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Dav. Co. Chancery Court

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

STATE OF TENNESSEE, *ex rel.* LESLIE A. NEWMAN in her official capacity as COMMISSIONER OF COMMERCE AND INSURANCE, on behalf of the employees of Plastech Engineered Products, Inc. (formerly United Screw and Bolt corporation), for Tennessee self-insured workers' compensation benefits,	
Petitioner,	**No. 08-2516-I**
vs.	
SAFETY NATIONAL CASUALTY CORPORATION, A Missouri domiciled insurance company,	
Respondent.	
In re: Bond for Workers' Compensation Self-Insurance of Plastech Engineered Products, Inc., debtor, formerly United Screw & Bolt Corporation,	

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REVISED CONSENT ORDER FOR SAFETY NATIONAL CASUALTY CORPORATION TO ADMINISTER ITS BOND SECURING WORKERS' COMPENSATION SELF- INSURANCE OF PLASTECH ENGINEERED PRODUCTS, INC.

The Honorable Chancellor Claudia C. Bonnyman, on December 1, 2008, held a telephone conference with undersigned counsel for the Petitioner, the Tennessee Commissioner of Commerce and Insurance, and for Respondent Safety National Casualty Corporation, regarding the Consent Order submitted by the parties. The Court has determined to enter the Consent Order of the parties, with the revision hereby stated that the parties shall submit a supplemental order to specify notice of this action to be mailed to persons employed by Plastech Engineered Products, Inc. at the Tennessee plants at the time of their closure, and to specify the type and frequency of Respondent's reporting to the Court of claims activities to aid this Court's oversight of the bond;

WHEREFORE, IT IS HEREBY AGREED by the Commissioner of Commerce and Insurance for the State of Tennessee, Leslie A. Newman, through her counsel, the Attorney General's Office, and Respondent Safety National Casualty Corporation, through counsel, and found by this Court, that the following order should be entered:

1. This Court has jurisdiction of the action and of equitable relief related to administering the security held by the Commissioner for purposes of workers' compensation self-insurance in Tennessee, and has subject matter jurisdiction over enforcement of the bond, with exclusive venue under Tenn. Code Ann. § 50-6-405(b)(1)(C). The Petitioner is Leslie A. Newman, in her official capacity as the duly appointed Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). The Commissioner has the exclusive right to enforce the bonds which are the subject of this action: "Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the [Commissioner] for the benefit of the employees of the self-insured employer." Tenn. Code Ann. § 50-6-405(b)(1)(A).

2. The Commissioner, as shown more fully by her Verified Complaint, to which this Consent Order is an exhibit, brings this action under Tenn. Code Ann. § 50-6-405(b)(1) on behalf of the Tennessee employees of Plastech Engineered Products, Inc. and a predecessor employer, United Screw & Bolt Corporation, which merged into Plastech in 1997, (collectively, "Plastech") who may be entitled to workers' compensation benefits self-insured by Plastech in Tennessee since January 1, 1986. Plastech has sought protection from creditors under the bankruptcy code in Bankruptcy Court and stopped paying its administrator to provide any workers' compensation benefits to its Tennessee employees as of July 1, 2008. Plastech's Tennessee plants in Kenton, Franklin, and Gallatin, employing about 450 workers, have closed,

ceasing employing workers in Tennessee no later than August 31, 2008. Plastech's authority to self-insure in Tennessee has terminated by agreed order with the Commissioner.

3. The Respondent is Safety National Casualty Corporation ("Bond Company" or "SNCC"), a corporation authorized to issue bonds and insurance policies in Tennessee, and domiciled in Missouri, which issued the bond filed with the Commissioner on behalf of Plastech, the Tennessee employer, that is to be administered as a result of this action. SNCC has principal offices at 1832 Schuetz Road, St. Louis, Missouri 63146. SNCC waives service of the Verified Petition and consents to the entry of this Consent Order without prior notice.

4. Respondent Safety National Casualty Corporation, by virtue of the Bond and riders appended to the Verified Complaint as Exhibit B, (identified as SIB 3229-TN and collectively as the "SNCC Bond") and Tenn. Code Ann. 50-6-405(b)(1), is obligated up to the maximum penal sum of the SNCC Bond, $970,000.00 (Nine Hundred Seventy Thousand Dollars), to be used for so long as required for the administration and payment of the unsatisfied outstanding obligations of Plastech under the Tennessee Workers' Compensation Law that were self–insured in Tennessee for workers' work-related injuries incurred during the period of Plastech's self-insurance from January 1, 1986 through August, 2008.

5. Plastech over its years of self-insurance entered into judgments and awards to employees under the Tennessee Workers' Compensation Law under which it may be required to provide further benefits or medical care, and has outstanding claims for injuries that have not yet become final awards. There are about twenty active claims in Tennessee currently. The Commissioner and SNCC agree that Plastech has defaulted in its fulfillment of the self-insured workers' compensation benefits, because as of June 29, 2008, it had stopped paying for benefits

and stopped paying its third-party administrator to fund the benefits and furnishing of medical and disability care.

6. On July 24, 2008, the Commissioner made demand on Respondent Safety National Casualty Corporation for access to the Bond, with notice to the bankruptcy counsel for Plastech. SNCC promptly cooperated with the Commissioner and took action to obtain the transfer of administrative claims files and information from Plastech's former administrator to an administrator hired by SNCC known as CCMSI, a company approved and doing business in Tennessee to act as a third party administrator of workers' compensation benefits for insurers and self-insured employers. As of July 9, 2008, Plastech had nineteen open and active claims, that CCMSI contacted and took steps to resume administration of benefits. SNCC accordingly has already incurred expense for administration and some employee benefits against its total monetary obligation under the SNCC Bond.

7. The information from Plastech's former claims administrator, as well as review of the information by CCMSI, indicate that the expected outstanding claims and administrative expenses required for Plastech's self-insured workers' compensation into the future, should cost less than half the available bond penalty. The Commissioner and SNCC are thus of the opinion based on the information available, that SNCC is capable of assuming and arranging for the administration of the Bond proceeds for the benefit of the Tennessee employees of Plastech entitled to such workers' compensation, and that the SNCC Bond penalty sum is expected to be adequate. The presumed adequacy of the SNCC Bond gives rise to the parties' agreement that the administration of such workers' compensation benefits should take place so far as possible under the ordinary provisions and time-frames of Tennessee's Workers' Compensation law.

8. The Commissioner's Verified Petition requests entry of this Consent Order, and establishes the premises and good cause for the entry of this Consent Order to secure to Plastech's employees the continuation of workers' compensation benefits under Tennessee Workers' Compensation Law, at Tennessee Code Annotated, Title 50, chapter 6 by Safety National Casualty Corporation administering the SNCC Bond.

Wherefore, this Court ORDERS AND DECREES because of Plastech's default on its workers' compensation obligations in this State, that the Commissioner's recourse to the SNCC Bond is required and warranted by the Bond, and that SNCC shall fulfill the obligations up to the penal sum of the SNCC Bond under the following provisions:

1. The Court declares that Respondent SNCC is liable for and shall furnish and administer workers' compensation benefits for Tennessee workers of Plastech injured during the coverage period of Plastech's self-insurance in Tennessee up to the maximum penal sum of the SNCC Bond, Bond No. SIB 3229-TN, and attendant riders, $970,000.00 (Nine Hundred Seventy Thousand Dollars), which amount shall include expenses for administration and employee benefits incurred prior to the entry of this Order, and that SNCC at any such time of full payment, duly shown to this Court, would be accordingly released from any further liability upon the SNCC Bond. SNCC proceeds are available for Tennessee self-insured claims incurred (dates of injury) from January 1, 1986 through the cessation of its employment of Tennessee workers no later than August 31, 2008.

2. The Court Orders SNCC to administer the SNCC Bond in the following manner, with the purpose of providing continued coverage to and notice to Plastech's Tennessee claimants of this case and their entitlement to seek outstanding workers' compensation benefits

under Tennessee state law from SNCC, which shall be the exclusive method of any person's making claim on or relating in any manner to the SNCC Bond funds.

A. The SNCC Bond in favor of the State of Tennessee for the use and benefit of Plastech's Tennessee employees entitled to the benefits of Tennessee's workers' compensation law shall be self-administered by the Bond Company, Safety National Casualty Corporation, under the authority of this Order of Court, for the payment of due and properly-owed self-insured claims and benefits of or relating to Plastech's Tennessee employees injured in the course and scope of their employment during the period of Plastech's self-insurance covered by the SNCC Bond and for the payment of the costs of furnishing this administration.

B. The funds obligated under the SNCC Bond may be held and retained by SNCC, except as they are paid out for workers' compensation benefits including the administration and payment of proper workers' compensation claims and benefits, for so long as necessary under Tennessee workers' compensation law to accomplish the administration of claims as charged under this action. SNCC shall maintain accountings and details of all expenses and charges against the Bonds, which shall be available to the Commissioner on written request. All expenses and charges made against and reducing the Bond proceeds balance, including those related expenses incurred prior to the filing of this Consent Order, shall be reported to the Commissioner annually, after a First Report made as of December 31, 2008, and at such times SNCC shall file in this Court a summary report of expenditures against the Bond and SNCC's estimate of the length of time needed for further administration of claims. The Court is requiring a notice from Safety National every six months so as to report upon claims and such will be the subject of a future order. SB

C. SNCC shall diligently perform the duties described herein and abide by and perform all things that the SNCC shall be directed to do by this and further orders of this Court;

D. SNCC shall determine, with reference to Tenn. Code Ann. § 50-6-405 and in accordance with any other principles and statutes pertaining to workers' compensation law in Tennessee, the nature and extent of claims to be covered by the SNCC Bond and take all actions needed to resolve or obtain any adjudication necessary of compensability and benefits to which an employee or other claimant is entitled. The assembly and determination of claims and the distribution of Bond proceeds is the responsibility of SNCC, and shall be performed by SNCC or through staff or contractors authorized to administer claims in Tennessee. SNCC has currently retained CCMSI, but may modify such designation with an authorized administrator upon notice to the Commissioner and to this Court.

E. <u>SNCC Appearance as Bonding Company in Workers' Compensation Cases</u>: SNCC is directed as well as permitted to appear where necessary in cases or administrative proceedings requiring any further action of that court concerning the employees' workers' compensation claims, by specifying its capacity as Bond company securing the self-insurance of Plastech and United Screw & Bolt, and may cite this Order for its authority. Any claims which have not previously been filed in other courts against Plastech may be brought in courts with venue over such Tennessee workers' compensation claims. SNCC's appearance in litigation or in any administrative proceeding shall be made solely in its capacity as security for the employer, and

SNCC's power to pay or compromise any action shall only be in its capacity and binding upon the Bond, and shall not bind or purport to affect Plastech.

F. SNCC shall diligently attempt to identify and give notice of this Order to persons who reasonably would be expected to make claim on the Bonds. With notice of this Order, any administrators formerly assisting Plastech, and any attorneys previously defending the employer, or representing injured workers and the workers themselves shall cooperate with SNCC including providing records as needed to permit SNCC to succeed to the administration of workers' compensation benefits due to the incapacity of Plastech.

G. Publication. SNCC shall publish a legal notice of this Order directing it to administer the SNCC Bond securing the self-insured liabilities of Plastech for workers' compensation in Tennessee, and of explicit instructions for contacting SNCC or its designated administrator once per week for (2) weeks, as soon as practicable after this Order is entered, in a newspaper of general circulation covering Plastech's plant locations in Kenton, Franklin and Gallatin, Tennessee. The Commissioner shall post a notice of this Consent Order on the Departmental website and any instructions to Plastech's claimants deemed necessary, and shall direct claimants to SNCC or its designee. The Court is also requiring the mailing of notice to employees' last known address and such of the Subject of future order

H. SNCC shall furnish written notice of its role under this Consent Order and of this action and of any requirements for filing or giving notice of their claims to the active claimants and such medical providers or vendors of which it is aware through such notice as SNCC deems necessary in order to provide adequate and timely notice and information to the claimants. SNCC may pay from its Bond the 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.

I. Use of Bond Proceeds: SNCC is authorized and directed to pay, up to the maximum penalty sum of its SNCC Bond, $970,000.00, 1) its administrative costs or other expenses directly attributed to this process, including this action, legal services associated with administration of Plastech's Tennessee self-insured workers' compensation obligations, 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 under Tennessee Workers' Compensation Law, and the medical providers who furnish medical or rehabilitative care to the claimants pursuant to workers' compensation law.

J. SNCC's administration of the SNCC Bond as ordered by this Court is the sole and exclusive source to the employees of Plastech, and any other individuals or entities who do or could make claim for outstanding workers' compensation benefits in Tennessee, with reference to enforcement against the SNCC Bond that Plastech filed with the Commissioner. Persons with notice of this Order are enjoined from instituting any action, levy, attachment, or proceeding with any pending action, against the State, the Commissioner or the Department, because claim shall only be made on the SNCC Bond to the extent provided in this proceeding. This Order does not prevent or purport to affect any filing of claims in Plastech's bankruptcy proceedings;

however orders of that Bankruptcy Court may already affect or bar claimants from further recoveries;

K. SNCC or the Commissioner at any time may move this Court for any further instructions, orders or modifications of this order as may be necessary to accomplish the purposes of this administration of Bond proceeds. If any matter requires determination of whether a claim is ineligible in its entirety for coverage under the SNCC Bond, because of matters of construction of the SNCC Bond or the self-insurance provisions of Tenn. Code Ann. § 50-6-405, that matter shall be brought to this Court.

L. SNCC shall take into account and access any other sources of coverage for the claims, and specifically any available excess policies, in paying claims allowable against the Bonds.

M. Copies of all subsequent pleadings or papers filed in this case shall be served on undersigned counsel for the parties SNCC and the Commissioner, Plastech's Debtor's counsel, and the interested party in the subject matter of the document. The Court may direct such other service as appropriate by further order.

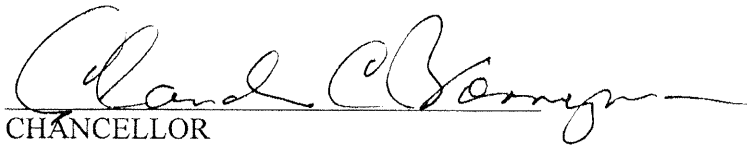
N. Final Discharge. SNCC may submit to the Court and the Commissioner a report of final payment, if ever, after completion of disbursement of the proceeds of the SNCC Bond to valid claimants and may seek an order of discharge accordingly.

O. That any costs of this action, which may include interim court costs, be paid by SNCC from the proceeds of the Bond.

P. That the State has satisfied its statutory duty to claimants or any other persons with respect to the Bond for payment out of the Bond proceeds by enforcing the Bond in the manner provided under this Order. SNCC, by virtue of the entry of this Consent Order, has satisfied its statutory duty to the Commissioner of the Tennessee Department of Commerce and Insurance and to the State of Tennessee, subject to SNCC's satisfactory performance and completion of the duties and obligations contained in this Consent Order.

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

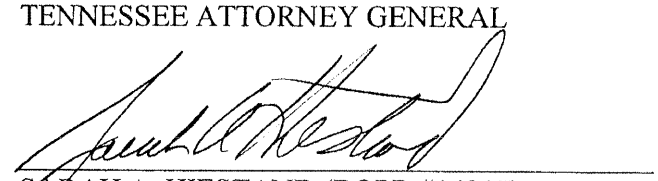
IT IS SO ORDERED.



CHANCELLOR

Agreed and Approved for Entry by:

ROBERT E. COOPER, JR.
TENNESSEE ATTORNEY GENERAL



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