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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

CAPITOL INDEMNITY CORPORATION, a )  
Wisconsin corporation, )

Plaintiff, )

vs. )

MANCHESTER DEVELOPMENT )  
COMPANY, L.L.C., an Arizona limited )  
liability company; GC ENTERPRISES, an )  
Arizona business; DAVID H. MASON, an )  
Arizona individual; MARTIN D. COLLIER )  
and VALERIE L. COLLIER, Arizona )  
individuals individually and as husband and )  
wife; and ALBERT H. GERSTEN, an )  
Arizona individual, )

Defendants. )

Case No. 4:09-CV-482-TUC-DCB

**TEMPORARY RESTRAINING ORDER**

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Upon consideration of the allegations in the Complaint for Damages and Injunctive Relief (“Complaint”), the Application for Specific Performance, Application for Temporary Restraining Order and Order to Show Cause (With Notice), and Application for Preliminary Injunction (“Application”), the Affidavit of Andy Anderson (“Affidavit”), and the

1 Memorandum in support of said Application, and the Court being advised in the premises, the  
2 Court finds as follows:

3 A. By virtue of the General Indemnity Agreement executed on April 5, 2004 by  
4 Defendants Manchester Development Company, L.L.C. (“Manchester”), GC Enterprises  
5 (“GC”), David H. Mason (“Mason”), Martin D. Collier and Valerie L. Collier (collectively,  
6 “Collier”), and Albert H. Gersten (“Gersten”) (collectively, the “Defendants”), by virtue of  
7 the equitable doctrines of specific performance, exoneration, indemnification and *quia timet*,  
8 and pursuant to the Joint Stipulation filed on September 11, 2009 (document 11) as to  
9 Defendants Manchester Development Company, LLC and David Mason, the Plaintiff has  
10 established support for the relief granted by this Temporary Restraining Order.

11 B. Defendants Manchester, Mason, and Collier were provided good, sufficient,  
12 and appropriate notice of the Application and an opportunity to be heard on September 9,  
13 2009, at 10:30 a.m. as to why a temporary restraining order should not issue.

14 C. It clearly appears from the specific facts shown by the Application, the  
15 Affidavit, the Complaint, and the evidence that unless restrained and enjoined therefrom,  
16 Defendants are likely to sell, transfer, dispose, lien, secrete or otherwise divert their assets  
17 from being used to discharge Defendants’ obligations to exonerate and indemnify Plaintiff,  
18 all to Plaintiff’s immediate and irreparable harm

19 D. It clearly appears from the specific facts shown by the Application, the  
20 Affidavit, the Complaint, and the evidence that immediate and irreparable injury, loss or  
21 damage will result to Plaintiff if Defendants Gersten and GC are given notice and an  
22 opportunity to be heard in opposition, and that therefore in accordance with Rule 65(b),  
23 Fed.R.Civ.P., the interests of justice require that this order be granted without prior notice to  
24 Defendants Gersten and GC.

25 **WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

26 1. A Temporary Restraining Order is hereby issued restraining Defendants  
27 from selling, transferring, disposing, liening or otherwise secreting any of their assets and  
28 property, other than in the ordinary course of business, unless and until Defendants place

1 Plaintiff in funds or fully collateralize Plaintiff to the extent of Plaintiff's liability in the  
2 amount of \$696,813.00, subject to further order of the Court.

3 2. This Temporary Restraining Order is issued and effective as of  
4 September 9, 2009 at 10:30 a.m.

5 3. Should Defendants fail to comply with this Order, they may be adjudged  
6 in contempt of Court in which event appropriate sanctions will be imposed by the Court.

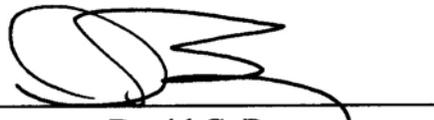
7 4. Defendants shall be required to appear before the Honorable David C.  
8 Bury, United State District Judge, on **October 19, 2009 at 1:30 o'clock p.m.** at 405 West  
9 Congress Street, Courtroom 6B, Tucson, Arizona 85701 (the "Hearing"), then and there to  
10 show cause, if any they may have, why this Temporary Restraining Order should not remain  
11 in effect as a preliminary injunction pending disposition of this lawsuit.

12 5. Defendants shall file and serve any opposition to the issuance of a  
13 preliminary injunction, including any declarations, memoranda or other evidence on which  
14 they intend to rely, and objections to any evidence submitted by Plaintiff, no later than 5:00  
15 p.m. on Wednesday, September 23, 2009. Such documents shall be served by e-mail, fax, or  
16 hand-delivery upon Plaintiff's counsel by that same date and time.

17 6. Plaintiff shall file and serve any reply to Defendants' opposition(s) no  
18 later than 5:00 p.m. on Friday, October 2, 2009. Such documents shall be served by e-mail,  
19 fax, or hand-delivery upon Defendants by that same date and time.

20 7. In accordance with Rule 65(b)(2), Fed.R.Civ.P., this Court finds that  
21 based upon the consent of Defendants Mason, Manchester, and Collier, good cause exists as  
22 to Defendants Mason, Manchester, and Collier to extend the date that the Temporary  
23 Restraining Order will expire on **October 19, 2009, at 1:30 p.m.**, the date and time set for the  
24 hearing on the Preliminary Injunction.

25 Dated this 15th day of September, 2009.

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David C. Bury  
United States District Judge