

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

**TRAVELERS CASUALTY AND SURETY)
COMPANY OF AMERICA)**

Plaintiff,)

v.)

**JENNEFER COLEMAN, MICHAEL)
COLEMAN, AND VIRGINIA COLEMAN)**

Defendants.)

Case No. 4:22cv59-DMB-JMV

COMPLAINT

Plaintiff, Travelers Casualty and Surety Company of America (“Travelers”), by and through its undersigned counsel, alleges the following for its Complaint against Defendants Jennefer Coleman, Michael Coleman, and Virginia Coleman (collectively, the “Indemnitors”):

I. PARTIES

1. Travelers is a Connecticut corporation with its principal place of business in the State of Connecticut, and Travelers is registered to do business in the State of Mississippi. Travelers’s principal place of business is located at Travelers’s corporate headquarters located in Hartford, Connecticut, which is the location from which Travelers’s high level officers direct, control, and coordinate Travelers’s activities. Thus, Travelers is a citizen of Connecticut for the purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

2. Upon information and belief, Jennefer Coleman is a citizen of the State of Mississippi and can be served with process at 205 Riverside Drive, Greenwood, Mississippi 38930.

3. Upon information and belief, Michael Coleman is a citizen of the State of Mississippi and can be served with process at 57465 County Road 559, Greenwood, Mississippi 38930.

4. Upon information and belief, Virginia Coleman is a citizen of the State of Mississippi and can be served with process at 57465 County Road 559, Greenwood, Mississippi 38930.

II. JURISDICTION AND VENUE

5. This Court possesses original jurisdiction over the claims asserted in Travelers's Complaint pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs, and the matter is a controversy between citizens of different states.

6. This Court possesses the power to declare the respective rights and other legal relations of Travelers as requested herein pursuant to 28 U.S.C. § 2201(a).

7. This Court possesses the authority to award the injunctive relief requested herein pursuant to Rule 65 of the Federal Rules of Civil Procedure.

8. Venue is proper in the United States District Court for the Northern District of Mississippi, Greenville Division pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 104(a)(3) because (a) the Indemnitors reside in the Northern District of Mississippi, Greenville Division (Leflore County), and (b) a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Mississippi, Greenville Division (Leflore County).

III. FACTUAL ALLEGATIONS

The Indemnity Agreement

9. Before it petitioned for bankruptcy protection under Subchapter V of Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Mississippi bearing Case No. 21-11832-SDM (the “Bankruptcy”), Express Grain Terminals, LLC (“Express Grain”) was purportedly engaged as a grain dealer and/or grain warehouse.¹

10. Mississippi law requires grain dealers and grain warehouses to be licensed by the Mississippi Department of Agriculture and Commerce (the “Department”). As a condition for the application for such licenses, Mississippi law requires applicants to furnish a grain warehouseman’s bond and/or a grain dealers bond.

11. As a condition of Travelers’s issuance of surety bonds, Express Grain and the Indemnitors, acting individually and on behalf of Express Grain, executed the General Contract of Indemnity, attached hereto as **Exhibit 1** (the “Indemnity Agreement”), in favor of Travelers on or about June 26, 2019.

12. The Indemnity Agreement applies to any and all bonds furnished for or on behalf of “[o]ne, some or all of the Indemnitors.”

13. With respect to the Indemnitors’ joint and several obligation to exonerate and indemnify Travelers, the Indemnity Agreement requires Indemnitors to:

To indemnify and exonerate [Travelers] from and against any and all loss, cost and expense of whatever kind which it may incur or sustain as a result of or in connection with the furnishing of Bond(s), the assumption of obligations by [Travelers] of Bond(s), and/or the enforcement of this Agreement, including unpaid premiums, interest, court costs and counsel

¹ Nothing in this Complaint shall be construed as a waiver on behalf of Travelers to dispute whether Express Grain was acting as a grain dealer or a grain warehouse under Mississippi law.

fees, and any expense incurred or sustained by reason of making any investigation, hereinafter referred to as “Loss.”

14. As an extension of the Indemnitors’ duty to exonerate and indemnify Travelers, the Indemnitors are jointly and severally obligated to deposit cash or other collateral. The Indemnity Agreement requires the Indemnitors:

To deposit with [Travelers], on demand, the amount of any reserve against such Loss which [Travelers] is required, or deems it prudent to establish whether on account of an actual liability or one which is, or may be, asserted against it and whether or not any payment for such Loss has been made.

15. Moreover, the Indemnity Agreement states that:

Indemnitors shall, within thirty (30) days of receipt of [Travelers]’s written demand (“Discharge Demand”), procure the full and complete discharge of [Travelers] from any and all Bond(s) by providing competent written evidence of discharge satisfactory to [Travelers], in its sole discretion. If Indemnitors fail to provide the aforementioned discharge Indemnitors shall, within an additional seven (7) days, provide [Travelers] with an irrevocable letter of credit in form, content and by a bank acceptable to [Travelers]. The letter of credit shall be in an amount equal to the total of all undischarged liability under said Bond(s), which liability shall be determined at the time of [Travelers]’s Discharge Demand. Collateral or letters of credit previously provided to [Travelers] may be utilized to establish compliance with this provision. If the undischarged liability subsequently increases, then it is the Indemnitors’ responsibility to ensure continued compliance with this provision at all times.

The Bonds

16. On June 28, 2019, in reliance of the Indemnity Agreement, Travelers issued the following bonds on behalf of Express Grain in connection with Express Grain’s application to the Department to become a licensed grain dealer and/or grain warehouseman:

- a. Grain Warehouseman’s Bond #107114715 (the “Warehouseman’s Bond”) with a penal sum in the amount of \$1,000,000; and

- b. Grain Dealers Bond #107114491 (the “Dealer’s Bond”) (collectively with the Warehouseman’s Bond, the “Bonds”) with a penal sum in the amount of \$100,000.

17. Express Grain filed for bankruptcy on September 29, 2021 in the U.S. Bankruptcy Court for the Northern District of Mississippi.

18. On or around December 8, 2021, the Department, through the Mississippi Attorney General, informed Travelers that a demand for payment of claims by sellers, depositors or storers of grain against Express Grain and Travelers would be forthcoming.

19. On or about March 10, 2022, the Director of the Grain Division of the Mississippi Department of Agriculture and Commerce filed a Petition for Determination and Payment of Claims (the “Petition”) before the Department. A copy of the Petition is attached hereto as **Exhibit 2**.

Breach of the Indemnity Agreement

20. Pursuant to the Indemnity Agreement, upon Travelers’s demand, the Indemnitors agreed to deposit “the amount of any reserve against such Loss which [Travelers] is required, or deems prudent to establish whether on account of an actual liability or one which is, or may be, asserted against it and whether or not any payment for such Loss has been made.”

21. Moreover, the Indemnitors agreed to procure the full and complete discharge of Travelers from the Bonds by providing competent written evidence of discharge within thirty (30) days of receipt of Travelers’s demand. Indemnitors agreed that upon their failure to do so, they would provide Travelers with an irrevocable letter of credit in an amount equal to the total of all undischarged liability under the Bonds, as determined by Travelers at the time of its discharge demand.

22. After learning of the Department’s forthcoming demand and pursuant to its rights under the Indemnity Agreement, Travelers made demand upon the Indemnitors in a letter dated

December 17, 2021 to (i) fully and completely discharge Travelers from the Bonds or (ii) provide an irrevocable letter of credit in the amount of \$1,100,000 no later than January 31, 2022 (the “Collateral Demand”). This correspondence is attached hereto as **Exhibit 3**.

23. As of the date of this Complaint, Travelers has established an indemnity reserve on the Dealer’s Bond in the amount of \$100,000 and an expense reserve in the amount of \$50,000, which it deemed prudent to establish on account of the claims in the Petition.

24. To date, the Indemnitors have not honored their obligations under the Indemnity Agreement to either (i) fully and completely discharge Travelers from the Bonds, (ii) provide an irrevocable letter of credit in the amount of \$1,100,000, or (iii) deposit the amount of reserve Travelers deemed prudent to establish, or otherwise responded to the Collateral Demand.

25. Accordingly, Travelers now brings this action to enforce its rights under the Indemnity Agreement and to otherwise protect Travelers from loss.

IV. CLAIMS FOR RELIEF

COUNT I – SPECIFIC PERFORMANCE OF THE INDEMNITY AGREEMENT

26. Travelers re-alleges and incorporates by reference all prior allegations contained in the foregoing paragraphs as if fully set forth herein.

27. Pursuant to the Indemnity Agreement, the Indemnitors agreed to deposit with Travelers, upon demand by Travelers, collateral security equal to the amount of Travelers’s undischarged liability under the Bonds.

28. In addition, the Indemnitors agreed to deposit with Travelers, upon demand, the amount of any reserve against such loss which Travelers deems prudent to establish whether on account of an actual liability or one which is, or may be, asserted against it and whether or not any payment for such loss has been made.

29. In the Collateral Demand, Travelers demanded that the Indemnitors fully and completely discharge Travelers from the Bonds or deposit an irrevocable letter of credit in the amount of \$1,100,000.

30. To date, Travelers has established an indemnity reserve on the Dealer's Bond in the amount of \$100,000 and an expense reserve in the amount of \$50,000, which it deemed prudent to establish on account of the claims asserted against Express Grain in the Bankruptcy and the allegations contained in the Petition.

31. Despite Travelers's Demand and their contractual obligations to do so, the Indemnitors have not furnished collateral security or deposited the amount of reserve established by Travelers.

32. The Indemnitors' failure to do so constitutes a material breach of the Indemnity Agreement.

33. Travelers does not possess an adequate remedy at law in relation to the Indemnitors' breach of the Indemnity Agreement.

34. The Indemnitors' material breach of the Indemnity Agreement has caused immediate and irreparable harm to Travelers.

35. The Indemnity Agreement entitles Travelers to specific performance of the Indemnitors' obligations to either (i) discharge Travelers from the Bonds, (ii) provide collateral equal to the amount of Travelers's undischarged liability, and/or (iii) deposit the amount of reserve Travelers deemed prudent to establish.

36. Travelers is entitled to injunctive relief for specific performance of the Indemnitors' obligations under the Indemnity Agreement.

37. Travelers is therefore entitled to the entry of an injunction compelling the Indemnitors, jointly and severally, to (i) furnish an irrevocable letter of credit in the amount of \$1,100,000 to Travelers as collateral security for the undischarged liability Travelers faces under the Bonds and to (ii) deposit the amount of reserve Travelers deems prudent to establish.

38. Travelers further requests an injunction prohibiting the Indemnitors from transferring, expending, or otherwise encumbering their assets without the consent of Travelers or further order of this Court.

COUNT II – DECLARATORY JUDGMENT

39. Travelers re-alleges and incorporates by reference all prior allegations contained in the paragraphs 1-25 as if fully set forth herein.

40. There are actual and justiciable controversies between the parties regarding Travelers's rights and the Indemnitors' obligations under the Indemnity Agreement. A declaratory judgment issue by this Court will resolve outstanding issues between the parties and provide certainty regarding the parties' current and future obligations.

41. Under the Indemnity Agreement, the Indemnitors have a contractual obligation to exonerate Travelers from any and all loss incurred or sustained in connection with furnishing the Bonds.

42. As an extension of this obligation, the Indemnitors have a contractual obligation, upon written demand by Travelers, to procure the complete discharge of Travelers from the Bonds or provide an irrevocable letter of credit in an amount equal to the total of all undischarged liability under the Bonds. If the undischarged liability subsequently increases, then the Indemnitors must provide an additional letter of credit to ensure compliance with this obligation.

43. Moreover, the Indemnitors have a contractual obligation to deposit with Travelers, on demand, the amount of any reserve against loss, which Travelers deems it prudent to establish.

44. Travelers is therefore entitled to a declaration that the Indemnitors have a continuing obligation, upon written demand, to provide an irrevocable letter of credit that is equal to the total of all undischarged liability under the Bonds, as determined by Travelers.

45. Travelers is also entitled to a declaration that the Indemnitors have a continuing obligation to exonerate Travelers from losses sustained and to deposit with Travelers, upon demand, an amount equal to the then-current reserves against loss that have been established by Travelers.

COUNT III – QUIA TIMET

46. Travelers re-alleges and incorporates by reference all prior allegations contained in the paragraphs 1-25 as if fully set forth herein.

47. Based upon the number and size of the claims filed against Express Grain in the Bankruptcy and the allegations in the Petition, Travelers has grounds to believe there is a reasonable probability that the Indemnitors will default on their obligations under the Indemnity Agreement.

48. Quia timet relief is appropriate to safeguard and secure Travelers against such defaults and resulting losses to Travelers.

49. Travelers is therefore entitled to adequate collateral from the Indemnitors to cover all reasonably probable losses under the Bonds.

COUNT IV – BREACH OF THE INDEMNITY AGREEMENT

50. Travelers re-alleges and incorporates by reference all prior allegations contained in the paragraphs 1-25 as if fully set forth herein.

51. Under the Indemnity Agreement, the Indemnitors are jointly and severally obligated to indemnify and exonerate Travelers from and against any and all loss, cost and expense of whatever kind which it may incur or sustain as a result of or in connection with the furnishing of the Bonds, the assumption of obligations by Travelers of the Bonds, and/or the enforcement of the Indemnity Agreement, and any expense incurred or sustained by reason of making any investigation.

52. To date, Travelers has incurred and continues to incur liability for losses, fees, costs, and expenses (including attorney's fees) as a result of or in connection with the furnishing of the Bonds, the assumption of obligations by Travelers of the Bonds, the enforcement of the Indemnity Agreement, and by reason of investigation.

53. The Indemnitors' failure to exonerate, hold harmless, indemnify and keep indemnified Travelers constitutes a material breach of the Indemnity Agreement.

54. Travelers has been damaged and continues to be damaged by the Indemnitors' breach of the Indemnity Agreement in an amount to be proven at trial.

55. Therefore, Travelers is entitled to the entry of judgment against the Indemnitors, jointly and severally, in an amount sufficient to fully exonerate, hold harmless, indemnify, and keep indemnified Travelers from and against any and all liability for losses, fees, costs, and expenses (including attorney's fees) as a result of or in connection with the furnishing of the Bonds, the assumption of obligations by Travelers of the Bonds, the enforcement of the Indemnity Agreement, and by reason of investigation.

56. Travelers may have additional exposure under the Bonds and reserves all rights in relation thereto including, without limitation, the right to amend its demand on the Indemnitors to

include such additional exposure and/or to file a separate suit against the Indemnitors in relation to such additional exposure

WHEREFORE, PREMISES CONSIDERED, Travelers prays for the following relief:

- a) For the issuance of process requiring the Indemnitors to answer Travelers's Complaint;
- b) For the entry of a preliminary injunction and/or a judgment compelling the Indemnitors, jointly and severally, to specifically perform their obligation to deposit cash or other collateral satisfactory to Travelers, in its sole discretion, totaling \$1,100,00 with Travelers as collateral security for the liability that has or may be asserted against Travelers by reason of having issued the Bonds and/or as collateral security for the Indemnitors' obligations to Travelers under the Indemnity Agreement;
- c) For the entry of a preliminary injunction and/or a judgment enjoining the Indemnitors from transferring, expending, or otherwise encumbering their assets without the consent of Travelers or further order of this Court;
- d) For the entry of judgment against the Indemnitors, jointly and severally, in an amount sufficient to fully exonerate and indemnify Travelers from and against any and all liability for losses and/or expenses of whatsoever kind (including, but not limited to, interest, court costs, and counsel fees) and from and against any and all such losses and/or expenses which Travelers may sustain (a) by reason of having executed or procured the execution of the Bonds, (b) by reason of the failure of the Indemnitors to perform or comply with the covenants and conditions of the Indemnity Agreement, and/or (c) in enforcing by suit or otherwise any of the covenants and conditions of the Indemnity Agreement, which amount will be proven at trial;
- e) For the entry of an order declaring that the Indemnitors, jointly and severally, have an obligation, upon written demand, to provide an irrevocable letter of credit equal to the total of all undischarged liability under the Bonds, as of the date of the Collateral Demand;
- f) For the entry of an order declaring that the Indemnitors, jointly and severally, have a continuing obligation to exonerate and indemnify Travelers from all losses sustained;
- g) For the entry of an order declaring that the Indemnitors, jointly and severally, have a continuing obligation, upon demand, to deposit with Travelers an amount equal to Travelers's then-current reserves against loss;
- h) For the entry of an order requiring the Indemnitors to deposit adequate funds or collateral with Travelers to secure and protect it from future potential loss;

- i) For such further relief, both general and specific, as may be appropriate in accordance with the nature of this cause including, but not limited to, pre-judgment and post-judgment interest.

Respectfully submitted,

/s/ Adrienne B. Fazio

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