

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

OHIO CASUALTY INSURANCE	)	CIVIL ACTION NO.: 3:17-cv-01658-JMC
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>CONSENT ORDER</b>
	)	<b>CONCERNING</b>
LIFEGUARD FIRE PROTECTION, INC.,	)	<b>COLLATERAL SECURITY</b>
CAREY M. SMITH, MELBA D. SMITH,	)	
JAMIE PATTERSON, and KIM	)	
PATTERSON,	)	
	)	
Defendants.	)	
	)	

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This matter is before the Court on Plaintiff Ohio Casualty Insurance Company’s (“Ohio Casualty”), Motion for Preliminary Injunction (ECF No. 9), filed on June 23, 2017, seeking specific performance of the collateral security provisions in the General Indemnity Agreement (“Motion”). Defendants Lifeguard Fire Protection, Inc. (“Lifeguard”), Carey M. Smith, Melba D. Smith, Jamie Patterson, and Kim Patterson (collectively, “All Defendants”), responded to the Motion and opposed the requested preliminary injunction. Both parties filed Memorandums of Law with the Court. The Court scheduled a hearing on the Motion for August 1, 2017. Prior to the hearing, the parties advised the Court that they had reached an agreement to resolve Ohio Casualty’s Motion and would be presenting a proposed Consent Order Concerning Collateral Security (“Consent Order”) for the Court’s consideration.

Based upon the consent of the parties, as indicated by their attorneys’ signature to this Consent Order and the Court’s review of the file, Ohio Casualty’s Motion for Preliminary Injunction seeking the posting of collateral security is **GRANTED** and the Court **ORDERS**, as follows:

1. While all Defendants may be jointly and severally liable to Ohio Casualty to post collateral security in the total amount of at least \$652,172.43, only Defendants Carey M. Smith and Melba D. Smith are financially able to post collateral to secure Ohio Casualty against failure of payment of any final judgment against Defendant Carey M. Smith and Melba D. Smith or other default as defined herein.

2. Defendant Carey M. Smith and Defendant Melba D. Smith (“Defendant Smiths”) are ordered to take the following actions in connection with the Sentinel Security Life Insurance Company Annuity Contract Number 012-08-005970: (1) Provide notice to Sentinel Security Life Insurance Company that Defendant Smiths will not extend the annuity beyond September 28, 2017, and that Defendant Smiths will surrender said annuity and redeem the contract amount and any interest due thereon; (2) Terminate this Annuity Contract and collect the cash proceeds to be used as collateral security in this case; and (3) To deliver said cash proceeds from the annuity along with additional cash as necessary to deposit a total of \$318,756.18, to the Trust Account of Shumaker, Loop & Kendrick, LLP, to be held as collateral security pursuant to the General Indemnity Agreement executed by the Defendants.

3. Defendant Smiths, and to the extent action is needed by other Defendants, are ordered to take the following actions in connection with the Equitrust Life Insurance Company, Annuity Contract Number EQ0001180863F: (1) Provide notice to Equitrust Life Insurance Company that Defendants are assigning as collateral their interest in said Annuity Contract to Ohio Casualty; (2) Take all action necessary to promptly grant a fully perfected security interest in said annuity to Ohio Casualty; (3) Cooperate in obtaining from Equitrust Life Insurance Company acknowledgement of the receipt of the collateral assignment and obligation to honor

said assignment; and (4) Fully execute the attached Assignment As Collateral (Exhibit A) and cooperate in the delivery of the Assignment As Collateral to Equitrust Life Insurance Company.

4. All Defendants will take all action necessary in connection with the above annuity contracts to accomplish the above, including providing and obtaining written permission of all parties identified in the annuity contracts, including primary and contingent beneficiaries, who might be required to consent to the above actions being taken.

5. In regard to the Assignment as Collateral of Equitrust Life Insurance Company Annuity Contract Number EQ0001180863F (“Equitrust Annuity”) the following provisions shall apply:

(a) Upon assignment of the Equitrust Annuity, Ohio Casualty will have a secured interest in it and will be able to take full ownership of it upon default by Defendants Carey M. Smith or Melba D. Smith.

(b) A default occurs upon Ohio Casualty obtaining a judgment against Defendants Carey M. Smith or Melba D. Smith in this action and their failure to pay the judgment within thirty (30) days.

(c) A default also occurs if Defendants Carey M. Smith and Melba D. Smith file for bankruptcy.

(d) During the time when there is no default, Defendant Smiths may receive the monthly payments due under the Equitrust Annuity, as long as such payments do not reduce the original contract amounts.

(e) Ohio Casualty may, but is not required, to file a UCC-1 in connection with the Equitrust Annuity.

6. This is an Order for specific performance covered under Rule 62(a)(1) of the

Federal Rules of Civil Procedure.

7. Failure of the Defendants to abide by this Order and post the required collateral security will result in the Court using its inherent powers, and those granted by Rule 70 of the Federal Rules of Civil Procedure, to enforce this Order.

**SO ORDERED**, this the 12th day of September, 2017.

A handwritten signature in black ink that reads "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

Columbia, South Carolina

The parties consent to the entry of this Consent Order Concerning Collateral Security.

**OHIO CASUALTY INSURANCE COMPANY:**

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