

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>FIDELITY AND DEPOSIT COMPANY OF</b>	)	
<b>MARYLAND</b>	)	
	)	
<i>Plaintiff,</i>	)	<b>Civil Action No. 2:24-cv-04139</b>
	)	
v.	)	
	)	
<b>WAI CONSTRUCTION GROUP, LLC, WASTREN</b>	)	
<b>PROPERTIES, LLC, STEVEN MOORE,</b>	)	
<b>JENNIFER MOORE, JAMES GARDNER, DONNA</b>	)	
<b>GARDNER, DOUGLAS COLLINS, TRACY</b>	)	
<b>COLLINS, and WAI PROPERTIES, LLC</b>	)	
	)	
<i>Defendants.</i>	)	
	)	

**COMPLAINT**

Plaintiff Fidelity and Deposit Company of Maryland (“F&D” or the “Surety”) respectfully states the following for its Complaint against Defendants WAI Construction Group, LLC, Wastren Properties, LLC, Steven Moore, Jennifer Moore, James Gardner, Donna Gardner, Douglas Collins, Tracy Collins (each of the foregoing Defendants an “Indemnitor” and collectively the “Indemnitors”), and WAI Properties, LLC.

**I. PARTIES**

1. F&D is a corporation formed under the laws of Illinois, with its corporate headquarters and principal place of business located at 1299 Zurich Way, Schaumburg, IL 60196, which is the location from which F&D’s high-level officers direct, control, and coordinate F&D’s corporate activities. Thus, F&D is a citizen of Illinois for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

2. Defendant WAI Construction Group, LLC is a limited liability company formed under Ohio law, whose member, Defendant Steven Moore, is domiciled in and is therefore a citizen of Ohio. Thus, Defendant WAI Construction Group, LLC is a citizen of Ohio for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

3. Defendant Wastren Properties, LLC is a limited liability company formed under Ohio law, whose member, Defendant Steven Moore, is domiciled in and is therefore a citizen of Ohio. Thus, Defendant Wastren Properties, LLC is a citizen of Ohio for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

4. Defendant Steven Moore is domiciled in and is therefore a citizen of Ohio for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

5. Defendant Jennifer Moore is domiciled in and is therefore a citizen of Ohio for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

6. Upon information and belief and despite the fact that he currently resides elsewhere, Defendant James Gardner remains domiciled in and is therefore a citizen of Colorado for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

7. Upon information and belief and despite the fact that she currently resides elsewhere, Defendant Donna Gardner remains domiciled in and is therefore a citizen of Colorado for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

8. Defendant Douglas Collins is domiciled in and is therefore a citizen of Ohio for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

9. Defendant Tracy Collins is domiciled in and is therefore a citizen of for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

10. Defendant WAI Properties, LLC is a limited liability company formed under Ohio law, whose member, Defendant Steven Moore, is domiciled in and is therefore a citizen of Ohio. Thus, Defendant WAI Properties, LLC is a citizen of Ohio for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

## **II. JURISDICTION AND VENUE**

11. This Honorable Court possesses original jurisdiction over F&D'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 in controversy is between citizens of different states (Illinois Plaintiff versus Ohio and Colorado Defendants).

12. This Honorable Court possesses the power to declare the respective rights and other legal relations among, F&D, the Indemnitors, and Defendant WAI Properties, LLC as requested herein pursuant to 28 U.S.C. § 2201(a).

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

14. Venue is proper in the United States District Court for the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 115(b) because a substantial part of the events or omissions giving rise to F&D's potential liability and "Loss" (as defined herein) and/or the misappropriation/conversion of "Bonded Contract Proceeds" (as defined herein) occurred within the Southern District of Ohio, Eastern Division (*i.e.*, Pike County).

15. Moreover, pursuant to Paragraph 22 of the "Indemnity Agreement" (as defined herein), the Indemnitors consented to personal jurisdiction and venue in the United States District Court for the Southern District of Ohio, Eastern Division because (a) certain Indemnitors reside in or have property in this District and Division, (b) certain bonded obligations arise from or must be

performed in this District and Division, and/or (c) actions may be brought against F&D in this District and Division in relation to certain of the “Bonds” (as defined herein) that F&D executed on behalf of Defendant WAI Construction Group, LLC.

### **III. FACTUAL ALLEGATIONS**

#### **The Indemnity Agreement**

16. At all relevant times, Defendant WAI Construction Group, LLC has engaged in the construction contracting business and has sometimes been required to obtain surety bonds as a condition of bidding on and/or entering into various construction contracts in Ohio.

17. As a condition of F&D’s execution of bonds, undertakings, and/or obligations of suretyship or guarantee in relation to certain of Defendant WAI Construction Group, LLC’s construction contracts, the Indemnitors (*i.e.*, Defendants WAI Construction Group, LLC, Wastren Properties, LLC, Steven Moore, Jennifer Moore, James Gardner, Donna Gardner, Douglas Collins, Tracy Collins) and others executed the General Indemnity Agreement dated March 10, 2017 attached hereto as **Exhibit 1** (the “Indemnity Agreement”) in favor of F&D.

18. The Indemnity Agreement’s definition of “Bonds” expressly encompasses the following:

any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured (herein “issued”) by Surety (whether as surety, co-surety, reinsurer or otherwise) in the name of or on behalf of any Indemnitor, any Related Entity, any other entity on request in accordance with this Agreement, or any combination thereof, whether issued prior to or after the execution of this Agreement, and all renewals, extensions, modifications and substitutions of bonds  
.....

19. Paragraph 2 of the Indemnity Agreement obligates the Indemnitors to exonerate, indemnify, and hold F&D harmless from any and all liability and “Loss” as follows, in relevant part:

Indemnitors shall exonerate, indemnify, and hold Surety harmless from any and all liability and Loss, sustained or incurred, arising from or related to:

- (a) any Bond,
- (b) any Claim,
- (c) any Indemnitor failing to timely and completely perform or comply with this Agreement,
- (d) Surety enforcing this Agreement or
- (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of Surety's interests, or to avoid, or lessen Surety's liability or alleged liability.

20. Paragraph 30 of the Indemnity Agreement defines "Loss" as follows:

Loss means all premiums due to Surety and any and all liability, loss, Claims, damages, court costs and expenses, attorneys' fees (including those of Surety), consultant fees, and all other costs and expenses, including but not limited to any additional or extra-contractual damages arising from Surety's Settlement of any Claim. Pre-judgment and post-judgment interest shall accrue from the date of any payment made by Surety with respect to any of the foregoing at the maximum default rate permitted by law.

21. Paragraph 30 of the Indemnity Agreement defines "Claim" or "Claims" as "any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond, any Bonded Contract, or this Agreement."

22. Paragraph 30 of the Indemnity Agreement defines a "Bonded Contract" as "any contract or other obligation referred to in any Bond or secured by any Bond."

23. With respect to the scope of the Indemnitors' duty to exonerate, indemnify, and hold F&D harmless relative to all potential liability, "Claims," "Loss," etc., Paragraph 2 of the Indemnity Agreement further provides:

The liability of Indemnitors to Surety under this Agreement includes all Claims made on Surety, all payments made, Loss incurred, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the amounts

paid or the actions taken, or that it was necessary or expedient to make such payments or take such actions, whether or not such liability, necessity or expediency existed.

24. Paragraph 30 of the Indemnity Agreement defines “Good Faith” as, “with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Principal and Indemnitors.”

25. Paragraph 30 of the Indemnity Agreement defines “Principal” as “any person or entity whose obligation is guaranteed by a Bond.”

26. With respect to the timing and/or triggering of the Indemnitors’ payment and other obligations to F&D, Paragraph 2 of the Indemnity Agreement further states, “Indemnitors shall promptly, upon demand, make payment to Surety as soon as liability or Loss exists, whether or not Surety has made any payment.”

27. With respect to procedure for proving the fact, amount, and extent of the Indemnitors’ liability to F&D, Paragraph 2 of the Indemnity Agreement also states, “An itemized statement of Loss, sworn to by any officer of Surety, or the voucher or other evidence of any payment, shall be prima facie evidence of the fact, amount and extent of the liability of Indemnitors for such Loss.”

28. Paragraph 2 of the Indemnity Agreement obligates the Indemnitors to, upon demand, either procure the full and complete discharge of F&D’s obligations under any “Bonds” or deposit the amount of money that F&D determines is sufficient to collateralize or pay any outstanding obligations covered by the “Bonds” as follows:

Indemnitors shall promptly, upon demand, procure the full and complete discharge of Surety from all Bonds and all liability in connection with such Bonds. If Indemnitors are unable to obtain discharge of any or all such Bonds within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations.

29. Paragraph 3 of the Indemnity Agreement grants F&D the absolute and unconditional right to settle any “Claim” and to take other actions to protect F&D’s interests as follows:

Surety shall have the absolute and unconditional right and is authorized but not required to: (a) adjust, pay, perform, decline to perform, compromise, settle, deny, litigate or otherwise resolve any Claim and/or any claim, counterclaim, defense or setoff held by or made against any Indemnitor, Principal or other entity and/or to take any action to protect any rights of Surety or to preserve or protect Surety’s interests, or to avoid or lessen any alleged liability (hereinafter “Settlement”); and (b) modify, consent to or decline to consent to modification of any Bond and/or Bonded Contract, and/or to take, consent to or decline to consent to any assignment (hereinafter “Modification”). Any Settlement and/or Modification by Surety shall be final, binding and conclusive upon Indemnitors. Indemnitors shall remain bound under this Agreement for all Loss even though any such Settlement or Modification by Surety does or might substantially increase the liability of Indemnitors.

30. Paragraph 4 the Indemnity Agreement obligates the Indemnitors to, upon demand, deposit with F&D an amount of money that F&D determines is sufficient to fund any liability or “Loss” as follows:

Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety’s liability under all Bonds.

31. With respect to the Indemnitors’ assignment of certain “Collateral” to F&D and F&D’s license to utilize the “Collateral,” Paragraph 5 of the Indemnity Agreement states:

Indemnitors pledge, assign, transfer and set over to Surety the Collateral, as collateral to secure the obligations in this Agreement, whether incurred before or after the execution of this Agreement, including a license to use the Collateral, without cost, to perform or discharge Surety’s obligations under any Bond or Bonded Contract. This pledge and assignment becomes effective on the date of this Agreement, or the earliest date allowable by law.

32. Paragraph 30 of the Indemnity Agreement defines “Collateral” as follows:

Collateral means all right, title and interest of one or more Indemnitors in the following, wherever located, and whenever acquired or arising: (a) all Bonded

Contracts; (b) all goods (including equipment, machinery, tools and materials), general intangibles, and inventory, to the extent not subject to a prior perfected security interest; (c) all subcontracts and purchase orders arising under any Bonded Contract, and all surety bonds supporting such subcontracts and purchase orders; (d) all sums which are or may become payable in connection with any Bonded Contract and all other contracts in which any Indemnitor has an interest; (e) all intellectual property (including proprietary software) necessary or required to perform any Bonded Contract; (f) any facilities or plants necessary or required to perform any Bonded Contract; and (g) any real or personal property, the improvement of which is secured by any Bond.

33. With respect to the Indemnitors' irrevocable nomination and/or appointment of F&D as their attorney-in-fact for purposes of exercising F&D's rights in the "Collateral," Paragraph 17 of the Indemnity Agreement states:

Indemnitors irrevocably nominate, constitute, appoint and designate Surety, and any persons designated by Surety, as their attorney-in-fact, with the right, but not the obligation, to exercise all of the rights of Indemnitors pledged, assigned, transferred and set over to Surety in this Agreement, including, in the name of Indemnitors to make, execute, and deliver any and all assignments or documents deemed necessary and proper by Surety in order to exercise its rights, powers and remedies under this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as such attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts.

34. With respect to the trust fund nature of the proceeds of any "Bonded Contract" and the trust fund purpose of the proceeds of the "Bonded Contracts," Paragraph 6 of the Indemnity Agreement, entitled "Trust Funds," states:

All sums due, to become due, or received by any Indemnitor or Principal for or on account of any Bonded Contract are trust funds in which Surety has an interest as a beneficiary of the trust whether in the possession of such Indemnitor or Principal or another. Such trust funds shall be held in trust for the benefit and payment of all obligations or Loss for which Surety may be liable under any Bond. Surety has the right, but not the obligation, to require that trust funds be placed in a dedicated trust fund account. This Agreement and declaration constitute notice of such trust.

35. With respect to F&D's right, in its sole discretion, to take over and/or arrange for the performance of any "Bonded Contract" in its sole discretion if an "Event of Default" occurs, Paragraph 8 of the Indemnity Agreement, entitled "Takeover," provides:

If an Event of Default occurs, Surety shall have the right, in its sole discretion, and is authorized to take possession of any part or all of the work, materials and equipment under any Bonded Contract and any other materials or equipment which Surety deems necessary or proper to perform such Bonded Contract, and to perform or arrange for the performance of such Bonded Contract.

36. Paragraph 30 of the Indemnity Agreement defines an “Event of Default” as follows:

Event of Default means any one or more of the following:

- (a) failure to timely perform or comply with any Bonded Contract or failure to timely pay invoices, bills or other indebtedness or to discharge liabilities under any Bonded Contract or Bond;
- (b) Breach of any Bond or declaration of default under any Bonded Contract (whether admitted or contested);
- (c) Surety setting any reserve against Loss or incurring Loss;
- (d) breach of or failure to timely comply with this Agreement;
- (e) any Principal or Indemnitor becoming the subject of any bankruptcy, insolvency, receivership, creditor assignment or trusteeship (whether voluntary or involuntary and whether insolvent or not);
- (f) any occurrence which deprives or impairs any Principal, Indemnitor and/or Surety of the use of any Collateral;
- (g) any individual Indemnitor becoming legally incompetent, imprisoned, convicted of a felony, or disappearing and being unable to be located,
- (h) a Change in Control;
- (i) any default, however described, which occurs under any document relating to the financial indebtedness of any Principal or Indemnitor, or any event as a result of which that financial indebtedness is or becomes capable of being rendered prematurely due and payable; or
- (j) any representation by any Principal or Indemnitor to Surety which was materially false or misleading when made.

37. With respect to the Indemnitors’ duty to provide F&D access to any and all information and documents concerning the business or financial situation of any Indemnitor or any “Related Entity,” Paragraph 11 of the Indemnity Agreement states:

Indemnitors shall promptly provide Surety with any and all information and documentation concerning the business or financial situation of any Indemnitor or any subsidiary, affiliate or Related Entity of any Indemnitor, as requested by Surety. Indemnitors shall furnish on demand, and Surety shall have the right to access, examine and copy the books, records and accounts of Indemnitors and of any entity under the control of any Indemnitor, at no cost to Surety. Indemnitors authorize any entity in which funds of any Indemnitor may be deposited to furnish to Surety a statement of the amount of such deposits as of the date requested. Indemnitors authorize any and all lenders, obligees, subcontractors, suppliers, accountants, other insurers, and other persons or entities to furnish to Surety any information requested by Surety, including but not limited to the performance of obligations under any Bond or Bonded Contract and payments related to any such Bond or Bonded Contract.

38. Paragraph 10 of the Indemnity Agreement defines a “Related Entity” as follows, in relevant part:

(a) any present or future, directly or indirectly owned subsidiary or affiliate of any Indemnitor; (b) any legal entity in which any Indemnitor has or acquires an ownership interest; and (c) any joint ventures, consortiums, teaming arrangements or any other business collaboration or economic enterprise (“Joint Venture”) in which any Indemnitor is or was a member at the time the Bond was issued.

39. With respect to the cumulative nature of F&D’s rights against the Indemnitors, Paragraph 15 of the Indemnity Agreement states:

This Agreement is in addition to and not in lieu of all other agreements of indemnity and any and all rights, powers, and remedies that Surety may have or acquire against Indemnitors or any other person or entity, whether by agreement, law or otherwise. Indemnitors acknowledge and agree that other indemnity, collateral, property and/or security may be required by Surety with respect to Bonds issued under this Agreement. Indemnitors shall remain bound under the terms of this Agreement even though Surety may from time to time (before or after the date of this Agreement):

- (a) accept, modify or release other agreements of indemnity with respect to any Bond;
- (b) accept, modify the indemnity of, or release any Indemnitor or any other person or entity; or
- (c) accept, release or subordinate any rights to collateral, real property, personal property or security.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against any person or entity or which may be asserted by any Principal, Indemnitor or any other person or entity arising from or related to any Bonded Contract, any Bond, this Agreement, other agreements, by law or otherwise. Surety is subrogated to all rights, Claims, funds and receivables related to any Bonded Contract. Surety has the right to offset Loss on any Bonded Contract against proceeds, funds, real property or personal property under any other Bonded Contract or otherwise available to Surety under this Agreement. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.

40. With respect to F&D's right to specific performance of the Indemnitors' obligations thereunder, Paragraph 16 of the Indemnity Agreement states:

Indemnitors acknowledge that the failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Indemnitors agree that Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.

41. Paragraph 18 of the Indemnity Agreement, entitled "Joint and Several Liability," confirms that the Indemnitors' obligations to F&D are joint and several and that F&D has the option of pursuing relief against one or more of the Indemnitors as follows, "Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity."

42. With respect to the Indemnitors' consent to jurisdiction and venue in this Court, Paragraph 21 of the Indemnity Agreement, entitled "Lawsuits and Jurisdiction," states:

Separate lawsuits may be brought under this Agreement as causes of action accrue, and the bringing of any lawsuit or the recovery of any judgment on any cause of action shall not prejudice or bar the bringing of other lawsuits, on the same or other causes of action, whether arising before or after any other lawsuit or cause of action. In any legal proceeding brought by or against Surety that in any way relates to this Agreement, each Indemnitor irrevocably and unconditionally submits to the jurisdiction, at Surety's sole option, of the Federal, state and local courts in which

- (a) any Indemnitor resides or has property,
- (b) any bonded obligation arises or is performed in whole or in part, or

(c) any action may be brought against Surety.

Indemnitors submit to the jurisdiction of such courts and waive and agree not to assert that they are not subject to the jurisdiction of any such court or that the jurisdiction and/or venue is in an inconvenient forum or otherwise improper.

43. With respect to the Indemnitors' knowing and voluntary waiver of any right they may have otherwise possessed to a trial by jury relative to the Indemnity Agreement, Paragraph 26 of the Indemnity Agreement, entitled "Jury Waiver," states, "Indemnitors hereby knowingly and voluntarily waive and covenant that they will not assert any right to trial by jury in respect to any legal proceeding arising out of this Agreement."

### **The Bonds and the Bonded Contracts**

44. In reliance upon the Indemnitors' execution of the Indemnity Agreement and F&D's rights against the Indemnitors under the Indemnity Agreement, and F&D executed various "Bonds" at the Indemnitors' request in relation to various "Bonded Contracts" involving Defendant WAI Construction Group, LLC.

45. The "Bonds" under which Defendant WAI Construction Group, LLC qualified as the "Principal" and the "Bonded Contracts" to which those "Bonds" relate include, but are not limited to, the following:

<b>EXECUTION DATE</b>	<b>BOND NO.</b>	<b>OWNER-OBLIGEE</b>	<b>BONDED CONTRACT DESCRIPTION</b>	<b>PENAL SUM OF BOND</b>
09/13/2019	Performance Bond 9319400	State of Ohio – Scioto Valley Local School District Board of Education	2019 Improvements Project	\$530,000.00
09/13/2019	Payment Bond 9319400	State of Ohio – Scioto Valley Local School District Board of Education	2019 Improvements Project	\$530,000.00
02/11/2021	Performance Bond 9366641	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0032537-X-326 Access Roadway-Parking Lot-Haul Path Installation	\$2,287,501.52

<b>EXECUTION DATE</b>	<b>BOND NO.</b>	<b>OWNER-OBLIGEE</b>	<b>BONDED CONTRACT DESCRIPTION</b>	<b>PENAL SUM OF BOND</b>
02/11/2021	Payment Bond 9366641	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0032537-X-326 Access Roadway-Parking Lot-Haul Path Installation	\$2,287,501.52
06/21/2021	Performance Bond 9366696	Southern Ohio Medical Center	SOMC Vanceburg MOB, Vanceburg, Kentucky	\$2,590,000.00
06/21/2021	Payment Bond 9366696	Southern Ohio Medical Center	SOMC Vanceburg MOB, Vanceburg, Kentucky	\$2,590,000.00
06/24/2021	Bid Guaranty and Contract Bond 9393206	Village of West Union	Panhandle Sanitary Sewer Improvements – Phase 4	\$3,832,840.50
06/25/2021	Bid Guaranty and Contract Bond 9393213	Ohio Department of Mental Health & Addiction Services	Access Control Upgrade, Appellation Behavioral HealthCare	\$1,358,000.00
08/17/2021	Bid Guaranty and Contract Bond 9393204	State of Ohio – Ohio University	Grosvenor Hall Elevator Upgrades 2021	\$451,225.00
10/13/2021	Performance Bond 9381085	Fairfield County Alcohol Drug Addiction Mental Health Board	Fairfield ADAMH Board Crisis Stabilization Unit	\$3,490,000.00
10/13/2021	Payment Bond 9381085	Fairfield County Alcohol Drug Addiction Mental Health Board	Fairfield ADAMH Board Crisis Stabilization Unit	\$3,490,000.00
10/18/2021	Bid Guaranty and Contract Bond 9393206	Ohio Department of Natural Resources	Lake White Boater Education Center	\$700,000.00
12/08/2021	Bid Guaranty and Contract Bond 9393214	Ohio Facilities Construction Commission	Pickaway County FSMF	\$12,500,000.00
02/10/2022	Performance Bond 9393229	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0034129 – 5-Unit Excavating Dewatering	\$805,549.29
02/10/2022	Payment Bond 9393229	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0034129 – 5-Unit Excavating Dewatering	\$805,549.29
02/10/2022	Performance Bond 9393229	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0034114 – 5-Unit Modular Tank Containment & Installation	\$845,887.06
02/10/2022	Payment Bond 9393229	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0034114 – 5-Unit Modular Tank Containment & Installation	\$845,887.06
04/14/2022	Bid Guaranty and Contract Bond 9400885	Ohio Department of Rehabilitation and Correction	Secure Recreation Areas, Ross Correction Institution	\$996,000.00

<b>EXECUTION DATE</b>	<b>BOND NO.</b>	<b>OWNER-OBLIGEE</b>	<b>BONDED CONTRACT DESCRIPTION</b>	<b>PENAL SUM OF BOND</b>
04/21/2022	Bid Guaranty and Contract Bond 9400897	Ohio Facilities Construction Commission	Historic Oldtown	\$10,039,000.00
07/14/2022	Bid Guaranty and Contract Bond 9420562	Adams County Community Improvement Corporation	Winchester Industrial Park Contract A – Sitework, Contract B – Pavement	\$987,151.67
08/03/2022	Bid Guaranty and Contract Bond 9420560	Board of Education of the Logan Hocking School District	Logan High School Clinic Addition Project	\$802,000.00
09/06/2022	Bid Guaranty and Contract Bond 9420561	State of Ohio – Ohio University	Copeland Hall Elevator Repairs – Replacement 2022	\$350,320.00
10/11/2022	Performance Bond 9400927	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0035203 – X-785 IMTA Trailer Installation	\$2,450,001.22
10/11/2022	Payment Bond 9400927	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0035203 – X-785 IMTA Trailer Installation	\$2,450,001.22
10/12/2022	Bid Guaranty and Contract Bond 9420563	Vinton County Commissioners	Vinton County Sheriff's Office Renovation 12 Hour Court Holding Cells	\$389,000.00
10/19/2022	Performance Bond 9400932	National Aeronautics and Space Administration	TCO Relocation	\$3,720,286.00
10/19/2022	Payment Bond 9400932	National Aeronautics and Space Administration	TCO Relocation	\$3,720,286.00
02/09/2023	Performance Bond 9420575	Fluor-BWXT Portsmouth, LLC	X-333 Exterior ACM Abatement	\$751,506.33
02/09/2023	Payment Bond 9420575	Fluor-BWXT Portsmouth, LLC	X-333 Exterior ACM Abatement	\$751,506.33
03/29/2023	Bid Guaranty and Contract Bond 9426700	Village of Piketon	Water Treatment Plant – Contract A	\$8,520,000.00
04/10/2023	Performance Bond 9426658	Fluor-BWXT Portsmouth, LLC	ILTS Utilities & Clarifier Containment	\$2,614,586.24
04/10/2023	Payment Bond 9426658	Fluor-BWXT Portsmouth, LLC	ILTS Utilities & Clarifier Containment	\$2,614,586.24
04/23/2023	Bid Guaranty and Contract Bond 9426710	Rio Grande Community College	RGCC-0901 Project POWER	\$1,007,563.00
07/20/2023	Bid Guaranty and Contract Bond 9426790	Village of Piketon	Wastewater Treatment Plant	\$13,739,723.00

EXECUTION DATE	BOND NO.	OWNER-OBLIGEE	BONDED CONTRACT DESCRIPTION	PENAL SUM OF BOND
09/12/2023	Performance Bond 9426738	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0036738, Solicitation No. RFP23SC117447, X-333 Bulk ACM	\$5,043,038.59
09/12/2023	Payment Bond 9426738	Fluor-BWXT Portsmouth, LLC	Contract No. PO-0036738, Solicitation No. RFP23SC117447, X-333 Bulk ACM	\$5,043,038.59
			<b>TOTAL</b>	<b>\$105,929,535.67</b>

46. As set forth more fully in the “Bonds” and subject to their terms and conditions, F&D stood as surety for Defendant WAI Construction Group, LLC under the “Bonds” and thereby guaranteed certain of the performance and/or payment obligations that Defendant WAI Construction Group, LLC owes to the owner/obligees under the “Bonded Contracts” and/or that Defendant WAI Construction Group, LLC owes to its subcontractors and suppliers relative to the labor, material, equipment, etc. they furnished in relation to the “Bonded Contracts.”

**The “Events of Default,” the “Claims,” and the “Loss”**

47. To date, the numerous “Events of Default” exist under the Indemnity Agreement.

48. The numerous “Events of Default” that exist under the Indemnity Agreement include Defendant WAI Construction Group, LLC’s failure to timely perform or comply with its performance obligations under several of the “Bonded Contracts.”

49. For example, Defendant WAI Construction Group, LLC’s records indicate that it faces exposure for liquidated damages in excess of \$2,855,000 in relation to various delays arising from its performance under certain of the “Bonded Contracts” (in relation to which exposure F&D reserves any and all of its rights, remedies, and defenses under the “Bonds” and/or the “Bonded Contracts”).

50. The numerous “Events of Default” that exist under the Indemnity Agreement include Defendant WAI Construction Group, LLC’s failure to pay its subcontractors and suppliers and/or to discharge its liabilities in relation to several of the “Bonded Contracts.”

51. For example, the “Claims” that Defendant WAI Construction Group, LLC’s subcontractors and suppliers have asserted against the “Bonds” in relation to amounts they claim they are owed for labor, material, equipment, etc. furnished to Defendant WAI Construction Group, LLC in relation to the “Bonded Contracts” can be summarized as follows (in relation to which F&D reserves any and all of its rights, remedies, and defenses under the “Bonds” and/or the “Bonded Contracts”):

<b>EXECUTION DATE</b>	<b>BOND NO.</b>	<b>OWNER-OBLIGEE</b>	<b>BONDED CONTRACT DESCRIPTION</b>	<b>AGGREGATE CLAIMS</b>
06/24/2021	Bid Guaranty and Contract Bond 9393206	Village of West Union	Panhandle Sanitary Sewer Improvements – Phase 4	\$284,979.68
06/25/2021	Bid Guaranty and Contract Bond 9393213	Ohio Department of Mental Health & Addiction Services	Access Control Upgrade, Appellation Behavioral HealthCare	\$88,522.64
08/17/2021	Bid Guaranty and Contract Bond 9393204	State of Ohio – Ohio University	Grosvenor Hall Elevator Upgrades 2021	\$21,026.40
10/13/2021	Payment Bond 9381085	Fairfield County Alcohol Drug Addiction Mental Health Board	Fairfield ADAMH Board Crisis Stabilization Unit	\$81,757.06
12/08/2021	Bid Guaranty and Contract Bond 9393214	Ohio Facilities Construction Commission	Pickaway County FSMF	\$2,145,563.37
04/14/2022	Bid Guaranty and Contract Bond 9400885	Ohio Department of Rehabilitation and Correction	Secure Recreation Areas, Ross Correction Institution	\$363,401.38
04/21/2022	Bid Guaranty and Contract Bond 9400897	Ohio Facilities Construction Commission	Historic Oldtown	\$1,169,861.99
08/03/2022	Bid Guaranty and Contract Bond 9420560	Board of Education of the Logan Hocking School District	Logan High School Clinic Addition Project	\$39,504.72
09/06/2022	Bid Guaranty and Contract Bond 9420561	State of Ohio – Ohio University	Copeland Hall Elevator Repairs – Replacement 2022	\$2,277.12

<b>EXECUTION DATE</b>	<b>BOND NO.</b>	<b>OWNER-OBLIGEE</b>	<b>BONDED CONTRACT DESCRIPTION</b>	<b>AGGREGATE CLAIMS</b>
10/12/2022	Bid Guaranty and Contract Bond 9420563	Vinton County Commissioners	Vinton County Sheriff's Office Renovation 12 Hour Court Holding Cells	\$5,707.20
10/19/2022	Payment Bond 9400932	National Aeronautics and Space Administration	TCO Relocation	\$498,580.64
03/29/2023	Bid Guaranty and Contract Bond 9426700	Village of Piketon	Water Treatment Plant – Contract A	\$861,072.27
04/10/2023	Payment Bond 9426658	Fluor-BWXT Portsmouth, LLC	ILTS Utilities & Clarifier Containment	\$443,325.49
04/23/2023	Bid Guaranty and Contract Bond 9426710	Rio Grande Community College	RGCC-0901 Project POWER	\$164,218.99
07/20/2023	Bid Guaranty and Contract Bond 9426790	Village of Piketon	Wastewater Treatment Plant	\$611,737.43
			<b>TOTAL</b>	<b>\$6,781,536.38</b>

52. The numerous “Events of Default” that exist under the Indemnity Agreement include Defendant WAI Construction Group, LLC being declared in default under several of the “Bonded Contracts.”

53. For example, the Ohio Facilities Construction Commission and the Ohio Department of Natural Resources have declared Defendant WAI Construction Group, LLC to be in default under the “Bonded Contract” to which Bid Guaranty and Contract Bond 9400897 relates (in relation to which F&D reserves any and all of its rights, remedies, and defenses under the “Bonds” and/or the “Bonded Contracts”).

54. The numerous “Events of Default” that exist under the Indemnity Agreement include F&D being forced to set a reserve against “Loss” (and to expend reserves to pay amounts owed to Defendant WAI Construction Group, LLC’s subcontractors/suppliers and thereby incur “Loss”).

55. The numerous “Events of Default” that exist under the Indemnity Agreement include the Indemnitors’ failure to procure the full and complete discharge of F&D from all “Bonds” and all liability in connection with the “Bonds.”

56. The numerous “Events of Default” that exist under the Indemnity Agreement include the Indemnitors’ failure to deposit any collateral in the month since F&D demanded that they immediately deposit cash or other acceptable collateral with F&D totaling \$11,000,000, which was the minimum exposure to “Loss” that F&D faced under the “Bonds” according to Defendant WAI Construction Group, LLC’s own records at the time.

57. The numerous “Events of Default” that exist under the Indemnity Agreement include certain Indemnitors’ misappropriation and/or conversion of the proceeds of the “Bonded Contracts” (collectively, the “Bonded Contract Proceeds”) — which constitute trust funds to be used solely for satisfying debts for which F&D could be liable under the “Bonds.”

58. For example, despite F&D specifically reminding certain Indemnitors and representatives of Defendant WAI Construction Group, LLC of the trust fund nature of the Bonded Contract Proceeds in September 2024, Defendant WAI Construction Group, LLC appears to have received millions of dollars of Bonded Contract Proceeds from the owners/obligees under the “Bonds” — all of which proceeds WAI Construction appears to have used for purposes **other than** satisfying obligations for which F&D would be liable under the “Bonds.”

59. Moreover, instead of using certain Bonded Contract Proceeds for their intended purpose of satisfying obligations for which F&D would be liable under the “Bonds,” WAI Construction Group, LLC appears to have used Bonded Contract Proceeds to pay mortgages on properties owned by Defendant WAI Properties, LLC and/or other obligations owed by certain of the Indemnitors or “Related Entities.”

60. The numerous “Events of Default” that exist under the Indemnity Agreement include the whereabouts/location of Defendant James Gardner and Defendant Donna Gardner being unknown.

61. The numerous “Events of Default” that exist under the Indemnity Agreement include various representations of Defendant Steven Moore and other representatives of Defendant WAI Construction Group, LLC that were materially false or misleading when made.

62. The representations of Defendant Steven Moore and other representatives of Defendant WAI Construction Group, LLC that were materially false or misleading when made include representations relating to their intentions regarding the utilization of Bonded Contract Proceeds.

63. The representations of Defendant Steven Moore and other representatives of Defendant WAI Construction Group, LLC that were materially false or misleading when made include representations relating to the timeframe during which they would irrevocably direct each owner/obligee under the “Bonds” to remit all Bonded Contract Proceeds to F&D’s escrow to insure those trust funds were used for their sole intended purpose of paying obligations for which F&D may be liable under the “Bonds.”

64. To date, F&D has sustained and continues to sustain “Loss” arising from or relating to the “Bonds.”

65. To date, F&D has sustained and continues to sustain “Loss” arising from or relating to various “Claims.”

66. To date, F&D has sustained and continues to sustain “Loss” arising from or relating to the Indemnitors’ failure to timely and/or completely perform or comply with the terms and conditions of the Indemnity Agreement.

67. To date, F&D has sustained and continues to sustain “Loss” arising from or relating to F&D’s enforcement of the terms and conditions of the Indemnity Agreement.

68. To date, F&D has sustained and continues to sustain “Loss” arising from or relating to F&D’s ongoing actions to protect or procure F&D’s rights, protect or preserve any of F&D’s interests, or to avoid, or lessen F&D’s liability or alleged liability.

69. F&D’s ongoing actions to protect or procure F&D’s rights, protect or preserve any of F&D’s interests, or to avoid, or lessen F&D’s liability or alleged liability include, but are not limited to, F&D’s retention of outside construction consultants, outside accounting consultants, and outside legal counsel.

70. To date, F&D’s ongoing “Loss” includes, but is not limited to, the following:

<b>EXECUTION DATE</b>	<b>BOND NO.</b>	<b>BONDED CONTRACT DESCRIPTION</b>	<b>CLAIMANT</b>	<b>LOSS PAID</b>
12/08/2021	Bid Guaranty and Contract Bond 9393214	Pickaway County FSMF	The Petty Group	\$210,041.53
12/08/2021	Bid Guaranty and Contract Bond 9393214	Pickaway County FSMF	Gm Equipment Corp	\$26,833.41
04/14/2022	Bid Guaranty and Contract Bond 9400885	Secure Recreation Areas, Ross Correction Institution	The Petty Group	\$305,053.46
04/21/2022	Bid Guaranty and Contract Bond 9400897	Historic Oldtown	Mull-It-Over Products	\$28,535.00
04/23/2023	Bid Guaranty and Contract Bond 9426710	RGCC-0901 Project POWER	Intek Construction	\$12,763.00
			<b>TOTAL</b>	<b>\$583,226.40</b>

71. F&D is also actively investigating and attempting to effectuate “Settlements” of various other “Claims” that have been asserted against the “Bonds,” in relation to which efforts F&D has incurred and continues to incur additional “Loss.”

**F&D’s Estimated Exposure to Liability and “Loss”**

72. In addition to the “Loss” it has already sustained, F&D also remains exposed to significant liability and/or future “Loss” arising from or relating to the “Bonds” by reason of the “Claims” and/or the various “Events of Default” under the Indemnity Agreement.

73. While F&D’s investigation remains ongoing and F&D fully reserves any and all of its rights, remedies, defenses, etc. under the “Bonds” and/or the “Bonded Contracts,” F&D has estimated that its exposure to liability and/or future “Loss” exceeds \$19,672,412.00 and can be summarized as follows:

<b>CATEGORY OF POTENTIAL REVENUE OR “LOSS” ACCORDING TO WAI CONSTRUCTION GROUP, LLC’S OWN RECORDS</b>	<b>AMOUNT</b>
Minimum Amount Currently Owed to Subcontractors Suppliers According to WAI Construction Group, LLC’s Records (Including Retainage) Plus a 10% Contingency	\$13,844,225
Minimum Cost to Complete the Bonded Contracts According to WAI Construction Group, LLC’s Records (Including Minimum Amounts that will be Owed to Subcontractors/Suppliers) Plus a 20% Contingency	\$22,458,776
Minimum Exposure to Liquidated Damages According to WAI Construction Group, LLC’s Records	\$2,855,000
Maximum Amount of Remaining Bonded Contract Proceeds According to WAI Construction Group, LLC’s Records (Including Retainage)	( <b>\$19,485,589</b> )
<b>MINIMUM TOTAL “LOSS” ACCORDING TO WAI CONSTRUCTION GROUP, LLC’S OWN RECORDS</b>	<b>\$19,672,412.00</b>

**The Indemnitors’ Failure to Procure Full/Complete Discharge of F&D,  
to Collateralize F&D, and/or to Indemnify F&D’s “Loss”**

74. As reflected by the September 30, 2024 letter from F&D to the Indemnitors attached hereto as **Exhibit 2**, F&D demanded that the Indemnitors take various actions under the Indemnity Agreement as follows:

1. To the extent WAI has not already done so, irrevocably direct each owner/obligee under the Bonds identified in this letter to remit all proceeds of each Bonded Contract directly to Beacon Consulting Group, Inc. (“Beacon”),

who will insure those trust funds are used for their sole intended purpose of paying obligations for which F&D may be liable under the Bonds:

2. Either
  - a. procure the full and complete discharge of F&D from all Bonds and all liability in connection with the Bonds; or
  - b. deposit cash or other acceptable collateral with F&D totaling \$11,000,000 — which equals F&D’s minimum exposure to “Loss” according to WAI’s own records — unless and until the Indemnitors can verify that the excess loan proceeds and/or the Indemnitors other resources have been used to satisfy WAI’s bonded obligations (at which point F&D will give the Indemnitors a dollar-for-dollar credit toward its collateral demand); and
3. Grant F&D access to any and all information and documentation concerning each of your financial situations and/or the financial situation of any other Indemnitor or any subsidiary, affiliate, or “Related Entity.”

75. Despite F&D’s demand, neither the Indemnitors nor Defendant WAI Construction Group, LLC directed the owners/obligees under the “Bonds” to remit Bonded Contract Proceeds to F&D’s escrow agent until after Defendant WAI Construction Group, LLC received millions of dollars in Bonded Contract Proceeds — which Defendant WAI Construction Group, LLC used for purposes other than satisfying obligations for which F&D would be liable under the “Bonds.”

76. Despite F&D’s demand, the Indemnitors have not procured the full and complete discharge of F&D from any of the “Bonds” and/or F&D’s potential liability in connection with any of the “Bonds.”

77. Despite F&D’s demand, the Indemnitors have not deposited any money or other collateral with F&D.

78. Despite F&D’s demand, the Indemnitors have not granted F&D access to all information and documentation concerning each of their financial situations and/or the financial situation of any other Indemnitor or any subsidiary, affiliate, or “Related Entity.”

79. To date, the Indemnitors have not exonerated, indemnified, or held F&D harmless relative to any of the “Loss” that it has sustained and continues to sustain in relation to the “Bonded Contracts” and/or the “Bonds.”

#### IV. CAUSES OF ACTION

##### Count I — Specific Performance of Duty to Deposit Collateral Against the Indemnitors

80. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

81. Paragraph 2 of the Indemnity Agreement jointly and severally requires the Indemnitors to, upon demand, promptly procure the full and complete discharge of F&D from all “Bonds” and all liability in connection with such “Bonds.”

82. If the Indemnitors are unable to obtain discharge of any or all such “Bonds” within the time demanded, Paragraph 2 of the Indemnity Agreement jointly and severally requires the Indemnitors to promptly deposit with F&D an amount of money that F&D determines is sufficient to collateralize or pay any outstanding obligations the “Bonds.”

83. Paragraph 4 of the Indemnity Agreement further jointly and severally requires the Indemnitors to promptly deposit with F&D, on demand, an amount of money that F&D determines is sufficient to fund any liability or “Loss.”

84. Under a full reservation of F&D’s rights under the “Bonds” and/or the “Bonded Contracts,” F&D has determined that cash collateral (*i.e.*, money) in the amount of \$20,000,000 is necessary/sufficient to collateralize or pay any outstanding bonded obligations and/or to fund any liability or “Loss.”

85. Despite F&D’s demand, however, the Indemnitors have failed to either (a) procure the full and complete discharge of F&D from all “Bonds” and all liability in connection with such “Bonds” within the time demanded in violation of Paragraph 2 of the Indemnity Agreement or (b)

deposit any collateral with F&D in violation of Paragraph 2 and Paragraph 4 of the Indemnity Agreement.

86. The Indemnitors' failure to either (a) procure the full and complete discharge of F&D from all "Bonds" and all liability in connection with such "Bonds" within the time demanded in violation of Paragraph 2 of the Indemnity Agreement or (b) deposit any collateral with F&D in violation of Paragraph 2 and Paragraph 4 of the Indemnity Agreement constitutes a material breach of the Indemnity Agreement.

87. F&D lacks an adequate remedy at law in relation to the Indemnitors' material breach of Paragraph 2 and Paragraph 4 of the Indemnity Agreement.

88. The Indemnitors' material breach of Paragraph 2 and Paragraph 4 the Indemnity Agreement has also caused and continues to cause irreparable harm to F&D because, among other things, F&D is being deprived of its bargained-for right to receive, hold, and/or utilize cash collateral relative to the "Claims" that have been and/or may be asserted against F&D relative to the "Bonds."

89. Moreover, under Paragraph 16 of the Indemnity Agreement, the Indemnitors expressly acknowledged that (a) their failure to perform or comply with Paragraph 2 or Paragraph 4 of the Indemnity Agreement shall cause irreparable harm to F&D for which F&D has no adequate remedy at law and (b) F&D shall be entitled to injunctive relief and/or specific performance of the Indemnitors' obligations under Paragraph 2 and Paragraph 4.

90. The balance of the equities weighs heavily in favor of entering an injunction and/or judgment in favor of F&D for specific performance of the Indemnitors' obligations under Paragraph 2 and Paragraph 4 of the Indemnity Agreement because, among other things, F&D is merely seeking to enforce the terms of the Indemnity Agreement to which the Indemnitors

voluntarily agreed and F&D continues to be deprived of its bargained-for right to receive, hold, and/or utilize cash collateral relative to the “Claims” that have been and/or may be asserted against F&D relative to the “Bonds.”

91. Compelling the Indemnitors to collateralize F&D would strengthen the public interests of enforcing the clear and unambiguous terms of written indemnity agreements under Ohio law, while instilling confidence in the surety industry in Ohio.

92. Therefore, F&D is entitled to the entry of an injunction/judgment compelling the Indemnitors to specifically perform their obligation to deposit cash collateral (*i.e.*, money) totaling \$20,000,000 pursuant to Paragraph 2 and Paragraph 4 of the Indemnity Agreement, which is the amount of money F&D has determined is necessary/sufficient to collateralize or pay any outstanding bonded obligations and/or to fund any liability or “Loss.”

**Count II — Specific Performance of Duty to Furnish Access to Books, Records, Accounts, Etc. Against the Indemnitors**

93. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

94. Paragraph 11 of the Indemnity Agreement jointly and severally requires the Indemnitors to promptly (a) provide F&D with any and all information and documentation concerning the business or financial situation of any Indemnitor or any subsidiary, affiliate, or “Related Entity” of any Indemnitor as requested by F&D and (b) grant F&D access to examine and copy the books, records, and accounts of Indemnitors and of any entity under the control of any Indemnitor at no cost to F&D.

95. To date, the Indemnitors have provided only limited information/documentation concerning the business/financial situation of the Indemnitors and/or various “Related Entities” and/or granted only limited access to their books, records, and accounts in violation of Paragraph 11 of the Indemnity Agreement.

96. The Indemnitors' failure to (a) provide F&D with any and all information and documentation concerning the business or financial situation of any Indemnitor or any subsidiary, affiliate, or "Related Entity" of any Indemnitor as requested by F&D and/or (b) grant F&D access to examine and copy the books, records, and accounts of Indemnitors and of any entity under the control of any Indemnitor at no cost to F&D constitutes a material breach of the Indemnity Agreement.

97. F&D lacks an adequate remedy at law in relation to the Indemnitors' material breach of Paragraph 11 of the Indemnity Agreement.

98. The Indemnitors' material breach of Paragraph 11 of the Indemnity Agreement has also caused and continues to cause irreparable harm to F&D because, among other things, F&D has been deprived of documentation/information necessary to investigate and effectuate its various tools for preventing/mitigating its "Loss" under the Indemnity Agreement.

99. Moreover, under Paragraph 16 of the Indemnity Agreement, the Indemnitors expressly acknowledged that (a) their failure to perform or comply with Paragraph 11 shall cause irreparable harm to F&D for which F&D has no adequate remedy at law and (b) F&D shall be entitled to injunctive relief and/or specific performance of the Indemnitors' obligations under Paragraph 11.

100. The balance of the equities weighs heavily in favor of entering an injunction and/or judgment in favor of F&D for specific performance of the Indemnitors' obligations under Paragraph 11 of the Indemnity Agreement because, among other things, F&D is merely seeking to enforce the terms of the Indemnity Agreement to which the Indemnitors voluntarily agreed and F&D is being deprived of documentation/information necessary to investigate and effectuate its various tools for preventing/mitigating its "Loss" under the Indemnity Agreement.

101. Compelling the Indemnitors to perform their duty to provide F&D with any and all information and documentation concerning the business or financial situation of any Indemnitor or any subsidiary, affiliate, or “Related Entity” and grant F&D access to examine and copy the books, records, and accounts of the Indemnitors would strengthen the public interests of enforcing the clear and unambiguous terms of written indemnity agreements under Ohio law, while instilling confidence in the surety industry in Ohio.

102. Therefore, F&D is entitled to the entry of an injunction/judgment compelling the Indemnitors to specifically perform their obligation to provide F&D with any and all information and documentation concerning the business or financial situation of any Indemnitor or any subsidiary, affiliate, or “Related Entity” and grant F&D access to examine and copy the books, records, and accounts of the Indemnitors pursuant to Paragraph 11 of the Indemnity Agreement.

**Count III — Damages for Breach of the Indemnity Agreement Against the Indemnitors**

103. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

104. Paragraph 2 of the Indemnity Agreement jointly and severally obligates the Indemnitors to exonerate, indemnify, and hold F&D harmless from any and all liability and “Loss,” sustained or incurred, arising from or related to (a) any “Bond,” (b) any “Claim,” (c) any Indemnitor failing to timely and completely perform or comply with the Indemnity Agreement, (d) F&D’s enforcement of the Indemnity Agreement or (e) any act of F&D to protect or procure any of F&D’s rights, protect or preserve any of F&D’s interests, or to avoid, or lessen F&D’s liability or alleged liability.

105. To date, F&D has sustained/incurred and continues to sustain/incur “Loss” arising from or related to (a) the “Bonds,” (b) various “Claims,” (c) the Indemnitors failing to timely and completely perform or comply with the Indemnity Agreement, (d) F&D’s enforcement of the

Indemnity Agreement, and/or or (e) F&D's ongoing actions to protect or procure any of F&D's rights, protect or preserve any of F&D's interests, or to avoid, or lessen F&D's liability or alleged liability.

106. Despite F&D's demand, however, the Indemnitors have failed to exonerate, indemnify, and hold F&D harmless from any and all liability and "Loss" in violation of Paragraph 2 of the Indemnity Agreement.

107. The Indemnitors' failure to exonerate, indemnify, and hold F&D harmless from any and all liability and "Loss" constitutes a material breach of the Indemnity Agreement.

108. F&D has been damaged as a result of the Indemnitors' material breach of the Indemnity Agreement in an amount to be proven at trial, which amount currently exceeds \$583,226.40.

109. Therefore, F&D is entitled to the entry of judgment against the Indemnitors, jointly and severally, in an amount sufficient to fully exonerate, indemnify, and hold F&D harmless from any and all liability and "Loss," sustained or incurred, arising from or related to (a) the "Bonds," (b) various "Claims," (c) the Indemnitors failing to timely and completely perform or comply with the Indemnity Agreement, (d) F&D's enforcement of the Indemnity Agreement, and/or or (e) F&D's ongoing actions to protect or procure any of F&D's rights, protect or preserve any of F&D's interests, or to avoid, or lessen F&D's liability or alleged liability, which amount will be proven at the summary judgment stage or at trial but currently exceeds \$583,226.40.

**Count IV — Damages for Breach of Fiduciary Duty Against the Indemnitors**

110. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

111. Pursuant to Paragraph 6 of the Indemnity Agreement, all Bonded Contract Proceeds received by any Indemnitor for or on account of any “Bonded Contract” constitute trust funds in which F&D has an interest as a beneficiary of the trust.

112. Moreover, pursuant to the terms of the “Bonded Contracts,” Defendant WAI Construction Group, LLC was contractually obligated to use the Bonded Contract Proceeds to pay its subcontractors and suppliers for the labor, material, equipment, etc. they furnished to Defendant WAI Construction Group, LLC in relation to the “Bonded Contracts.”

113. By virtue of Paragraph 6 of the Indemnity Agreement and the terms of the “Bonded Contracts,” the Bonded Contract Proceeds are impressed with an express trust in favor of F&D and/or F&D stands as a trust beneficiary of the Bonded Contract Proceeds.

114. By virtue of Paragraph 6 of the Indemnity Agreement and the terms of the “Bonded Contracts,” the Indemnitors stand as trustees of any Bonded Contract Proceeds they received.

115. By virtue of their status as trustees of any Bonded Contract Proceeds they received, the Indemnitors owed a fiduciary duty to F&D to use all Bonded Contract Proceeds for their intended purpose of satisfying obligations for which F&D may be liable under the “Bonds.”

116. Despite the fiduciary duty owed to F&D and the trust fund purpose of the Bonded Contract Proceeds, the Indemnitors have used millions of dollars of the Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds.”

117. The Indemnitors’ utilization of the Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds” constitutes a material breach of the fiduciary duty they owed to F&D in relation to the Bonded Contract Proceeds.

118. F&D has sustained and continues to sustain injuries and/or damages that result proximately from the Indemnitors' breach of their fiduciary duty to F&D in an amount that will be proven at the summary judgment stage and/or at trial.

119. Therefore, F&D is entitled to the entry of judgment against each of the Indemnitors in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained and continues to sustain as a proximate result of the Indemnitors' utilization of Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the "Bonds" in an amount that will be proven at the summary judgment stage and/or at trial.

**Count V — Damages for Conversion Against All Defendants**

120. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

121. By virtue of the express trust that is imposed upon the Bonded Contract Proceeds under Paragraph 6 of the Indemnity Agreement and/or the terms and conditions of the "Bonded Contracts," the Indemnitors at most possessed bare legal title to any Bonded Contract Proceeds they may have received and were obligated to use such Bonded Contract Proceeds for the sole purpose of satisfying obligations for which F&D may be liable under the "Bonds" — as opposed to treating the Bonded Contract Proceeds as their own property

122. By virtue of the express trust that is imposed upon the Bonded Contract Proceeds under Paragraph 6 of the Indemnity Agreement and/or the terms and conditions of the "Bonded Contracts," F&D possesses the equitable title to, an ownership interest in, and other equitable and contractual interests in the Bonded Contract Proceeds.

123. To the extent F&D is required to pay and/or perform under the "Bonds," F&D will also become equitably subrogated to any ownership interests, equitable interests, and other

interests that WAI Construction LLC's subcontractors/suppliers under the "Bonded Contracts" and/or the owners/obligees under the "Bonds" may possess in relation to the Bonded Contract Proceeds.

124. The Indemnitors and Defendant WAI Properties, LLC have wrongfully exercised dominion/control and/or have wrongfully disposed of Bonded Contract Proceeds in violation of F&D's equitable title to, an ownership interest in, and other equitable and contractual interests in the Bonded Contract Proceeds.

125. The wrongful exercise of dominion/control and/or wrongful disposition of Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D would be liable under the "Bonds" constitutes a conversion of the Bonded Contract Proceeds under Ohio law.

126. F&D has sustained and continues to sustain injury and/or damages that result proximately from the conversion of Bonded Contract Proceeds by the Indemnitors and Defendant WAI Properties, LLC in an amount that will be proven at the summary judgment stage and/or at trial.

127. Therefore, F&D is entitled to the entry of judgment against one or more of the Indemnitors and/or Defendant WAI Properties, LLC in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained and continues to sustain as a result of the conversion of the Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the "Bonds," the amount of which will be proven at the summary judgment stage and/or at trial.

**Count VI — Damages for Money Had and Received Against All Defendants**

128. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

129. By virtue of the express trust that is imposed upon the Bonded Contract Proceeds under Paragraph 6 of the Indemnity Agreement and/or the terms and conditions of the “Bonded Contracts,” the Bonded Contract Proceeds ought to, in equity and good conscience, be paid to Defendant WAI Construction Group, LLC’s subcontractors/suppliers, ought to be paid to F&D, or ought to be utilized to satisfy Defendant WAI Construction Group, LLC’s obligations under the “Bonds” unless and until Defendant WAI Construction Group, LLC has satisfied the purpose of the express trust imposed upon the Bonded Contract Proceeds.

130. The Indemnitors and Defendant WAI Properties, LLC have been unjustly enriched to the extent they received and/or utilized Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds.”

131. F&D has sustained and continues to sustain injuries and damages as a proximate result of the unjust enrichment of the Indemnitors and Defendant WAI Properties, LLC.

132. Therefore, F&D is entitled to the entry of judgment against the Indemnitors and/or Defendant WAI Properties, LLC in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained and continues to sustain as a proximate result of the unjust enrichment of the Indemnitors and Defendant WAI Properties, LLC, the amount of which amount will be proven at the summary judgment stage or at trial.

**Count VII — Damages for Tortious Interference with Contract Against All Defendants  
Other than Defendant WAI Construction Group, LLC**

133. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

134. By virtue of the express trust that is imposed upon the Bonded Contract Proceeds under Paragraph 6 of the Indemnity Agreement and/or the terms and conditions of the “Bonded Contracts,” Defendant WAI Construction Group, LLC was contractually obligated to utilize the

Bonded Contract Proceeds to satisfy the purposes of the express trust — which was to satisfy obligations for which F&D may be liable under the “Bonds.”

135. The Indemnitors and Defendant WAI Properties, LLC were aware of Defendant WAI Construction Group, LLC’s contractual obligation to utilize the Bonded Contract Proceeds for the sole purpose of satisfying obligations for which F&D may be liable under the “Bonds.”

136. With such knowledge, one or more the Indemnitors and Defendant WAI Properties, LLC intentionally caused Defendant WAI Construction Group, LLC to breach its contractual obligations by accepting Bonded Contract Proceeds or causing Defendant WAI Construction Group, LLC to use Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds.”

137. No legal justification existed for one or more of the Indemnitors and/or Defendant WAI Properties, LLC to intentionally cause Defendant WAI Construction Group, LLC to breach its contractual obligations by accepting Bonded Contract Proceeds or causing Defendant WAI Construction Group, LLC to use Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds.”

138. Such intentional action by one or more of the Indemnitors and/or Defendant WAI Properties, LLC constituted tortious interference with the “Bonded Contracts” and/or the Indemnity Agreement.

139. Such utilization of the Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds” constituted tortious interference with the “Bonded Contracts” and/or the Indemnity Agreement.

140. F&D has sustained and continues to sustain injuries and damages as a proximate result of the tortious interference with the Indemnity Agreement and/or the “Bonded Contracts” by one or more of the Indemnitors and Defendant WAI Properties, LLC.

141. Therefore, F&D is entitled to the entry of judgment against one or more of the Indemnitors and Defendant WAI Properties, LLC in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained and continues to sustain as a proximate result of the tortious interference with the Indemnity Agreement and/or the “Bonded Contracts,” the amount of which amount will be proven at the summary judgment stage or at trial.

**Count VIII — Avoidance of Fraudulent Transfers/Obligations and Injunctive Relief in Relation Thereto Against All Defendants**

142. F&D incorporates the foregoing allegations as if fully set forth verbatim herein.

143. By virtue of its claims against the Indemnitors under the Indemnity Agreement, F&D possesses “Claims” against the Indemnitors as defined by the Ohio Uniform Fraudulent Transfer Act, which is codified at ORC Ann. § 1336.01 *et seq.*

144. By virtue of its “Claims” against the Indemnitors, F&D qualifies as a “Creditor” of the Indemnitors under the Ohio Uniform Fraudulent Transfer Act.

145. By virtue of its “Claims” against the Indemnitors, the Indemnitors qualify as “Debtors” under the Ohio Uniform Fraudulent Transfer Act.

146. Upon information and belief, the Indemnitors transferred Bonded Contract Proceeds and other “Property” and/or incurred obligations with the actual intent to hinder, delay, or defraud “Creditors of the “Indemnitors” including, but not limited to, F&D so as to render the transfers and/or obligations to be fraudulent and voidable as to F&D pursuant to ORC Ann. § 1336.04(a)(1).

147. Upon information and belief, the Indemnitors transferred Bonded Contract Proceeds and other “Property” and/or incurred obligations without receiving a reasonably equivalent value in exchange for the transfers or obligation and the Indemnitors intended to incur, or believed or reasonably should have believed that the Indemnitors would incur, debts beyond the Indemnitors’ ability to pay as they became due so as to render the transfers and/or obligations to be fraudulent and voidable as to F&D pursuant to ORC Ann. § 1336.04(a)(2).

148. Upon information and belief, the Indemnitors transferred Bonded Contract Proceeds and other “Property” and/or incurred obligations without receiving a reasonably equivalent value in exchange for the transfer or obligation and the Indemnitors were insolvent at that time or the Indemnitors became insolvent as a result of the transfers or obligations so as to render the transfers and/or obligations to be fraudulent and voidable as to F&D pursuant to ORC Ann. § 1336.05(A).

149. Upon information and belief, the Indemnitors transferred Bonded Contract Proceeds and other “Property” and/or incurred obligations with respect to an insider for an antecedent debt, the Indemnitors were insolvent at that time, and the insiders had reasonable cause to believe that the Indemnitors were insolvent so as to render the transfers and/or obligations to be fraudulent and voidable as to F&D pursuant to ORC Ann. § 1336.05(B).

150. By virtue of the Indemnitors’ transfer of Bonded Contract Proceeds or other “Property” and/or incurring obligations under circumstances that render the transfers/obligations fraudulent and voidable under ORC Ann. § 1336.04(a)(1), ORC Ann. § 1336.04(a)(2), ORC Ann. § 1336.05(A), and/or ORC Ann. § 1336.05(A), F&D is entitled to relief against the Indemnitors and/or Defendant WAI Properties, LLC under ORC Ann. § 1336.07 including, but not necessarily limited to, the following:

- a) Avoidance of the transfers or obligations to the extent necessary to satisfy F&D's claims against the Indemnitors and/or Defendant WAI Properties, LLC;
- b) Attachment or garnishments against the assets transferred or other property of the transferees in accordance with Chapters 2715. and 2716. of the Ohio Revised Code; and/or
- c) Any of the following:
  1. An injunction against further disposition by the Indemnitors and/or Defendant WAI Properties, LLC or transferees, or both, of the assets transferred or of other property;
  2. Appointment of a receiver to take charge of the assets transferred or of other property of the transferees; and/or
  3. Any other relief that the circumstances may require.

151. To the extent the Indemnitors' transfers of Bonded Contract Proceeds to Defendant WAI Properties, LLC are voidable under ORC Ann. § 1336.07(a)(1), F&D is entitled to a judgment against Defendant WAI Properties, LLC for the value of the Bonded Contract Proceeds transferred and/or for the amount necessary to satisfy the F&D's claim against the Indemnitors.

WHEREFORE, PREMISES CONSIDERED, F&D prays for the following relief:

- a) For the issuance of process requiring the Defendants to answer F&D's Complaint;
- b) For the entry of an injunction/judgment compelling the Indemnitors to specifically perform their obligation to deposit cash collateral (*i.e.*, money) totaling \$20,000,000 pursuant to Paragraph 2 and Paragraph 4 of the Indemnity Agreement, which is the amount of money F&D has determined is necessary/sufficient to collateralize or pay any outstanding bonded obligations and/or to fund any liability or "Loss" (under a full reservation of F&D's rights, remedies, defenses, etc. under the "Bonds," the "Bonded Contracts," the Indemnity Agreement, or otherwise);
- c) For the entry of an injunction/judgment compelling the Indemnitors to specifically perform their obligation to provide F&D with any and all information and documentation concerning the business or financial situation of any Indemnitor or any subsidiary, affiliate, or "Related Entity" and grant F&D access to examine and copy the books, records, and accounts of the Indemnitors pursuant to Paragraph 11 of the Indemnity Agreement;
- d) For the entry of judgment against the Indemnitors, jointly and severally, in an amount sufficient to fully exonerate, indemnify, and hold F&D harmless from any and all liability and "Loss" sustained or incurred, arising from or related to (1) the "Bonds,"

- (2) the “Claims,” (3) any Indemnitor failing to timely and completely perform or comply with the Indemnity Agreement, (4) F&D’s enforcement of the Indemnity Agreement, or (5) any act of F&D to protect or procure any of F&D’s rights, protect or preserve any of F&D’s interests, or to avoid, or lessen F&D’s liability or alleged liability pursuant to Paragraph 2 of the Indemnity Agreement, which amount will be proven at the summary judgment stage or at trial but currently exceeds \$583,226.40;
- e) For the entry of judgment against each of the Indemnitors in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained and continues to sustain as a proximate result of the Indemnitors utilization of Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds,” which amount will be proven at the summary judgment stage or at trial;
  - f) For the entry of judgment against one or more of the Indemnitors and/or Defendant WAI Properties, LLC in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained a continues to sustain as a result of the conversion of the Bonded Contract Proceeds for purposes other than satisfying obligations for which F&D may be liable under the “Bonds,” the amount of which will be proven at the summary judgment stage and/or at trial;
  - g) For the entry of judgment against the Indemnitors and Defendant WAI Properties, LLC in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained and continues to sustain as a proximate result of the unjust enrichment of the Indemnitors and Defendant WAI Properties, LLC, the amount of which amount will be proven at the summary judgment stage or at trial;
  - h) For the entry of judgment against one or more of the Indemnitors and Defendant WAI Properties, LLC in an amount sufficient to compensate and/or make F&D whole in relation to the injuries and/or damages F&D has sustained and continues to sustain as a proximate result of the tortious interference with the Indemnity Agreement and/or the “Bonded Contracts,” the amount of which amount will be proven at the summary judgment stage or at trial;
  - i) For the entry of judgment and/or other relief to which F&D is entitled under the Ohio Uniform Fraudulent Transfers Act; and
  - j) 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/ Jarrod W. Stone

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