

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

KEARNEY CONSTRUCTION COMPANY  
LLC,

Plaintiff,

v.

CASE NO.: 8:09-CV-1850-T-26-TBM

TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA,

Defendant.

v.

KEARNEY CONSTRUCTION  
COMPANY, LLC, BING CHARLES W.  
KEARNEY, BRAIN W. SEEGER,  
ALAN PAYNE, FLORIDA  
TRUCKING CO., INC., FLORIDA  
EQUIPMENT CO., LLC, KEARNEY  
CONSTRUCTION COMPANY, INC.,  
AVT EQUIPMENT COMPANY, INC.,  
K & S EQUIPMENT COMPANY, INC.,  
FLORIDA SOIL CEMENT, LLC, FLORIDA  
FUEL TRANSPORTERS, LLC

Third Party Defendants.

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**AMENDED ORDER ON TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA'S MOTION AND MEMORANDUM OF LAW  
TO REQUIRE SPECIFIC PERFORMANCE OF THE COLLATERAL  
SECURITY DEPOSIT PROVISIONS AND BOOKS AND RECORDS  
PROVISION OF THE GENERAL AGREEMENT OF INDEMNITY (Doc. 68)**

By Order dated July 15, 2010 (Doc. 84) this Court granted Travelers Casualty and Surety Company of America's ("Travelers") Motion to Require Specific Performance of the Collateral Security Deposit Provisions and Books and Records Provisions of the General

Agreement of Indemnity (Doc. 68) (the “Specific Performance Motion”), to the extent that the Indemnitors listed in the Specific Performance Motion (Kearney Construction Company, LLC (“Kearney LLC”), Bing Charles Kearney (“Bing Kearney”), Brian W. Seeger, Jr. (“Seeger”), Alan Payne (“Payne”), Florida Trucking Co., Inc. (“Florida Trucking”), Florida Equipment Co., LLC (“Florida Equipment”), Kearney Construction Company, Inc. (“Kearney Construction”), AVT Equipment, LLC (“AVT”), Kearney Development Company, Inc. (“Kearney Development”), K&S Equipment Company, Inc. (“K&S”), Florida Soil Cement, LLC (“Florida Soil”), Florida Fuel Transporters, LLC (“Florida Fuel”) (collectively, the “Indemnitors”)), were ordered, jointly and severally, to post \$3.5 million dollars in collateral with the Clerk of the Court.

Upon consideration of a Motion for Relief from Order on Specific Performance Pending Determination of Validated Collateral Amount filed by the Indemnitors (Doc. 89) (the “Motion for Relief”), the Court entered an Order dated September 8, 2010, granting said Motion for Relief to the extent that the Court scheduled an evidentiary hearing for Monday, October 18, 2010, “to hear evidence from the parties as to the reasonableness of the collateral security amount.”

THIS CAUSE came before the Court for said evidentiary hearing on Monday, October 18, 2010. After hearing the evidence and argument by the parties, and having reviewed the motions, responses, and other pleadings related to this matter, and being otherwise advised in the premises, concludes that Travelers’ Motion for Specific

Performance should be granted to the extent that the Indemnitors, jointly and severally, shall post \$2.8 million dollars in collateral with the Clerk of the Court. All other terms of the Court's Order dated July 15, 2010 remain in full force and effect.

The Court further finds, after hearing evidence in this matter, that the Trustee in the Kearney Construction Company, LLC bankruptcy shall be given twenty (20) days from the date of this Order to decide whether to pursue or dismiss a certain adversary proceeding entitled *Kearney Construction Company, LLC vs. Travelers Casualty and Surety Company of America*, bearing adversary proceeding number 09-00599 on the docket of the United States Bankruptcy Court for the Middle District of Florida (the "Travelers Adversary Proceeding"); and that, if the Trustee does not dismiss the Travelers Adversary Proceeding within twenty (20) days of the date of this Order, this Court will withdrawal the reference and consolidate the Travelers Adversary Proceeding with the captioned suit.

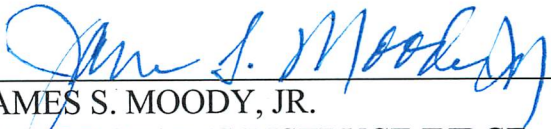
It is therefore ORDERED and ADJUDGED that:

1. Travelers Casualty and Surety Company of America's Motion and Memorandum of Law to Require Specific Performance of the Collateral Security Deposit Provisions and Books and Records Provision of the General Agreement of Indemnity (Doc. 68) is hereby GRANTED in part.
2. The Indemnitors, Bing Kearney, Seeger, Payne, K &S, Florida Soil, Kearney Development and Florida Fuel, jointly and severally, shall post \$2.8 million dollars in collateral security with the Clerk of the Court. Unless and until

these Indemnitors place good and sufficient collateral with the Clerk of the Court in this amount, they shall not sell, transfer, alienate or encumber any property. This Order does not prohibit K & S, Florida Soil, Kearney Development and Florida Fuel from paying expenses incurred for full value in the ordinary course of business. This Order also does not prohibit Bing Kearney, Seeger and Payne from expending funds for ordinary living expenses.

3. Upon receipt of the funds, the Clerk of the Court shall place the funds into a special interest-bearing account.
4. Travelers shall provide notice of this Order to the Trustee in the Kearney Construction Company, LLC, bankruptcy. If the Trustee elects not to dismiss the Travelers Adversary Proceeding within twenty (20) days of this Order, this Court shall withdrawal the reference of the Travelers Adversary Proceeding and consolidate it with the captioned litigation.

DONE and ORDERED in Tampa, Florida, on Oct. 25, 2010.

  
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JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

**Copies Furnished to:**

Counsel/Parties of Record