1982

American Manufacturers Mutual v. Resort Campers, Ltd. Et al : Brief of Defendant-Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

AMERICAN MANUFACTURERS MUTUAL, Plaintiff-Respondent, v. RESORT CAMPERS, LTD., DES TOWNSEND, TOM VEGEL, GLEN HATCH, DALE CHRISTIANSEN, JOHN W. WHITELEY, GWYN D. DAVIDSON, and UNITED BANK, a Utah Corporation, Defendants-Appellants.	)	Case No. 18262

BRIEF OF DEFENDANT-APPELLANTS JOHN W. WHITELEY & DALE CHRISTIANSEN

APPEAL FROM A DECLARATORY JUDGMENT AGAINST JOHN W. WHITELEY & DALE CHRISTIANSEN IN THE THIRD JUDICIAL DISTRICT COURT IN SALT LAKE COUNTY STATE OF UTAH THE HONORABLE DEAN E. CONDER, DISTRICT JUDGE

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NATURE OF THE CASE

This is an action by Respondent against Appellants and others, for a declaratory judgment to determine the meaning of a motor vehicle dealer's bond provided by Respondent, as surety, for one Dick Noren, doing business as Central R.V. Sales, as principal. The case involves an interpretation of the contract of the surety in favor persons protected under the bond, including the Appellants. The lower court was asked to interpret the contract of the surety, American Manufacturers Mutual, in light of Subsection 41-3-16(1), Utah Code Annotated, 1953, as revised and amended.

DISPOSITION IN THE LOWER COURT

The District Court, with the Honorable Dean E. Conder presiding, issued a memorandum decision on December 24, 1981, which was reduced to judgment thereafter, wherein the court held that the bond issued for one year constituted a penal sum of $20,000.00 for which the bonding company was liable as against valid claims for that one year, and that the subsequent year's premium constituted a second penal sum of $20,000.00 for which the bonding company was liable as against claims of valid creditors. The court thus ruled that the bonding company was liable for claims of up to $40,000.00; however, claims have been asserted by creditors of the principal which exceed $120,000.00. All cases of all claimants were ordered consolidated for hearing at a future date to determine their validity and their right to share in the sums

for which the bonding company was found liable, and further that each party is entitled to share pro-rata in the proceeds.

RELIEF SOUGHT ON APPEAL

Appellants seek a partial reversal of the Declaratory Judgment to the extent thatthis court find that the clear and distinct meaning of the contract or suretyship is that the bonding company is liable for each claim of each valid claimant in the penal amount of up to $20,000.00. These Appellants do not, however, seek to reverse the court's ruling that the creditors should share pro-rata in the proceeds due under the bond, or that the cases should be heard together at some future time.

STATEMENT OF FACTS

On or aboutFebruary 5 and 6, 1979 the Appellants were induced by an alleged fraudulent artifice to borrow $18,000.00 each from Tracy Collins Bank and Trust and to deliver the same to Dick Noren, dba Central R.V. Sales. Dick Noren then gave each a promissory note in which he promised to secure the funds by separate motor homes valued in excess of $18,000.00 each, and to repay the notes within ninety days.

Subsequently, Dick Noren failed to repay the monies, then filed for Bankruptcy as No. 80-00458 in the Central District of Utah. The parties/Appellants filed an action in Third District Court in and for Salt Lake County, as action no. C-80-1160, which action was stayed by the

bankruptcy proceedings. A separate action was filed in the bankruptcy court, and the proceedings were eventually permitted to proceed in the Third District Court.

In the meantime Dick Noren's surety on his motor vehicle's bond, American Manufacturer's Mutual, initiated this action for a declaratory judgment against a number of claimants who had either filed suit under the bond or who had made claim under the bond, seeking to place $20,000.00 into court for the benefit of all claimants, and to be releived from further liability under the bond.

This case comes on appeal to determine the meaning of the contract of suretyship (the bond), and whether or not the bonding company should be liable for up to $20,000.00 for each claim, or whether the claim is limited to something less than that.

American Manufacturers Mutal Insurance Company wrote a bond, No. 8SE296415, in favor of the principals, Dick and LaVonne Noren, dba Central R.V. Sales, on October 31, 1978 as required by U.C.A. 41-3-16, (1953) supplement, and received $400.00 premium therefore.

On October 31, 1979, the bond was renewed by Dick Noren and LaVonne Noren, dba Central R.V. Sales, for which the Respondent received an additional $400.00 premium.

The bond is required by Utah statute, U.C.A. 41-3-16 (1953), and a bond is to be given by each motor vehicle dealership in Utah (of which there are about 1200) regardless

of the sales volume of the dealership, or the size of the dealership. Since business in the bonding/suretyship field is competative in this area, and since there are relatively few companies engaged in the sale of motor vehicle bonds in the State of Utah, the business is relatively competative. For the bonding companies it generates approximately $480,000.00 in gross revenues per year from Utah dealerships.

The Utah Motor Vehicle Business Administration administers the provisions of Section 41-3-16 (1953) and is required to approve each bond; however, it does not prescribe the wording to be used in each bond written. The administrator is required only to see that the minimum requirements of the statute are met before approving a bond given to comply with the applicable statute.

Numerous claimants have each separately made claims against the principal, Dick and LaVonne Noren, dba Central R.V. Sales, and against its surety, American Manufacturers Mutual, alleging the principal conducted himself in such a manner as to give rise to liability on the part of the Respondent in favor of each of the claimants, of which the Appellants are but two. The cumulative amounts claimed by the claimants exceed $20,000.00, and are believed to be in excess of $120,000.00.

ARGUMENT

POINT 1

THE BOND PROVIDES IN CLEAR LANGUAGE THAT THE LIABILITY OF THE SURETY SHOULD BE UP TO $20,000.00 PER CLAIM, AND IS NOT CUMULATIVE IN NATURE.

The bond of the surety, American Manufacturers Mutual, was issued in compliance with Section 41-3-16, Utah Code Annotated (1953)as amended through the 1977 supplement, which provides as follows:

> 41-3-16. Dealer's bonds--Necessity, Filing Amount--Surety--Form--Conditions--Maximum Liability Thereof--1. New Motor Vehicle Dealer's and Used Motor Vehicle Dealer's Bond: Before any new motor vehicle dealer's license or used motor vehicle dealer's license shall be issued by the administrator to any applicant therefor the said applicant shall procure and file withthe administrator a good and sufficient bond in the amount of $20,000.00 with corporate surety thereon, duly licensed to do business within the State of Utah, approved as to form by the attorney general of the State of Utah, and conditioned that said applicant shall conduct his business as a dealer without fraud or fraudulent representation, and without the violation of any of the provisions of this act. The bond may be continuous in form, and the total aggregate liability on the bond shall be limited to the payment of $20,000.00.

In connection with and pursuant to this statute, Dick Noren and LaVonne Noren, his wife, dba Central R.V. Sales were issued a bond on October 28, 1978, which was renewed October 31, 1979 by the Respondent. The bond became effective October 31, 1978, and under the applicable provisions of the bond, provided as follows:

> "...firmly bound to the people of the State of Utah to indemnify <u>any and all persons</u>, firms and corporations <u>for any loss</u> suffered by reason of violation of the conditions hereinafter contained in the penal sum of Twenty Thousand Dollars ($20,000.00) lawful money of the United States..." (Emphasis added)

and further on:

> "... and indemnify any and all persons, firms

> and corporations for any loss suffered by reason of the fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act, and shall pay all judgments and costs adjudged against said principal on account of fraud or fraudulent representations and for any violation or violations of said law during the time of said license and all lawful renewals thereof..." (Emphasis added).

The bond clearly does not limit the aggregate or cumulative liability of the bonding company to $20,000.00. From the wording it appears that the bonding company is liable to any and all persons for any loss in the penal sum of $20,000.00. Thus it would appear that the wording of the bond imposes a $20,000.00 liability limit on a per person per claim basis. Any other interpretation of that wording would unduly construe the wording beyond their usual and customary meaning.

The appellants argue that the statute, Section 41-3-16, U.C.A. only sets the minimum requirements for the bond to be issued. The administrator is required to protect the people of the State of Utah by assuring that the bond meets the minimum requirements set forth in the statute. His testimony was that he routinely sends a bond to the attorney general's office to determine its legal sufficiency, and the attorney general who approved the wording of the particular bond in question, testified that it is assigned to a deputy attorney general to determine whether or not it meets the minimum requirements of statute, not necessarily that it conforms to the exact wording of the statute.

This fact is illustrated by the fact that the wording of the particular bond was apparently reviewed by one of the assitant attorney generals in 1947, and had not been changed by anyone else in the attorney general's office since that time even though the wording of the statute had changed in the interim. (T. page 103).

The Utah Supreme Court has clearly adopted the position that a bond by its terms may be more comprehensive than required by statute, and that the surety is bound by the more comprehensive wording of the bond. Zele v. Industrial Commission of Utah, 128 P. 2nd 751 (Utah, 1942).

In that case the sole question was whether or not the bonding company which assumed the role of surety for an employer's corporate bond which was required as self-insurer under the then applicable workmen's compensation acts of the State of Utah, was liable for compensation due an employee, Henry Haataja, whose claim had arisen prior to the effective date of the surety contract, but whose claim was ongoing in nature. The contract did not limit as to time the liability of the surety. The court held that the surety company was liable on its bond to Mr. Haataja even though his claim arose before the bond was executed because of the inclusive nature of the language used in the bond. Perhaps it is more correct to state that the court held the bonding company was liable to Mr. Haataja for compensation benefits even though his claim arose prior to the execution date of the bond since the bond failed to mention a

commencement date.

The court was clearly favoring the claimant by its liberal interpretation of the bond. This was so since the court apparently felt the public interest would better be served by requiring the bonding company to be liable for compensation in place of its principal to preserve the intent of the workmen's compensation act, and give effect to valid claims of those entitled to recovery under the act. Of no little concern in this reqard was that the bonding company had been paid for its services to act as surety for the corporate employer.

In the case of Fountain Green City v. National Surety Corporation, 100 Utah 160, 111 P.2nd 155 (Utah, 1941), the Utah Supreme Court addressed the question of whether a surety could be bound to a higher limit than required by statute, where the bond was unclear as to the designation of the amounts due for any given claim.

In that case an ordinance required that the water superintendent furnish a $750.00 performance bond as marshall and furnish another $1,000.00 bond as water superintendent. The surety company, which became his bondsman, issued a blanket bond in the total penal sum of $1,750.00 for "faithful performance of duties as city marshall and water superintendent as required by law." The court held that the surety became liable for the full penal sum of $1,750.00 regardless of whether the loss was due to the principal's liability as water superintendent or as marshall. The surety company argued that it should be only liable up to the sum of $750.00 if the claim

was due to misconduct as marshall or $1,000.00 if the misconduct was due to his activity as water superintendent. The court held that the surety was bound for loss of up to $1,750.00 if the loss was due from either or both jobs, thus holding that the language of the bond, if more comprehensive than the lanquage of the governing statute, will control.

The Utah Supreme Court in the Fountain Green City va. National Surety Corporation case (ibid) adopted with approval the rule laid down in the Bamberg County v. Maryland Casualty Company, et al, case, 173 S.C. 106, 174 S.E. 917, 918, which held that "while the statute required principal to furnish a bond for $2,000.00 only, it is my judgment that he and his surety could lawfully, by contract, increase the amount of the principal's bond by voluntarily executing a bond in a larger sum and when they chose to execute a bond for $3,000.00 conditioned upon the proper discharge of Rowell's duties as auditor and superintendent of education, it is my opinion that the county was secured as to either and both offices in that sum."

The Utah Supreme Court adopted with favor the holding of Peters v. Beckdolt, 100 Ind. App. 395, 192 N.E. 116 in the Zele case (supra.), which held that where the terms of a bond included a greater period of liability that the underlying statute required, that the longer period of liability of the bond was binding on the surety.

In a neighboring jurisdiction, the Nevada Supreme Court held in Royal Indemnity Co. v. Special Service Supply Company, 413 P.2nd 500 (Nev., 1966) that a surety was liable on its bond which was stated more broadly than required by its governing statute. That case dealt with a contractor's bond. The surety argued that the statute did not extend to simple breaches of contract on the part of the contractor. The language of the bond itself was found to be inclusive enough to encompass simple breaches of contract. The court held also the broader language of the bond to be binding on the surety.

In Robinson Clay Products Co. v. Beacon Construction Co. of Massachusettes, 159 N.E. 2nd 530 (Mass., 1959), the court held that the surety would be liable for its bond which contained no express provision limiting time in which an injured party might sue on the bond even though the statute pursuant to which the bond was issued included time limitations. The action on the bond was filed after the statutory limitation period had run. The court nevertheless found that the surety was liable on the bond because of the absence of language in the bond requiring a filing within a limited period of time.

In Travelers Indemnity Co. v. Housing Authority of City of Miami, 256 S 2nd 230 (Fla. App., 1972), the court held that a bond required by statute may be executed more broadly than required by statute. The statute underlying the bond did not required liability for claims based on breach of contract or negligence. The terms of the bond included such coverage.

The court ruled that the bond should be construed against the drafter, the surety in this case, and that it should be construed more broadly that the terms of the statute which required the coverage.

In the instant case the underlying statute does not require that the bond be continuous in form, it merely provides that it <u>may</u> be continuous in form, thus suggesting that the parties may contract otherwise.

The statute provides that the liability under the bond shall be limited to the payment of $20,000.00, and one would assume from this wording that this sum is meant to be a minimum standard for motor vehicle dealers and not necessarily a maximum figure. The Supreme Court of Utah has clearly ruled that parties under a performance bond may contract for a higher degree of liability than the minimums set down by statute. The court undoubtedly is taking into account the ultimate beneficiaries of such an arrangement, the people of the State of Utah, for whom the statute was meant to protect.

It is also interesting to note that the statute does not say that the payment of $20,000.00 is per claim or for all claimants. It does state that the aggregate liability shall be $20,000.00; however, this could mean that the aggregate liability per claim is $20,000.00. Whether this represents some confusion in the statute itself or not, the wording of the bond is most certainly clear that it does not limit the liability of the bonding company.

Nothing is said in the wording of the bond about limiting it on "aggregate" liability, or that the total cumulative liability shall be $20,000.00. The bond leaves this open, and does specifically state that it will indemnify any and all persons for any loss suffered in the penal sum of $20,000.00. The only reasonable definition of these terms is that each claimant is entitled to claim up to $20,000.00 for any loss suffered.

POINT II

THE WORDING OF THE BOND SHOULD BE CONSTRUED AGAINST THE BONDING COMPANY AND IN FAVOR OF THE APPELLANTS

The Respondent bonding company elected to utilize forms of the bond which apparently had been used in the state for many years. There is no indication that the forms were provided to it by the administrator of the Utah Motor Vehicle Business Administration, or that the forms were required to be used by the administrator or the attorney general's office, who are required to pass on the sufficiency of each bond issued.

There is evidence in the record that the administrator had approved riders to this bond form which changed conditions of the bond, thus it was not considered above amendment.(T.pg.1

In cases such as this, it is the bonding company who takes the upper hand. They are the ones who select the form of the bond. They are thus considered the drafting party. Neither Mr. Noren nor anyone else had any input

concerning the wording of the bond or its sufficiency. The company had been in Utah for several years and was familiar with this type of bond, which it considered a "no risk" bond. In other words, the bonding company does not consider this type of bond to be "risk" monies, since (a) it checks out the credit and credability of the principal, (b) takes back from the principal a guarantee of reimbursement in the event of a loss, (c) can cancell the bond with 60 days' notice at any time it feels itself at risk, and (d) conducts annual audits to insure itself that the business practices of the applicant are in conformity with accepted business practices required by statute in the State of Utah.

It is significant to note that the language of the bond does not track the language of the statute. The bond could have stated that the surety was bound only for all loss in a total aggregate liability of $20,000.00 suffered by reason of violation of the conditions enumerated in the body of the bond. Nevertheless, the bond failed to track the wording of the statute, and the bonding company chose to utilize this bond which stated that the bonding company would be liable to any person, firm or corporation for any loss in the penal sum of $20,000.00.

In the Royal Indemnity Company v. Special Service Supply Company case, supra, the concluding opinion of the Nevada Supreme Court stated:

> "We are reinforced in these views by a final point. The bonding requirements incident to a new contractor's license are expressly set forth in NRS 624, 270, supra. If the instant bond was intended only to fulfill that statute, as Royal insists, the parties could easily have drawn their contract in the exact wording of the statute." (Emphasis added.)
>
> "This to some extent they did-but they also spoke of "defaults" and "material bills." The only reasonable inference is that they intended to go beyond the statutory lanquage."

And in the Traveler's Indemnity Company v. Housing Authority of City of Miami, cited supra., the court noted in extending the liability of the surety beyond the meaning of the statute underlying the bond:

> "Parties in executing a bond may contract for provisions broader than the minimal requirements of the statute. A surety company is bound by any terms of its bond which extend beyond the statutory requirements.

And in a case recently decided in the Third District Court for Salt Lake County, by Judge James S. Sawaya, and which is now on appeal before this Honorable Court, and with which this case has now been consolidated for argument, Dennis Dillin Oldsmobile, GMC, Inc. vs. Frank T. Zdunich, dba Mountain View Motors, et al, No. 17886, Judge Sawaya ruled in partial summary judgment that:

> "The Bond of Motor Vehicle Dealer Salesman provided by defendant, Occidental Fire and Casualty Company, in this action, and under 41-3-16, Utah Code Annotated, 1953, and bonds required by said Section, are for the benefit of any person, firm, or corporation suffering loss by reason of the violation by the principal of any of the provisions of Chapter 3, of Title 41, Utah Code Ann., 1953 or by reason of fraud or fraudulent representations made by said principal and the limit of lia

> the surety under such bond is $20,000.00 per claim, and the payment by the surety of one such claim in the amount of $20,000.00 does not relieve said surety of liability on any other such claim."

A surety bond is a contract. The Restatement of Security states that such a contract is to be interpreted according to standards that govern the interpretation of contracts generally. The terms of the contract are to be understood in their plain and ordinary sense. The basic rule of construction applies that the contract is to be considered as a whole; all of its provisions are to be construed together. Suretyship, 74 Am. Jur. 2nd, Section 26 at page 28.

If the words in the contract are not vague or uncertain, the court is constrained from rewriting the contract to conform with the words of the statute. Provo City Corporation v. Nielson Scott Company, 603 P.2nd 803 (Utah, 1979).

In Skousen v. Smith, 27 Utah 2nd 169, 493 P.2nd 1003 (Utah, 1972). the court stated:

> "...it is equally elementary that parties may be bound by the language they deliberately use in their contracts, irrespective of the fact that it appears to result in improvidence, beyond and perhaps in excess of what the mythical reasonable, prudent man might feel constrained to venture."

The lower court found that the words of the contract were vague and uncertain. Even if this court agrees with the lower court on that point, where there is ambiguity in a contract, such ambiguity must be

interpreted against the Respondent, since it prepared and/or presented the contract to the principal for signature. Wilson v. Traveler's Insurance Company, 605 P.2nd 1327 (Okla., 1980). The fact that the Respondent chose and utilized the form requires that he live with the ambiguities utilized in the form, and they must be most strongly interpreted against his interest. Since the Respondent's chosen form failed to use such limiting words at "aggregate" or "total liability", he should not now be permitted to claim that the statute now places such limitations upon his liability.

If the court were to so hold, it would be placed in the uncomfortable position of reforming the contract to meet the minimum requirements of the statute, a position which was certainly not within the mind of either party at the time the contract was executed.

POINT III

PUBLIC POLICY IS SERVED BY EXTENDING LIABILITY UNDER THE BOND TO $20,000.00 PER CLAIM

Section 41-3-16, U.C.A. (1953) as revised and amended was obstensibly passed by the Utah State Legislature to protect the public of the State from deceptive and fraudulent practices of new and used car dealers in connection with the sale of motor vehicles.

It is the general public that ought to be of greatest concern when interpreting any statute or the applicability of any bond provided pursuant to that statute.

One should take note that if the court were to construe the bond given as a "continuous" type bond, that is, a bond when renews itself from year to year with a $20,000.00 fixed all-inclusive liability, some incongruous results are obtained. The individual pays a $400.00 yearly premium for that privilege. Assuming that the bond only pays on a "claims made" basis. If a claim is made for $20,000.00 in one year, and another claim of $20,000.00 is made in the following year, the bonding company would only be liable for a total of $20,000.00.

On the other hand, if the principal had shopped between two bonding companies, and had obtained a bond from one company in one year, and a bond from another company in the following year, and had paid exactly the same premium both for the initiation of the bond as for the renewal, he would then in effect have coverage to cover both claims, i.e. $40,000.00 rather than $20,000.00 as under the single company coverage.

Clearly, such a result militates against the public interest, and the court would wish to protect the public interest to the greatest extent from the

fraudulent practices of deceptive new or used motor vehicle dealers. It would thus rule that the result should be the same in the case where the principal purchases a bond from one surety for two (or more) years, as in the case where the principal purchases a bond from two different sureties for two (or more) years.

The public interest is also best served in the instant case to rule that where a contract enlarges liability of the surety beyond the statutory minimum, that the surety, who after all is being paid for such offer of suretyship, should be bound to that larger scope of liability. Thus, where there are numerous claims, all of which jointly exceed the $20,000.00 minimum liability imposed by statute, the court is acting in the best interest of the general public, who are to be recipients of the legislature's intended protection, by finding that the surety is liable to each individual claimant up to the maximum $20,000.00 claim.

Nor should the court feel amiss in finding such a result, since the statute and the bond itself, specifically gives the surety the right to determine the integrity of its insured, and does not govern the amount required to secure such a bond.

In addition the surety can terminate its agreement, unilaterally with the principal at any time it feels its position as surety is threatened.

Also, the surety is minimizing (and in fact is reducing to nearly zero) its risk. As was testified by the underwriter's agent at trial (T. page 71), the surety does not anticipate any loss in writing this type of bond. They take back a pledge against the principal for reimbursement of any losses they might incur as a result of having written a bond, and further, they take a credit application, as in this case, from the principal, to determine his net worth, and his ability to pay in the event of a loss claim. They also check his reputation for honesty, and his credit standing in the community. Under such circumstances, the bonding company does not anticipate any losses. And the rates are based upon loss data; rather, they are based to some degree upon administrative overhead to cover the cost of setting up a principal's account.

Also, the court should be concerned with the practical aspect of holding the surety to an enlarged degree of liability in the instant case. Although the legislature did not require a bond which was based upon the number of employees, the sales volumn of a dealership, or the size of the dealership, the court should be cognizant of the effects of inflation in the automotive industry in the past several years. With the cost of new or used motor vehicles, it would hardly be conceivable to imagine that a $20,000.00 bond would not be fully consumed by more than a couple of claims.

As the instant claim so vividly illustrates, a half dozen or so claimant's claims comes to more than six times the amount of the yearly bond of $20,000.00. It cannot be said that a strict interpretation of the statute limiting the amount of the surety's total liability to $20,000.00 is serving the best public good.

Where two interests are to be served, the surety whoprotect's the principal's obligation, and the public interest, it is the public whose interest should receive first consideration.

The court, by upholding a more liberal interpretation of the meaning of the contract, is furthering the concept of freedom to contract. Contrary to the concept set out by the Respondent, such feedom of contract does not halt the issuance of such bonds by bonding companies. Bonding companies are free to contract with anxious dealers. Perhaps the net result is that bonding companies will be more careful in the selection of principals. Perhaps they will take a closer look at the credentials of would-be dealers. Who could dispute that such attention would inure to the public good. Since the bonds are not based upon loss incidence, who is to say that the premiums would increase significantly, if at all. The result would be that companies who write such bonds would be more selective in the persons they accept to bond.

Of course, the bonding companies could limit their liability to statutory minimums, if they so desired

No matter which route the bonding company takes, the interests of Section 41-3-16 is preserved. The actions of dealers who act fraudulently would be compensated to the injured public, and the preservation of freedom of contractual relations is protected.

Affirmance of the principal that the present contract expands the liability of the surety does not undercut the policy that bonds may be extended for a minimum liability of $20,000.00, since under the statute the dealer and the bonding company may still contract for such minimum coverage. But affirmance of the theory of the Appellants does make a statement that the court believes that the public interests are best served by requiring the surety to reimburse each valid claim up to a maximum of $20,000.00 per claim.

CONCLUSION

The Appellants respectfully submit to the Supreme Court that the contract between the surety and its principal should be read to require the surety to be bound up to $20,000.00 per claim for each valid claim presented. Of course, before the surety is bound, each claim will have to be litigated as to its validity under the contract of suretyship, and this court is not required to pass upon the question of the validity of those claims.

The Court is called upon to find that the liability of the surety is expanded beyond the minimum statutory requirement of Section 41-3-16, U.C.A. , 1953 (as revised

and amended). The Court should determine that the contract between the parties is binding upon them, and that ordinary interpretation of the words within the four corners of the contract compels the Court to find that each claimant is entitled to pursue his claim up to a maximum of $20,000.00 per claim.

In the event that the court finds that the contract is ambiguous within its four corners, any ambiguity should be interpreted against the interests of the surety, since they were responsible for presenting such contract for execution.

Dated this 18th day of May, 1982.

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CERTIFICATE OF MAILING

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