General
State of Tennessee



SARAH A. HIESTAND (BPR 14217)
Senior Counsel
Office of the Attorney General
Financial Division
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-6035
Attorney for Petitioner Paula A. Flowers,
Commissioner of the Tennessee Department of
Commerce and Insurance

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
20th JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, ex rel. PAULA A. FLOWERS, in her official capacity as COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE,	)	
Petitioner,	)	**No. _____**
vs.	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; TRAVELERS CASUALTY & SURETY INSURANCE COMPANY,	)	
Respondents.	)	
In re Bonds held by the Commissioner for Birmingham Steel Corporation for Self-Insured Workers' Compensation Liability in Tennessee for Covered Injuries from 9-1-1998 to 3-14-2002	)	

VERIFICATION AFFIDAVIT OF COMMISSIONER

1. I, Paula A. Flowers, am the Commissioner of the Department of Commerce and Insurance for the State of Tennessee and the petitioner in the foregoing action.

2. I have read the Verified Petition and swear that the information contained therein is true and correct to the best of my knowledge, information and belief. The Bonds attached to the Petition are certified to be true and correct copies of such Bonds found in the official records of the Insurance Division.

3. The Order requested by the foregoing Petition, the preliminary injunction and the request for expedited hearing to establish the administration are needed to allow the workers' compensation claimants to have notice of this case, to assert their claims for benefits from the bond funds, and to assure that the bond funds are made available in this State as intended by the

law and for the prompt payment of any and all approved payments. The Order will also protect the Bonding Companies and this Department from the irreparable harm of any multiple or competing lawsuits seeking payment, and to conserve the Bonds equitably for their statutory purpose of the use and benefit of all the employee claimants.

4. I hereby recommend to the Court that in this instance, that I be appointed receiver for the Bonds in my official capacity, with the power to delegate duties to appropriate members of the Department staff, both administrative and legal. I base this different procedure on the fact that the charges of the time and expenses of the Department should be economical, especially given the likely small number of claims that may be filed against the bond funds, which do not appear to justify at this time the hiring of a third party receiver. This appointment may be regarded as another option that effectively carries out the purposes of Tenn. Code Ann. § 50-6-405, making this Department responsible for the holding of security for the workers compensation self-insured employers. It is my opinion that members of Departmental legal staff have the receivership and workers compensation knowledge and qualification to conduct the administration of these Bonds efficiently and properly under the Court's supervision and would be qualified for that role. This Department proposes to be reimbursed for the actual cost of the staff and legal time and expenditures made in carrying out the duties of the receiver.

5. Furthermore, to the extent we would deem it necessary and efficient, the Department may need to obtain services from the prior claims administrators for BSC or to consult with prior counsel for BSC that have files related to these claims. By virtue of their prior contracts with BSC to administer the Tennessee self-insured workers compensation benefits until it ceased business, they may be familiar with the workers' compensation claimants and files, and

the reserves established for such claims. It is my recommendation that the receiver should be able to enlist the information and/or services of the administrators, to aid in seeking to settle the claims or litigating their final value as a claim against the Bonds. Thus, the plan of administration calls for this service to be established, and paid for subject to the final approval of this Court.

Further affiant sayeth nought.

Paula A. Flowers

PAULA A. FLOWERS
Commissioner, Department of Commerce and Insurance for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this 15th day of April, 2003.

Denise M Lewis

NOTARY PUBLIC

My Commission Expires: My Commission Expires MAR. 27, 2004

CERTIFICATE OF SERVICE

I, the undersigned counsel for the Petitioner, hereby certify that I served the foregoing Verified Petition and in the above-captioned matter with the attached Verified Affidavit and Exhibits by U.S. Mail, postage prepaid, (including by certified mail to Respondents) on all the interested and notice parties to the Verified Petition, on this 22nd day of April 2003.

Sarah A. Kirstein

Travelers Casualty and Surety Company
[Bob Boldt, Manager, Surety]
One Tower Square
Bond 14CZ
Hartford, CT 06183
860-277-4275 fax 860-277-2289

Insurance Company of the State of PA
Attention: Salvatore Ferraro/AIG Technical Services, Inc.
175 Water Street
New York, New York 10038
212-458-1273 fax 212-458-1660

Christopher L. Hawkins, Esq.
Bradley Arant Rose & White
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Attorney for Liquidating Trustee for Birmingham Steel Corporation (re: bankruptcy)
205-521-8556 fax 205-488-6556

Dept. of Labor listing of employees with unresolved claims:

Michael Kenefick
c/o Michael Binkley, Esq.
150 2nd Avenue N., Suite 300
Nashville, TN 37201-1902
615-244-8630 fax 244-8644

Henry T.V. Miller, Esq.
McDonald Kuhn, PLLC
Attorneys at Law
P.O. Box 3160
Memphis, TN 38173-0160

(Defense Attorney re: Kenefick)
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901-525-5555 fax 901-525-7642
Attorney for Rickie Blanchard

Steve Echols
4563 Sawmill Drive
Memphis, TN 38128

BIRMINGHAM STEEL CORPORATION

POST OFFICE BOX 1208
BIRMINGHAM, AL 35201-1208
PHONE (205) 970-1200
FAX (205) 970-1352

December 6, 2002

Mr. Mark Brothers, Director
Tennessee Dept. of Commerce and Insurance
Workers' Compensation Self-Insurance Division
500 James Robertson Parkway, 4th Floor
Nashville, TN 37243

Re: Change in Birmingham Steel Corporation's Self-Insured Status

Dear Mr. Brothers:

Birmingham Steel Corporation would like to formally notify you of a change in our company's self-insured status. As the result of a sale of the company's assets to Nucor Corporation on Monday, December 9, 2002, Birmingham Steel will no longer exist and will therefore discontinue making payments on its self-insured workers' compensation claims.

It is our understanding that this situation will warrant a transfer of all workers' compensation claims to the state. In an effort to minimize the administrative burden of this process, we would like to provide a listing of third party administrators and contacts that will be able to assist you in the claim transfer. These third party administrators are aware of Birmingham Steel's situation and are prepared to mail claims to the state upon your request. The third party administrator contacts are as follows:

Sedgwick Claims Management Services, Inc.
Ms. Brenda Peterson, Account Manager
Phone (404) 240-4613

Sterling Administrative Services, Inc.
No Contact Information Available
Sterling/Reliance Insurance Co. went into bankruptcy and liquidation. They only transferred some of the open Birmingham Steel claims to our corporate office and did not mail the remainder. I would suggest that the state contact someone at Sterling to urge them to submit the remaining files. The open claims mailed by Sterling were transferred to Attenta for continued administration. Please contact Attenta for the open claims.

Attenta
Ms. Cathi Oates, Adjuster
Phone (205) 581-9118

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SELF INSURANCE LINES DIV.
DEPT OF COMMERCE & INSURANCE

To the best of our knowledge, these are the only third party administrators with Tennessee workers' compensation claims. Unless your historical records indicate differently, these should be the only sources necessary to obtain Birmingham Steel's workers' compensation claim files.

We appreciate the opportunity to self-insure our claims and hope this transition does not create an undue burden for the state. Thank you for your assistance.

Sincerely,

Kim Whatley

Kim Whatley
Corporate Risk Manager

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DEC 12 2002
DEPT. OF COMMERCE & INSURANCE

STATE OF TENNESSEE

Office of the Attorney General

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

MAILING ADDRESS
P.O. BOX 20207
NASHVILLE, TN 37202

Bankruptcy Division
Telephone: (615) 532-2546
Fax: (615) 741-3334

MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

March 10, 2003

Christopher L. Hawkins, Esq.
BRADLEY ARANT ROSE
& WHITE LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

Re: Letter Agreement
In re Birmingham Steel Corp., et. al.
Ch. 11 No. 02-11586 (Jointly Administered)

Dear Mr. Hawkins:

This Letter Agreement is entered into by the Tennessee Attorney General, on behalf of the Tennessee Department of Commerce and Insurance ("TDCI") and PWCO Services, Inc., (the "Liquidating Trustee") as liquidating trustee for Birmingham Steel Corporation, Birmingham Southeast, LLC, Port Everglades Steel Corporation, Birmingham Recycling Investment Company, and American Steel and Wire Corporation (collectively, the "Debtors").

On June 3, 2002 (the "Filing Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). On the Filing Date, the Debtors filed a joint Chapter 11 plan of reorganization (as subsequently amended, the "Plan"). By order dated September 17, 2002, the bankruptcy court confirmed the Plan. Pursuant to the Plan, the Debtors sold substantially all their assets to Nucor Corporation and certain of its affiliates on December 9, 2002. The Debtors have since been dissolved. The liquidating trustee currently is administering the Debtors' remaining assets and winding up the affairs of the Debtors and the Debtors' estates.

Prior to the Filing Date, the Debtors maintained operations at a mini-mill facility in Memphis, Tennessee (the "Memphis Mill"). The Debtors maintained a self-insured worker's compensation program in Tennessee during the time the Debtors operated the Memphis Mill. The

EXHIBIT
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Debtors shut down operations at the Memphis Mill on or about January 1, 2000. The Debtors' self-insured status was cancelled, effective March 14, 2002.

Tenn Code Ann. § 50-6-405 imparts upon TDCI the obligation to ascertain whether business entities maintaining a self insured worker's compensation program are financially capable of providing compensation. Because the Debtors no longer are viable entities, two (2) surety bonds currently held by TDCI on behalf of the Debtors are the only recourse for workers injured during the self insured period, other than any distributions under the Plan on Account of Allowed Claims for workers' compensation, if any, which distributions are not expected to pay Allowed Claims in full. Any worker's compensation claims that arose prior to the Filing Date are subject to the automatic stay provisions of Section 362 of the Bankruptcy Code and the discharge and injunction provisions of the Plan.

Based on the foregoing, the undersigned parties agree that any applicable automatic stay provisions under the Bankruptcy Code or discharge and injunction provision under the Plan are not in effect with regard to the regulatory authority of the TDCI in administering the bonds held by the State of Tennessee for the benefit of the Debtors' injured workers subject to the worker's compensation benefits under Tenn. Code Ann. § 50-6-101, et seq.

The parties therefore agree that the State of Tennessee may bring an action in the Chancery Court of Davidson County, Tennessee to administer the bonds. Furthermore , the parties agree that the bonding company may tender funds called by the State of Tennessee for the payment of worker's compensation benefits. The State of Tennessee agrees that any pleadings filed in any subsequent lawsuit shall also be served upon the undersigned counsel for Liquidating Trustee.

Except as specifically set forth in this Letter Agreement, the Liquidating Trustee reserves all rights under the Plan.

Hereby agreed upon this 11th day of March, 2003.

PAUL G. SUMMERS
Attorney General and Reporter

By: Tisha L. Morris ~~(B.P.R. 18146)~~
Assistant Attorney General
Tennessee Attorney General's Office
Bankruptcy Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-2546
(615) 741-3334 (fax)

Attorney for Liquidating Trustee

Christopher L. Hawkins, Esq.
BRADLEY ARANT ROSE
& WHITE LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

STATE OF TENNESSEE

DEPARTMENT OF COMMERCE AND INSURANCE
4TH FLOOR, SELF INSURANCE SECTION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-1132

Bond # 76S103072888
Effective Date 09/01/98

RECEIVED
OCT 02 1998
SELF INS/SURPLUS LINES DIV.
DEPT. OF COMMERCE & INSURANCE

BOND OF EMPLOYER CARRYING HIS OWN RISK

KNOW ALL MEN BY THESE PRESENTS: That BIRMINGHAM STEEL CORPORATION a corporation duly incorporated under the laws of the State of Delaware, as principal, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a corporation duly incorporated under the laws of the State of CONNECTICUT, as surety, are held and firmly bound unto the State of Tennessee for the use and benefit of the employees of the principal and to the dependents of such employees, in the sum of THREE HUNDRED FIFTY THOUSAND AND NO/100---------- Dollars, current money of the United States to be paid to the State of Tennessee, to the payment whereof we hereby bind ourselves and each of us, our and each of our heirs, executors, successors and assigns, jointly and severally, firmly, by these presents.

Sealed with our seal and dated, this 1ST day of SEPTEMBER, A. D., 19 98.

WHEREAS, the above bounden BIRMINGHAM STEEL CORPORATION did on the 1ST day of SEPTEMBER, 19 98, file with the Commissioner of Insurance of the State of Tennessee, his, her, their or its application for the privilege, under Section 50-6-405, Tennessee Code Annotated, and any amendments thereto, being a part of the Worker's Compensation Insurance Law, Chapter 12, of Title 50, Tennessee Code Annotated, of paying compensation and operating under said Law without insuring the same; and

WHEREAS, the Commissioner of Commerce and Insurance did, on the 1ST day of SEPTEMBER, 19 98, grant this privilege upon the condition that the said principal enter into a bond in the penalty sum of $350,000.00---- Dollars, conditioned, among other things, that said principal shall abide by and perform the requirements of the aforesaid Law and any amendments thereto, with reference to paying compensation and furnishing medical, surgical and other services and funeral expenses to said employees and their dependents;

NOW, THEREFORE, the condition of this obligation is such that if the above bounden BIRMINGHAM STEEL CORPORATION shall well and truly, from time to time, and at all times thereafter, abide by and perform all requirements of the aforesaid Law and any amendments thereto, respecting the payment of compensation and furnishing at its own cost and expense, of medical, surgical and other services and funeral expenses to said employees and their dependents, then this obligation shall be void, otherwise to remain in full force and effect virtue in law.

This bond is and shall be construed to be a direct obligation by the principal and surety herein either jointly or severally, to the person who may be entitled to such sum for medical, surgical and other services, funeral expenses or compensation and may be sued upon and enforced in the name or names of such person or persons.

This Bond may be cancelled at any time by the surety upon giving thirty (30) days' written notice to the Commissioner of Commerce and Insurance of the State of Tennessee, in which event the liability of the surety shall, at the expiration of the said thirty days, cease and determine, except as to such liability of the principal on account of injury or death to any of its employees, as may have accrued prior to the expiration of said thirty days, it being understood that the surety shall be liable, within the penal sum mentioned herein, for the default of the principal in fully discharging any liability on its part accruing during the life of this obligation.

IN WITNESS WHEREOF, The said employer has caused these presents to be signed in its name by its President, and its corporate seal attached hereto, attested by its Secretary, and the said Surety has likewise caused these presents to be signed in its name by its President, and its corporate seal attached hereto, attested by its Secretary.

Catherine W Pecher
Secretary

BIRMINGHAM STEEL CORPORATION
Per [signature]
Executive Vice President

Dina Ferguson
Secretary

TRAVELERS CASUALTY AND SURETY COMPANY OF AMER
Per [signature]
President or authorized officer of Surety Co.

I, _____, Secretary of the employer corporation aforesaid hereby certify that by resolution adopted on 28th day of September, 19 98, the Board of Directors of the employer aforementioned directed and empowered the execution of this Bond.

In witness whereof I hereunto set my hand and affix my official seal.

_____
Secretary

(PLEASE ATTACH POWER OF ATTORNEY)

(USE THIS FORM OF ACKNOWLEDGMENT IF THE EMPLOYER IS A CORPORATION)

STATE OF Alabama,
Jefferson COUNTY.

This 28th day of September, A. D. 19 98, personally came before me, Darlene Lyles, Notary Public of Jefferson County, State of Alabama, who being by me duly sworn says that he knows the common seal of Birmingham Steel and is acquainted with William Lucas Exec. Vice who is president of said corporation, and that he, the said Catherine Pecher, is the secretary of the said corporation and saw the said Exec. Vice president sign the foregoing instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or that he, the said _____ secretary as aforesaid, affixed said seal to said instrument), and that he, the said _____ signed his name in attestation of the execution of said instrument in the presence of said president of said corporation.

Witness my hand and official seal, this the 28th day of September, 19 98.

Darlene R Lyles
Notary Public.

My Commission Expires 7-19-2000.

IN-0123 (Rev. 3-94)

White — Self-Insurance Section, Yellow — Surety Company, Pink — Self-Insured

EXHIBIT
C

Birmingham

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183-9062

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint Lee McGriff, III, Mary Jo Lyons, Mark W. Edwards, II, Anita W. Rosenua, R. E. Daniels or Christopher P. Howell

of, Birmingham, AL, its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or, if the following line be filled in, within the area there designated , the following instrument(s):
by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto

and to bind TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Company, which Resolutions are now in full force and effect:

VOTED: That each of the following officers: Chairman, Vice Chairman, President, Any Executive Vice President, Any Group Executive, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, may from time to time appoint Resident Vice Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him or her.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the Chairman, the Vice Chairman, the President, an Executive Vice President, a Group Executive, a Senior Vice President, a Vice President, an Assistant Vice President or by a Resident Vice President, pursuant to the power prescribed in the certificate of authority of such Resident Vice President, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile under and by authority of the following Standing Resolution voted by the Board of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: Chairman, Vice Chairman, President, Any Executive Vice President, Any Group Executive, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

(over)

RECEIVED
OCT 02 1998
SELF INS/SURPLUS LINES DIV.
DEPT. OF COMMERCE & INSURANCE

IN WITNESS WHEREOF, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA has caused this instrument to be signed by its Vice President, and its corporate seal to be hereto affixed this 1st day of July, 1997.

STATE OF CONNECTICUT } SS. Hartford

COUNTY OF HARTFORD

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

By _____
George W. Thompson
Vice President

On this 1st day of July, 1997, before me personally came GEORGE W. THOMPSON to me known, who, being by me duly sworn, did depose and say: that he/she is Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; and that he/she executed the said instrument on behalf of the corporation by authority of his/her office under the Standing Resolutions thereof.

Marie C Tetreault

My commission expires June 30, 2001 Notary Public
Marie C. Tetreault

CERTIFICATE

I, the undersigned, Assistant Secretary of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a stock corporation of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Board of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 1ST day of SEPTEMBER , 19 98.

By: _____
Rose Gonsoulin
Assistant Secretary

TravelersPropertyCasualty
A member of citigroup

Travelers Casualty and Surety Company of America
Hartford, CT 06183

CANCELLATION NOTICE

Date: December 07, 1999

Office at: BNA Building 100, 402 BNA Dr.
NASHVILLE, TN 37217

State of TN, Dept. of Insurance, Division of Self Insurance
500 James Robertson Pkwy
4th Floor
NASHVILLE, TN 372430565

You are hereby notified that this Company elects to cancel:

Bond No. or Policy No. 076 S 103072888 BCM, in favor of Birmingham Steel Corporation.

This cancellation is to take effect on January 14, 2000, in accordance with the terms of said Bond or Policy.

Travelers Casualty and Surety Company of America

By: Vickie B. Morgan
Vickie B Morgan Attorney-in-Fact

RECEIVED
DEC 10 1999
SELF INS/SURPLUS LINES DIV.
DEPT. OF COMMERCE & INSURANCE

F-129-P (3-76)

STATE OF TENNESSEE

DEPARTMENT OF COMMERCE AND INSURANCE
4TH FLOOR, SELF INSURANCE SECTION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-1132

Bond # 104325
Effective Date 9/1/98

BOND OF EMPLOYER CARRYING HIS OWN RISK

KNOW ALL MEN BY THESE PRESENTS: That Birmingham Steel Corporation a corporation duly incorporated under the laws of the State of _____, _____ as principal, and The Insurance Company of the State of Pennsylvania, a corporation duly incorporated under the laws of the State of New York, as surety, are held and firmly bound unto the State of Tennessee for the use and benefit of the employees of the principal and to the dependents of such employees, in the sum of Three Hundred Fifty Thousand and no/100---------- Dollars, current money of the United States to be paid to the State of Tennessee, to the payment whereof we hereby bind ourselves and each of us, our and each of our heirs, executors, successors and assigns, jointly and severally, firmly, by these presents.

Sealed with our seal and dated, this 11th day of January, A. D., 19 2000.

WHEREAS, the above bounden Birmingham Steel Corporation did on the 1st day of September, 19 98, file with the Commissioner of Insurance of the State of Tennessee, his, her, their or its application for the privilege, under Section 50-6-405, Tennessee Code Annotated, and any amendments thereto, being a part of the Worker's Compensation Insurance Law, Chapter 12, of Title 50, Tennessee Code Annotated, of paying compensation and operating under said Law without insuring the same; and

WHEREAS, the Commissioner of Commerce and Insurance did, on the 1st day of September, 19 98, grant this privilege upon the condition that the said principal enter into a bond in the penalty sum of $350,000.00 Dollars, conditioned, among other things, that said principal shall abide by and perform the requirements of the aforesaid Law and any amendments thereto, with reference to paying compensation and furnishing medical, surgical and other services and funeral expenses to said employees and their dependents;

NOW, THEREFORE, the condition of this obligation is such that if the above bounden Birmingham Steel Corporation shall well and truly, from time to time, and at all times thereafter, abide by and perform all requirements of the aforesaid Law and any amendments thereto, respecting the payment of compensation and furnishing at its own cost and expense, of medical, surgical and other services and funeral expenses to said employees and their dependents, then this obligation shall be void, otherwise to remain in full force and effect virtue in law.

This bond is and shall be construed to be a direct obligation by the principal and surety herein either jointly or severally, to the person who may be entitled to such sum for medical, surgical and other services, funeral expenses or compensation and may be sued upon and enforced in the name or names of such person or persons.

This Bond may be cancelled at any time by the surety upon giving thirty (30) days' written notice to the Commissioner of Commerce and Insurance of the State of Tennessee, in which event the liability of the surety shall, at the expiration of the said thirty days, cease and determine, except as to such liability of the principal on account of injury or death to any of its employees, as may have accrued prior to the expiration of said thirty days, it being understood that the surety shall be liable, within the penal sum mentioned herein, for the default of the principal in fully discharging any liability on its part accruing during the life of this obligation.

IN WITNESS WHEREOF, The said employer has caused these presents to be signed in its name by its President, and its corporate seal attached hereto, attested by its Secretary, and the said Surety has likewise caused these presents to be signed in its name by its President, and its corporate seal attached hereto, attested by its Secretary.

Catherine W Pecher
Secretary

Birmingham Steel Corporation
Per J Daniel Garrett
Vice President

Ina Ferguson
Secretary

The Insurance Company of the State of Pennsylvania
Per [signature]
President or authorized officer of Surety Co.

I, _____, Secretary of the employer corporation aforesaid hereby certify that by resolution adopted on _____ day of _____, 19____, the Board of Directors of the employer aforementioned directed and empowered the execution of this Bond.

In witness whereof I hereunto set my hand and affix my official seal.

_____
Secretary

RECEIVED JAN 14 2000 SELF INSURANCE LAW DIV. DEPT. OF COMMERCE & INSURANCE

(PLEASE ATTACH POWER OF ATTORNEY)

(USE THIS FORM OF ACKNOWLEDGMENT IF THE EMPLOYER IS A CORPORATION)

STATE OF _____,
_____ COUNTY.

This _____ day of _____, A. D. 19____, personally came before me, _____, Notary Public of _____ County, State of _____, _____ who being by me duly sworn says that he knows the common seal of _____ and is acquainted with _____ who is president of said corporation, and that he, the said _____, is the secretary of the said corporation and saw the said president sign the foregoing instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or that he, the said _____ secretary as aforesaid, affixed said seal to said instrument), and that he, the said _____ signed his name in attestation of the execution of said instrument in the presence of said president of said corporation.

Witness my hand and official seal, this the _____ day of _____, 19____.

_____
Notary Public.

My Commission Expires _____.

IN-0123 (Rev. 3-94)

White — Self-Insurance Section, Yellow — Surety Company, Pink — Self-Insured

EXHIBIT
D

The Insurance
Principal Bond Office 175 Water Street, New York, NY 10038

No. 09-B-01391

KNOW ALL MEN BY THESE PRESENTS:

That The Insurance Company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

---Mark W. Edwards, II, Jeffrey M. Wilson, Ronald B. Giadrosich: of Birmingham, Alabama---
---R. E. Daniels: of Pensacola, Florida---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby.

IN WITNESS WHEREOF, The Insurance Company of the State of Pennsylvania has executed these presents

this 4th day of January, 1999.

Lawrence W. Carlstrom, Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK}ss.

On this 4th day of January, 1999, before me came the above-named officer of The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.

JOSEPH B. NOZZOLIO
Notary Public, State of New York
No. 01-NO4652754
Qualified in Westchester County
Term Expires June 3, 2000

CERTIFICATE

Excerpts of Resolution adopted by the Board of Directors of The Insurance Company of the State of Pennsylvania, on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolution adopted by the Board of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation

this 11 day of January xx 2000

Elizabeth M. Tuck, Secretary

RECEIVED
JAN 14 2000

EXHIBIT E

Dept. of Labor listing of claimants in Tennessee with resolved claims:

Jack Butler, Sr.
216 2nd Street
Marks, MS 38646

Curtis Carroll
4045 Terry Park #1
Memphis, TN 38118

Cliff Gordon
1604 Wilson
Memphis, TN 38106

Tom Holyoke
2040 Morgan Road
Dyersburg, TN 38024

Teddy Pollard
341 W. Lawn Street
Bradley, IL 60915

Bill J. Sapp
4222 Laurel Trace
Memphis, TN 38128

Jeanette Wilson
10226 Kennedy Avenue
Highland IN 46322

EXHIBIT E-1 /Sedgwick Claims Management Services, Inc. listed closed claims

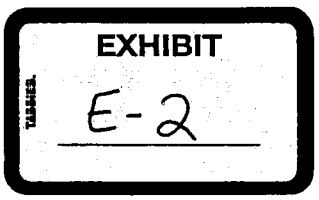
(see attached sheet)

SEDGWICK CMS Tennessee Claims for Birmingham Steel (All closed) Indemnity, and Medical Only listings

ity Number	Claimant Last Name	Claimant First Name	Claimant Middle Initial	Claimant Address Line 1	Claimant City	Claimant State	Claimant Zip	Claimant Home Phone	Claim Type	Claim Stat
	BLANCHARD	RICKIE		3929 PIPPIN	MEMPHIS	TN	38128	901-937-5323	IN	C
	CARROLL	CURTIS		4045 TERRY PARK #1	MEMPHIS	TN	38118	546-0511	IN	C
	EVANCE	DONALD		108 OAK STREET	DYESS	AR	72330		IN	C
	FERRY	MIKE		4700 PRISCILLA AVE	MEMPHIS	TN	38128	266-1100	IN	C
	HOLYOKE	TOM		2040 MORGAN ROAD	DYERSBURG	TN	38024	901/286-5332	IN	C
	PETERSON	RONALD		4469 BOEINGSHIRE	MEMPHIS	TN	38116	398-3981	IN	C
	POLLARD	TEDDY	J	P.O. BOX 343	CARWAY	AR	72419	870/482-9105	IN	C
	SAPP	BILL		4222 LAUREL TRACE	MEMPHIS	TN	38128	901-379-0530	IN	C
	BARNES	JOHN		5918 JULIAN COURT #4	MEMPHIS	TN	38119	682-3777	MO	C
	BLAND	CAREY		4181 MEADOW VALLEY	MEMPHIS	TN	38141	901-795-1571	MO	C
	BURRESS	DENNIS		3265 MORNINGSIDE	MEMPHIS	TN	38127	901-357-3050	MO	C
	BUTLER	JACK	O	216 2ND ST.	MARKS	MS	38646	601-326-8601	MO	C
	COOK	JAMES	B	4960 CHAMBERLIN	HERNANDO	MS	38632	601-429-4892	MO	C
	CRUISHANCK	LAINE		1988 LOURETTA	MEMPHIS	TN	38127	901-743-2769	MO	C
	EDWARDS	TIM		5471 N. COUNTY RD 917	BLYTHVILLE	AR	72315	870-762-0207	MO	C
	FARLEY	LEON		1430 WINFIELD	MEMPHIS	TN	38116	901-398-9287	MO	C
	GIBSON	JASON		716 PALM AVENUE	TRUMAN	AR	72472	870-483-7117	MO	C
	HOLBROOK	JIMMY		5279 E. ST HIGHWAY 150	BLYTHEVILLE	AR	72315	870-763-7033	MO	C
	JILES	REGINALD		1112 FULTON AVE. SW	BIRMINGHAM	AL	35211	662-893-0960	MO	C
	KENT-ELION	ANITA		5200 ORIOLE COVE	BARTLETT	TN	38134	371-8779	MO	C
	KNEISLEY	TODD		6152 KNIGHTBRIDGE DRIVE	MEMPHIS	TN	38115	901-547-1329	MO	C
	LITTLE	LEROY		5074 COUNTRY VIEW	MEMPHIS	TN	38134	901-385-9468	MO	C
	MARTIN	JERRY		3911 PECANVILLE COVE	MEMPHIS	TN	38135	901-373-1708	MO	C
	MCBROOME	PATRICK	W	1258 DEARING	MEMPHIS	TN	38117	901-818-9584	MO	C
	O'BRIEN	JOHN		5174 LONGMEADOW	MEMPHIS	TN	38134	901-371-9843	MO	C
	PERKINS	RICHARD		178 EASTWOOD DRIVE	MUNFORD	TN	38058	901-837-9836	MO	C
	PETERSON	RONALD		4469 BOEINGSHIRE DRIVE	MEMPHIS	TN	38116	901-398-3981	MO	C
	PORTER	BARRONE		6530 COUNTY OAKS	MEMPHIS	TN	38115	901-366-0698	MO	C
	ROBERTS	JAMES		9630 RICHARDSON	DRUMMONDS	TN	38023	901-835-4025	MO	C
	SHEPPARD	JOE		3443 HADLEY	MEMPHIS	TN	38111	901-323-7459	MO	C
	SULLIVAN	TERRY	R	2983 BRANDALE	MEMPHIS	TN	38118	901-362-0442	MO	C
	SULLIVAN JR.	CHARLIE	L	5885 GARDEN WALK EAST	SOUTHAVEN	MS	38671	601-349-0465	MO	C
	TEAGUE	RICKY	L	8155 ST. HIGHWAY 118	EARLE	AR	72331	870-343-2782	MO	C
	WHITE	CLARENCE		1731 NELSON AVE.	MEMPHIS	TN	38104	901-726-0904	MO	C
	WILSON	GREGORY		1047 BELVEDERE BLVD.	MEMPHIS	TN	38107	901-725-5832	MO	C

EXHIBIT E-1

Exhibit E-2

List of Employee Names and Dates of Loss supplied by BSC from an Occurrence Listing updated 2/1/02 for Birmingham Steel Corp. /dates of loss in 1999 through June, 1999. (Received by TDCI on February 4, 2002) [http://rms-x.relianceinsurance.com/cgi-bin/rsmx/rsmx.exe]

		Status:	
Ricky Blanchard	06/22/1999	Open	
Lester Payne	06/14/1999	Closed	
Robert Winfield	06/13/1999	Closed	
Terry Sullivan	06/09/1999	Closed	
Michael Kenefick	06/07/1999	Open	
Andrew Lewis	05/29/1999	Closed	
Lawrence Echols	05/29/1999	Closed	
Patrick Washington	05/20/1999	Closed	
Alan Stone	05/16/1999	Closed	
Todd Kneisley	05/04/1999	Closed	
Brenda Brown	05/03/1999	Closed	
Fred Richmond	04/28/1999	"N"	"No injuries at this time"
Jeff Jacobs	04/28/1999	Closed	
Dan Schreckengost	04/24/1999	Closed	
Keith Peterson	04/23/1999	Closed	
Anthony Moore	04/23/1999	Closed	
David Carver	04/21/1999	Closed	
Reenanlan Bailey	04/09/1999	Closed	
Derrick Washington	04/08/1999	Closed	
Van Bivens	04/08/1999	Closed	
Steven Long	04/02/1999	Closed	
Randy King	03/29/1999	Closed	
Robert Tate	03/26/1999	Closed	
John Barnes	03/20/1999	Closed	
Rickie Blanchard	03/14/1999	Closed	
Mike Forest	03/04/1999	"N"	"Notice only"
Anthony Moore	02/26/1999	Closed	
Marcus Gibbs	02/26/1999	Closed	
John Franko	02/03/1999	Closed	
Marcus Gibbs	02/02/1999	Closed	
Cliff Gordon	02/01/1999	Closed	
James Cook	01/25/1999	Closed	
Terry Sullivan	01/25/1999	Closed	
Luis Delgado	01/21/1999	Closed	
Elmer Harmon	01/20/1999	Closed	
Derrick Washington	01/15/1999	Closed