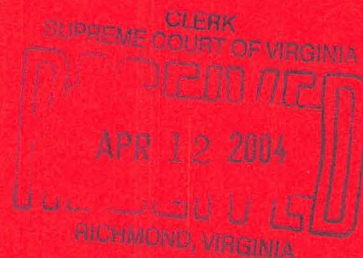

IN THE
Supreme Court of Virginia

RECORD NO. 032709



**AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,**

Appellants,

v.

C.G. MITCHELL CONSTRUCTION, INC., et al.,

Appellees.

JOINT APPENDIX

**S. Vernon Priddy, III
SANDS ANDERSON
MARKS & MILLER
Post Office Box 1998
Richmond, Virginia 23219
(804) 783-7238**

Counsel for Appellant

**William R. Mauck, Jr.
WILLIAMS MULLEN
A Professional Corporation
1021 East Cary Street
Richmond, Virginia 23219
(804) 643-1991**

*Counsel for Appellee -
C.G. Mitchell Construction, Inc.*

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. LP 937-1

NATIONS ENVIRONMENTAL SERVICES, INC.,

Serve: Adam N. Harrell, Jr., Registered Agent
707 East Main Street
Suite 1000
Richmond, Virginia 23219
(City of Richmond)

and

AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,

Serve: Commonwealth Legal Services Corporation
Registered Agent
4701 Cox Road, Suite 301
Glen Allen, Virginia 23060
(County of Henrico)

Defendants.

MOTION FOR JUDGMENT

Plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, for its Motion for Judgment against defendants Nations Environmental Services, Inc. ("Nations") and American Safety Casualty Insurance Company ("American Safety"), states as follows:

PARTIES

1. Mitchell is a Virginia corporation with its principal place of business located in Glen Allen, Virginia. Mitchell is engaged in the business of demolition and related services.

Filed in the Clerk's Office this 19 day of April, 20 02
Writ Tax \$ 25 8:45 A.M. P.M.
Fee 150
L. A. S. 2
C. H. M. F. 2
Lib. Fee 213
Sheriff's Fee 184
Total: BEVILL M. DEAN, CLERK
Ch. Deane D.C.

2. Nations is a Virginia corporation with its principal place of business located in Richmond, Virginia. Nations is engaged in business as a building, environmental and demolition contractor.

3. American Safety is a Delaware corporation with its principal place of business located in Atlanta, Georgia. American Safety is engaged in the business of, among other things, underwriting bid bonds, performance bonds, and payment bonds for environmental contractors, subcontractors, specialty trade contractors, artisan contractors, general contractors and difficult-to-place risks.

FACTS AND LEGAL BASIS

4. In May 2001, Mitchell entered into an agreement (the "Agreement") with Nations to provide labor, equipment and debris removal services in connection with the demolition of the Richmond Convention Center Exhibition Hall in the City of Richmond, Virginia (the "Project").

5. Pursuant to the Agreement, Nations was to compensate Mitchell for its work on a "time and materials" basis. Mitchell would supply Nations with daily tickets outlining the work that it performed and a representative from Nations would sign-off on each daily ticket. Mitchell would periodically invoice Nations based upon the totals from the daily tickets.

6. Between May and December 2001, Mitchell supplied labor, materials and equipment to the Project. To date, invoices from Mitchell to Nations in the amount of \$312,500.09 remain outstanding. A verified statement of Nations' account with Mitchell is attached hereto as Exhibit A.

7. Mitchell has demanded that Nations pay the balance due, but Nations has refused, and continues to refuse to make such payment.

8. American Safety is the surety and Nations is the principal under a Labor and Material Payment Bond (the "Bond") issued by American Safety for a contract between Nations and Turner Construction Company related to the Project.

9. Mitchell contacted American Safety and requested a copy of the Bond. A copy of the bond that American Safety provided to Mitchell is attached hereto as Exhibit B.

10. Under the terms of the Bond, American Safety is obligated to make payment to all claimants for all labor and material used or reasonably required for use by Nations in the performance of its contractual obligations related to the Project.

COUNT I

11. Mitchell realleges the allegations of paragraphs 1 through 10, inclusive.

12. Nations has breached the Agreement by failing and refusing to pay Mitchell the sums it is due thereunder.

13. As a direct result of Nations' breach of the Agreement, Mitchell has been damaged in the amount of \$312,500.09, plus interest.

COUNT II

14. Mitchell realleges the allegations of paragraphs 1 through 13, inclusive.

15. Mitchell is a proper claimant under the Bond, in that it has a direct contract with Nations for labor and material used or reasonably required for use in Nations' work on the Project.

16. Mitchell is owed the sum of \$312,500.09 as the balance due for the labor, equipment and materials that it supplied to Nations on the Project and American Safety is legally obligated to pay this sum in accordance with the terms of the Bond.

17. Nations and American Safety have refused to compensate Mitchell in full for the labor, equipment and materials that Mitchell has supplied to the Project.

WHEREFORE, plaintiff C.G. Mitchell Construction, Inc. requests that judgment be entered in its favor against defendants Nations Environmental Services, Inc. and American Safety Casualty Insurance Company in the amount of \$312,500.09, together with interest as provided by law, and its costs herein expended.

C.G. MITCHELL CONSTRUCTION, INC.

By  Of Counsel

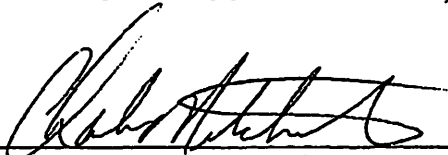
William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
Two James Center, 11th Floor
1021 East Cary Street
P. O. Box 1320
Richmond, Virginia 23218-1320
(804) 643-1991
(804) 783-6507 (fax)

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STATEMENT OF ACCOUNT
(Nations Environmental Services, Inc.)

Total Invoices:	\$479,260.47
Credits:	(\$10,250.00)
Total Payments:	<u>(\$166,760.38)</u>
Balance Due:	\$312,500.09

C.G. MITCHELL CONSTRUCTION, INC.



By: Charles G. Mitchell
President

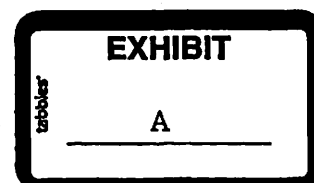
AFFIDAVIT

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Richmond, to-wit:

This 16th day of April, 2002, appeared before me, the undersigned Notary Public, Charles G. Mitchell, who made oath that he is the President of C.G. Mitchell Construction, Inc. and that Nations Environmental Services, Inc. is justly indebted to C.G. Mitchell Construction, Inc. in the sum of \$312,500.09, as described in the above Statement of Account.

My commission expires: 9-30-02


Notary Public



FORM 647 REV. 3/92

LABOR and MATERIAL PAYMENT BOND

Bond # ASB-45-03-0007KNOW ALL MEN BY THESE PRESENTS; that.....
(Name of Subcontractor)

Nations Environmental Services, Inc.

A..... corporation with principal offices located at
10 S. 14th Street, Richmond, VA 23219as Principal (hereinafter "Principal"), and
(Address)
American Safety Casualty Insurance Company
(Name of Surety)as Surety, a corporation with home offices located at
1845 The Exchange, Suite 200, Atlanta, GA 30339(hereinafter "Surety") are held and firmly bound unto TURNER
CONSTRUCTION COMPANY, a New York corporation (hereinafter "Obligee"), in the sum
of
Eight Hundred Twenty Four Thousand Eight Hundred Seventy..... Dollars (\$ 824,870.00),
for the payment whereof the Principal and Surety bind themselves, and their respective heirs,
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.WHEREAS, Principal has by written agreement dated 4/7/00..... entered into subcontract
with Obligee for the performance of ~~demolition of curb to curb including sidewalks, contain~~
~~wall, construction, roofing & flooring of Richmond Centre~~
hereinafter ("the Subcontract Work"), for and at the ~~The Greater Richmond Convention Center Expansion~~
(Name of Project)
(hereinafter the "Project") located at Richmond, Virginia
(Address)in accordance with Drawings and Specifications prepared by
Thompson, Ventulett, Stainback & Associates, Inc. (Architect/Engineer)

which subcontract is by reference made a part hereof, and is hereinafter referred to as the "Subcontract".

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal
shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or
reasonably required for use in the performance of the Subcontract, then this obligation shall be void;
otherwise it shall remain in full force and effect, subject, however, to the following conditions:1) A Claimant is defined as one having a direct contract with the Principal or with a
subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the
performance of the Subcontract, labor and material being construed to include that part of water, gas,
power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the
Subcontract.

6477YBD.DOC

1

EXHIBIT

B

FORM 647 REV. 3/98

2) The above named Principal and Surety hereby jointly and severally agree with the Obligor that every Claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The Obligor shall not be liable for the payment of any costs or expenses of any such suit.

3) No suit or action shall be commenced hereunder by any Claimant:

a) Unless Claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Obligor, or the Surety above named, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligor or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which the Principal ceased performing Subcontract Work, it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanic's liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

FORM 647 REV. 3/98

IN WITNESS WHEREOF, the Principal and Surety have hereunto caused this Bond to be duly executed and acknowledged as set forth below this 9th day of June, 2000

(Impress Corporate Seal)

Nations Environmental Services, Inc., Principal
(Name of Subcontractor / Principal)

ATTEST:

By:

Janet Williams (Officer)

Title: President

(Impress Corporate Seal)

American Safety Casualty Insurance Co., Surety
(Name of Surety)

ATTEST:

Shawn R. Jery

By: 

Herman Glover, III (Attorney-in-Fact)

NOTE: An original Power of Attorney bearing same date as Bond must be attached.



POWER OF ATTORNEY

NUMBER
ASB-45-03-0007

KNOW ALL MEN BY THESE PRESENTS, that American Safety Casualty Insurance Company has made, constituted and appointed, and by these presents does make, constitute and appoints

HERMAN GLOVER III
OF RICHMOND, VIRGINIA

its true and lawful attorney-in-fact, for it and its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertaking and contracts of suretyship to be given to

ALL OBLIGES

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

*****ONE MILLION DOLLARS***(\$1,000,000) DOLLARS*****

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company on the Twenty-Ninth day of January, 1999.

RESOLVED, that the President in conjunction with the Secretary or any Assistant Secretary may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the Company, to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any power of attorney previously granted to such persons.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company:

(i) when signed by the President or any Vice-President and attested and sealed (if a seal be required) by any Secretary or Assistant Secretary or (ii) when signed by the President or any Vice-President or Secretary or Assistant Secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or (iii) when duly executed and sealed (if a seal be required) by one or more attorney-in-fact or agents pursuant to and within the limits of the authority evidenced by the power of attorney issued by the Company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effects as though manually affixed.

IN WITNESS WHEREOF, American Safety Casualty Insurance Company has caused its official seal to be hereunto affixed, and these presents to be signed by its President and attested by its Secretary this Twenty-Ninth day of January, 1999.

Attest:

Fred J. Pinekney
Fred J. Pinekney, Secretary



Lloyd A. Fox
Lloyd A. Fox, President

STATE OF GEORGIA

COUNTY OF COBB

On this Twenty-Ninth day of January, 1999, before me personally came Lloyd A. Fox, to me known, who, being by me duly sworn, did depose and say that he is the President of American Safety Casualty Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



Dorothy J. Giglio
Dorothy J. Giglio, Notary Public

I, the undersigned, Secretary of American Safety Casualty Insurance Company, a Delaware corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and Sealed at the City of Atlanta, in the State of Georgia.

Dated the 9th day of June, 2000



Fred J. Pinekney
Fred J. Pinekney, Secretary

ORIGINALS OF THIS POWER OF ATTORNEY ARE PRINTED WITH RED NUMERICAL NUMBERS.
DUPLICATES SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORIGINAL ONLY WHEN ISSUED IN CONJUNCTION WITH THE ORIGINAL

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building**

C. G. MITCHELL CONSTRUCTION, INC.

Plaintiff,

v.

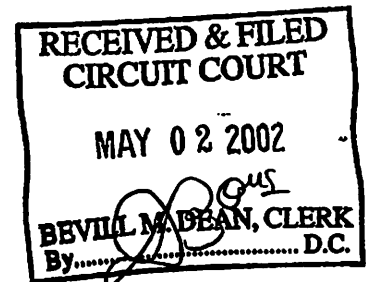
NATIONS ENVIRONMENTAL SERVICES, INC.,

and

**AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,**

Defendants.

Case No. LP 937-1



GROUND OF DEFENSE

Comes now the Defendant, Nations Environmental Services, Inc,
("Defendant") by counsel, and submits the following Grounds of Defense to the Motion
for Judgment (the "Motion") filed in this matter:

1. Defendant admits the allegations of paragraph 1 of the Motion.
2. Defendant admits the allegations of paragraph 2 of the Motion.
3. Defendant admits the allegations of paragraph 3 of the Motion.
4. Defendant denies the allegations of paragraph 4 of the Motion.
5. Defendant denies the allegations of paragraph 5 of the Motion.
6. Defendant denies the allegations of paragraph 6 of the Motion.

7. Defendant denies the allegations of paragraph 7 of the Motion.

8. Defendant denies the allegations of paragraph 8 of the Motion.

9. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations of Paragraph 9 of this Motion and accordingly denies them.

10. Defendant admits the allegations of paragraph 10 of this Motion as they relate to legitimate and reasonable labor and accordingly denies any other allegations of paragraph 10 of this Motion.

RESPONSE TO COUNT I OF THE MOTION FOR JUDGMENT

11. Defendant incorporates by reference its responses to paragraphs 1 through 10 as if fully stated herein.

12. Defendant denies the allegations of paragraph 12 of the Motion.

13. Defendant states that the allegations of paragraph 13 of the Motion contain legal conclusions and therefore do not require a response, however, to the extent that such paragraph contains factual allegations, defendant denies same.

RESPONSE TO COUNT II OF THE MOTION FOR JUDGMENT

14. Defendant incorporates by reference its responses to paragraphs 1 through 13 as if fully stated herein.

15. Defendant states that the allegations of paragraph 15 of the Motion contain legal conclusions and therefore do not require a response, however, to the extent that such paragraph contains factual allegations, defendant denies same.

16. Defendant states that the allegations of paragraph 16 of the Motion contain

legal conclusions and therefore do not require a response, however, to the extent that such paragraph contains factual allegations, defendant denies same.

17. Defendant denies the allegations in paragraph 17 of the Motion.

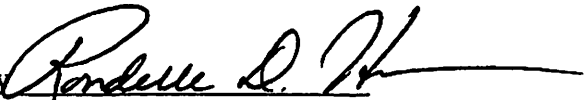
FURTHER ANSWERING, Defendant Nations Environmental Services, Inc.

states as follows:

Defendant will rely on all available defenses at the trial of this matter as may appear from the discovery of the evidence and the evidence presented at trial and reserves the right to amend these grounds of defense.

WHEREFORE, having fully answered, Defendant, Nations Environmental Services, Inc. prays that this matter be dismissed with costs.

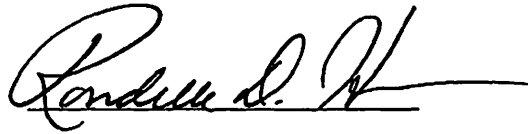
**NATIONS ENVIRONMENTAL
SERVICES INC.**

By 
Counsel

Rondelle D. Herman
Adam N. Harrell, Jr.
Harrell & Chambliss, LLP
707 E. Main Street, Suite 1000
Richmond, Virginia 23219
(804) 643-8401
(804) 648-2707 - facsimile

CERTIFICATE OF SERVICE

On April 30, 2002, I hereby certify that the foregoing Grounds of Defense was sent by first-class mail, postage prepaid to E. Livingston B. Haskell, Esquire, Williams Mullen, Two James Center, 11th Floor, 1021 East Cary Street, P.O. Box 1320, Richmond, Virginia 23218-1320.

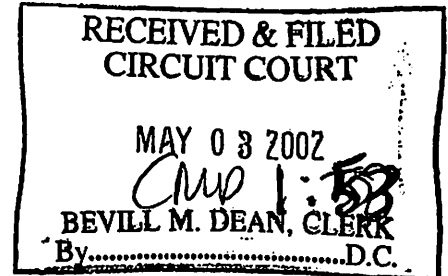
A handwritten signature in dark ink, appearing to read "Randall D. H.", with a horizontal line extending from the end of the signature.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)
)
Plaintiff,)
)
v.)
)
NATIONS ENVIRONMENTAL SERVICES, INC.,)
and AMERICAN SAFETY CASUALTY)
INSURANCE COMPANY,)
)
Defendants.)

Case No. CL02P-937



**MOTION TO STRIKE UNVERIFIED
PLEADING AND FOR ENTRY OF JUDGMENT**

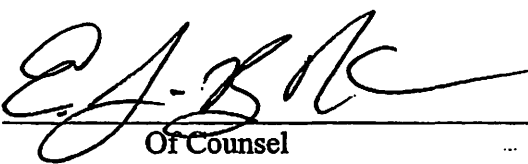
Plaintiff, C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel and pursuant to Virginia Code § 8.01-28 and Rule 1:10 of the Rules of the Supreme Court of Virginia, moves to strike the Grounds of Defense filed herein by Defendant, Nations Environmental Services, Inc. ("Nations"), and for entry of judgment in favor of Mitchell. In support thereof, Mitchell states as follows:

1. Mitchell's Motion for Judgment herein was filed on April 19, 2002. Pursuant to Virginia Code § 8.01-28, Mitchell included as Exhibit A to its Motion for Judgment, a Statement of Account, verified by affidavit, setting forth the amount owed by Nations to Mitchell under the contract at issue.
2. Nations was served with process on April 24, 2002.
3. On or about May 2, 2002, Nations filed its Grounds of Defense.
4. In its Grounds of Defense, Nations fails to deny Mitchell's claim under oath as required by Virginia Code § 8.01-28.

5. This motion to strike is brought within seven (7) days of the filing of Nations' unverified Grounds of Defense as required by Rule 1:10.

WHEREFORE, Plaintiff, C.G. Mitchell Construction, Inc, respectfully requests that Nations Environmental Services, Inc.'s Grounds of Defense be stricken and that judgment be entered in Mitchell's favor against Nations in accordance with its Motion for Judgment.

C.G. MITCHELL CONSTRUCTION, INC.

By 
Of Counsel

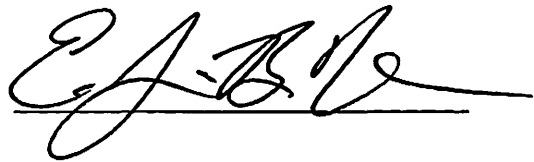
William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May 2002, a copy of the foregoing Motion to Strike Unverified Pleading and for Entry of Judgment was forwarded by first class, postage prepaid mail, to:

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

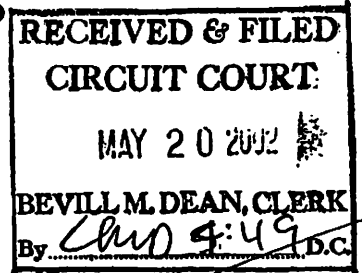
Rondelle D. Herman, Esq.
HARRELL & CHAMBLISS LLP
Eighth & Main Building
Suite 1000
707 East Main Street
Richmond, Virginia 23219
Counsel for Nations Environmental Services, Inc.

A handwritten signature in black ink, appearing to read 'E.R. Jordan', written over a horizontal line.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building



C.G. MITCHELL CONSTRUCTION, INC.)

Plaintiff,)

v.)

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*)

Defendants.)

Civil Case No. LP-937-1

**AMERICAN SAFETY'S GROUNDS OF DEFENSE
AND AFFIRMATIVE DEFENSES**

The defendant American Safety Casualty Insurance Company ("American Safety"), by counsel, as and for its Grounds of Defense and Affirmative Defenses to the Motion for Judgment filed by the plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), and pursuant to the *Rules of the Supreme Court of Virginia* (the "*Rules of Court*") and any and all other applicable authority, states the following.

**A.
GROUNDS OF DEFENSE**

1. American Safety is unable either to admit or deny the allegations in paragraphs numbered 1, 2, 4, 5, 6, 7 of the Motion for Judgment by reason of lack of knowledge and/or information or otherwise and demands for strict proof thereof.

2. American Safety admits the allegations in paragraphs numbered 3 and 9 of the Motion for Judgment.

3. As and for its response to paragraphs numbered 8 and 10 of the Motion for Judgment, Mitchell seeks to have American Safety make legal conclusions and/or conclusions as

to the legal significance of portions of certain documents, which documents speak for themselves, and American Safety neither admits nor denies the allegations contained in such paragraphs.

4. As and for its response to paragraph numbered 11 of the Motion for Judgment, American Safety incorporates its responses to paragraphs numbered 1 through 10.

5. As and for its response to paragraphs numbered 12 and 13 of the Motion for Judgment, American Safety is unable either to admit or deny the allegations in paragraphs numbered 12 and 13 of the Motion for Judgment by reason of lack of knowledge and/or information or otherwise and demands for strict proof thereof.

6. As and for its response to paragraph numbered 14 of the Motion for Judgment, American Safety incorporates its responses herein to paragraphs numbered 1 through 13.

7. As and for its response to paragraphs numbered 15-17 of the Motion for Judgment, Mitchell seeks to have American Safety make legal conclusions and/or conclusions as to the legal significance of portions of certain documents, which documents speak for themselves, and American Safety neither admits nor denies the allegations contained in such paragraphs.

8. American Safety denies that it is liable to Mitchell:

- a. for the matters alleged in the Motion for Judgment; and/or
- b. in the amount for which Mitchell seeks judgment.

9. American Safety denies any allegation contained in the Motion for Judgment which it has not expressly admitted above.

B.
AFFIRMATIVE DEFENSES

In accordance with the provisions of *Rules of Court*, American Safety sets forth the following as affirmative defenses:

10. Mitchell's claim is barred, in whole or in part, if, and to the extent that, Mitchell failed to comply with the contractual or statutory provisions governing the enforcement of its claim, or with the conditions precedent to filing and maintaining an action to enforce its claim, all as set forth in the bond and/or in *Virginia Code* § 2.2-4341, or other applicable law.

11. Mitchell's claim is barred, in whole or in part, if, and to the extent that, Nations paid any contract funds to Mitchell and/or anyone on behalf of any of them and/or to the extent there are legitimate back-charges which Nations may properly assess against Mitchell and/or any person or entity within the contractual chain.

12. Mitchell's claim is barred, in whole or in part, if, and to the extent that, Turner Construction Company paid any contract funds not due, made over-payments, failed to pay contract funds that were due and/or failed to withhold payment of funds which were required to be withheld by contract or by reason of notice given.

13. Mitchell's claim is barred, in whole or in part, if, and to the extent that, Mitchell has waived and/or is estopped from asserting its claim by virtue of Mitchell's own prior breaches of contract and/or misconduct in performance of its work, including, but not limited to, delay, defective performance or supply of material and/or failure to comply with contractual and/or statutory obligations.

14. Mitchell's claim is barred, in whole or in part, if, and to the extent that, the present action was not commenced within the time required by the provisions of any bond and/or applicable statute of limitation.

15. On information and belief, the claim which Mitchell seeks to assert against American Safety is barred and precluded, in whole or in part, by the doctrines of waiver, estoppel and/or failure to mitigate damages.

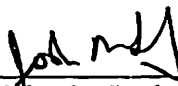
C.
RESERVATION

American Safety reserves the right to file counterclaims, cross-claims, third-party claims and/or to amend its Grounds of Defense and Affirmative Defenses to add additional grounds therefor as it may deem appropriate and/or as it may later become advised.

WHEREFORE, and by reason of the foregoing, American Safety demands that the Court grant judgment in favor of American Safety and for its costs and expenses herein incurred, including the reasonable fees and charges of its attorneys.

AMERICAN SAFETY CASUALTY
INSURANCE COMPANY

By Counsel



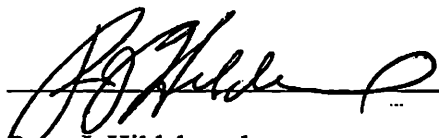
Elaine R. Jordan (VSB No. 27284)
Joshua N. Lief (VSB No. 37094)
Sands Anderson Marks & Miller, P.C.
801 East Main Street
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

AFFIDAVIT

STATE OF GEORGIA
COUNTY OF COBB, to wit:

Peter J. Hildebrand, an authorized representative and agent of American Safety Casualty Insurance Company, being first duly sworn and on oath, appeared this day before the undersigned Notary Public, and stated that, upon information and belief, that the matters in this pleading are true and correct.

Subscribed and sworn this 17th day of May, 2002.


Peter J. Hildebrand

My commission expires: 11/17/03

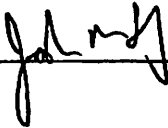

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 20th day of May, 2002, to:

William R. Mauck, Esquire
Williams Mullen
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

Rondelle D. Herman, Esquire
Adam N. Harrell, Jr., Esquire
Harrell & Chambliss, LLP
707 E. Main Street, Suite 1000
Richmond, VA 23219
Counsel for Nations Environmental Services, Inc.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION CO., INC.)

Plaintiff,)

v.)

Civil Case No. LP-937-1)

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*)

Defendants.)

AMERICAN SAFETY CASUALTY INSURANCE COMPANY)

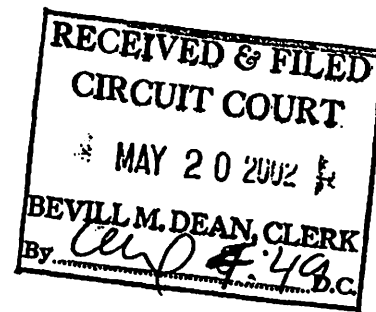
Defendant/Cross-claim plaintiff,)

v.)

NATIONS ENVIRONMENTAL SERVICES, INC.)

Serve: Adam N. Harrell, Jr.
Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802
(County of Henrico)

Defendant/Cross-claim defendant.)



CROSS-CLAIM

The defendant/cross-claim plaintiff American Safety Casualty Insurance Company ("American Safety"), by counsel, as and for its cross-claim against the defendant/cross-claim defendant Nations Environmental Services, Inc. ("Nations") and pursuant to the *Rules of the Supreme Court of Virginia* (the "*Rules of Court*") and any and all other applicable authority, states the following.

1. American Safety is a corporation duly organized and existing under the laws of the State of Delaware and maintains its principal place of business in the State of Georgia and is duly authorized to engage in business as a surety in the Commonwealth of Virginia.

2. Nations is a corporation organized and existing under the laws of the Commonwealth of Virginia and a licensed contractor.

3. In the Motion for Judgment initiating this action (the "Motion for Judgment"), the plaintiff C.G. Mitchell Construction Co., Inc. ("Mitchell") alleges that it has a valid claim against labor and materials payment bond (the "Bond") issued by American Safety and naming Nations as the principal.

4. American Safety denies liability to Mitchell based on the allegations in the Motion for Judgment, or for any other matter whatsoever.

5. Under the terms and conditions of a "General Agreement of Indemnity" (the "Indemnity Agreement") and other applicable law, Nations is obligated to exonerate, hold harmless, indemnify and keep indemnified American Safety from and against any and all claims, demands, liabilities, losses, costs and expenses, including attorneys' fees, by reason of having executed, or procured the execution of, the Bond.

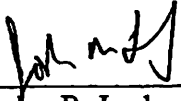
6. Although American Safety denies liability to Mitchell, to the extent that American Safety is held liable to Mitchell, then Nations is liable to and must exonerate, hold harmless, indemnify and keep indemnified American Safety for the same amount, plus attorneys' fees and costs incurred in defense of Mitchell's claim.

WHEREFORE, to the extent that American Safety is held liable to Mitchell, then American Safety demands judgment against Nations in the same amount, or those sums which the law and the evidence may otherwise establish, plus all interest at the pre-judgment rate as

authorized by the *Code of Virginia*, as well as all of its costs, expenses, attorneys' fees and post-judgment interest on the entire sum until paid, all as provided by the terms and conditions of the Indemnity Agreement.

AMERICAN SAFETY CASUALTY
INSURANCE COMPANY

By Counsel



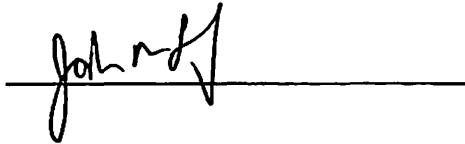
Elaine R. Jordan (VSB No. 27284)
Joshua N. Lief (VSB No. 37094)
Sands Anderson Marks & Miller, P.C.
801 East Main Street
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 20th day of May, 2002, to:

William R. Mauck, Esquire
Williams Mullen
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

Rondelle D. Herman, Esquire
Adam N. Harrell, Jr., Esquire
Harrell & Chambliss, LLP
707 E. Main Street, Suite 1000
Richmond, VA 23219
Counsel for Nations Environmental Services, Inc.

A handwritten signature, appearing to be "John R. Harrell", is written over a horizontal line.

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building**

C. G. MITCHELL CONSTRUCTION, INC.

Plaintiff,

v.

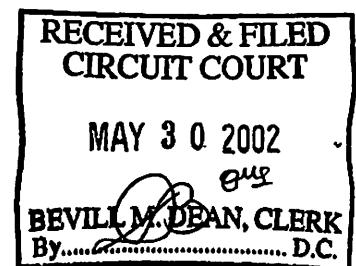
NATIONS ENVIRONMENTAL SERVICES, INC.,

and

**AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,**

Defendants.

Case No. LP 937-1



GROUND'S OF DEFENSE TO CROSS-CLAIM

Comes now the Defendant, Nations Environmental Services, Inc,
("Defendant") by counsel, and submits the following Grounds of Defense to the Cross-
Claim (the "Motion") filed in this matter:

1. Defendant admits the allegations of paragraph 1 of the Motion.
2. Defendant admits the allegations of paragraph 2 of the Motion.
3. Defendant admits the allegations of paragraph 3 of the Motion as the document speaks for itself.
4. Defendant admits the allegations of paragraph 4 of the Motion as the document speaks for itself.

5. Defendant denies the allegations of paragraph 5 of the Motion.

6. Defendant denies the allegations of paragraph 6 of the Motion.

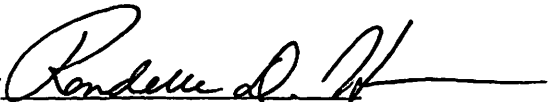
FURTHER ANSWERING, Defendant Nations Environmental Services, Inc.

states as follows:

Defendant will rely on all available defenses at the trial of this matter as may appear from the discovery of the evidence and the evidence presented at trial and reserves the right to amend these grounds of defense.

WHEREFORE, having fully answered, Defendant, Nations Environmental Services, Inc. prays that this matter be dismissed with costs.


**NATIONS ENVIRONMENTAL
SERVICES INC.**

By 
Counsel

Rondelle D. Herman
Adam N. Harrell, Jr.
Harrell & Chambliss, LLP
707 E. Main Street, Suite 1000
Richmond, Virginia 23219
(804) 643-8401
(804) 648-2707 - facsimile

CERTIFICATE OF SERVICE

On May 23, 2002, I hereby certify that the foregoing Grounds of Defense was sent by first-class mail, postage prepaid to Elaine R. Jordan, Sands, Anderson, Marks & Miller, P.C., 801 East Main Street, P. O. Box 1998, Richmond, VA 23218-0998 and Livingston B. Haskell, Esquire, Williams Mullen, Two James Center, 11th Floor, 1021 East Cary Street, P.O. Box 1320, Richmond, Virginia 23218-1320.

A handwritten signature in dark ink, appearing to read "Randall D. H.", with a horizontal line extending from the end of the signature.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.

Plaintiff,

v.

Civil Case No. LP-937-1

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*

Defendants.

AMERICAN SAFETY CASUALTY INSURANCE CO.,

Third-Party Plaintiff

v.

JANET C. WILLIAMS, and

Serve: Janet C. Williams
10 South 14th Street, Suite 103
Richmond, Virginia 23219

CHIJOKE UDE,

Serve: Chijioke Ude
10 South 14th Street, Suite 103
Richmond, Virginia 23219

Third-Party Defendants.

THIRD-PARTY MOTION FOR JUDGMENT

The defendant and third-party plaintiff American Safety Casualty Insurance Company ("American Safety"), by counsel, as and for its Third-Party Motion for Judgment against Janet C. Williams ("Williams") and Chijioke Ude ("Ude"), and pursuant to the *Rules of the Supreme*

Filed in the Clerk's Office this 10 day of June, 2007
Writ Tax \$ 25
Fee 150
L. A. S. 2
C. H. M. F. 2
Lib. Fee 2-3
iffs Fee 184
11:05 A.M. P.M.
Teste: BEVILL M. DEAN, CLERK
[Signature] D.C.

Court of Virginia (the “*Rules of Court*”) and any and all other applicable authority, states the following.

PARTIES

1. The plaintiff C. G. Mitchell Construction, Inc. (“Mitchell”) has filed against American Safety a motion for judgment (the “Motion for Judgment”) instituting this action, a copy of which is attached hereto as Exhibit A.

2. American Safety is a corporation duly organized and existing under the laws of the State of Delaware and maintains its principal place of business in the State of Georgia and is duly authorized to engage in business as a surety in the Commonwealth of Virginia.

3. Williams is, and was at all times pertinent to this proceeding, a citizen of Virginia and president of defendant Nations Environmental Services, Inc. (“Nations”).

4. Ude is, and was at all times pertinent to this proceeding, a citizen of Virginia and vice-president of Nations.

COUNT I

5. In the Motion for Judgment, Mitchell alleges that it has a valid claim against a labor and material payment bond (the “Bond”) issued by American Safety and naming Nations as the principal.

6. American Safety denies liability to Mitchell based on the allegations in the Motion for Judgment and has asserted various affirmative defenses.

7. On May 23, 2000, Nations, Williams and Ude executed an agreement in writing whereby they agreed to jointly and severally exonerate, hold harmless and indemnify American Safety from and against any and all claims, demands, liability, losses, costs and expenses of any kind, including court costs and attorneys’ fees in connection with the Bond (the “Indemnity

Agreement"). A copy of the Indemnity Agreement is attached as Exhibit B and made a part of this Third-Party Motion for Judgment.

8. Under the terms of the Indemnity Agreement, Mitchell's lawsuit against American Safety constitutes an "Event of Default" in the Indemnity Agreement.

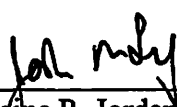
9. Under the terms of the Indemnity Agreement, upon occurrence of an "Event of Default," American Safety was authorized to, among other remedies, file suit to enforce the Indemnity Agreement.

10. Although American Safety denies liability to Mitchell, to the extent that American Safety is held liable to Mitchell, then Nations, Williams and Ude must indemnify American Safety for the same amount, plus attorneys' fees and costs. American Safety has separately filed a cross claim against Nations.

WHEREFORE, American Safety seeks judgment against Williams and Ude (and also under the cross claim against Nations), jointly and severally, in the amount of any judgment entered in this action against American Safety, plus all interest as provided by law, as well as all of its costs, expenses, attorneys' fees and post-judgment interest on the entire sum until paid, all as provided by the terms and conditions of the Indemnity Agreement.

AMERICAN SAFETY CASUALTY
INSURANCE COMPANY

By Counsel

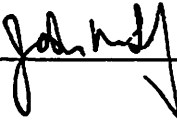

Elaine R. Jordan (VSB No. 27284)
Joshua N. Lief (VSB No. 37094)
Sands Anderson Marks & Miller, P.C.
801 East Main Street
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 6th day of June, 2002, to:

William R. Mauck, Esquire
E. Livingston B. Haskell, Esquire
Williams Mullen
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

Rondelle D. Herman, Esquire
Harrell & Chambliss, LLP
707 E. Main Street, Suite 1000
Richmond, VA 23219
Counsel for Nations Environmental Services, Inc.



A handwritten signature, appearing to be "John D. Mauck", is written over a horizontal line.

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building**

C. G. MITCHELL CONSTRUCTION, INC.

Plaintiff,

v.

NATIONS ENVIRONMENTAL SERVICES, INC.,

and

**AMERICAN SAFETY CASUALTY
INSURANCE COMPANY, et al.**

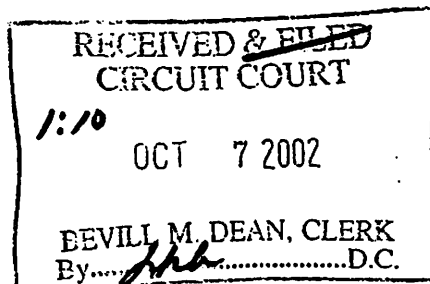
Defendants.

Case No. LP 937-1

MOTION TO WITHDRAW AS COUNSEL

Harrell & Chambliss LLP, counsel for Nations Environmental Services, Inc. ("Nations"), defendant herein (the "Client"), under Virginia Rules of Professional Conduct 1.16, respectfully moves for leave to withdraw as counsel herein, and as cause represents:

1. Under Rule 1.16(c), counsel of record may not withdraw "except by leave of court after compliance with notice requirements."
2. Under Rule 1.16(b), counsel may withdraw from representation under certain specified conditions, to include:



a. The Client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled, and

b. The representation will result in an unreasonable financial burden on the lawyer.

3. Harrell & Chambliss LLP has represented Client in this matter and presently is owed in excess of \$45,000.00 on account of services rendered. Client has ceased all or nearly all of its business activity and lacks the resources to pay counsel for services rendered in the past or for services to be rendered in the future in this matter. As a result, both of the conditions set forth in the withdrawal set out in paragraph 2 about have been met.

4. Client is aware of this Motion and has consented to the entry of an order granting counsel leave to withdraw as evidenced by its endorsement of the sketch order submitted herewith.

WHEREFORE, Harrell & Chambliss LLP, counsel for Nations Environmental Services, Inc., defendant, respectfully moves for leave to withdraw as counsel herein and that the Court enter the order granting that relief attached hereto after such hearing as the Court deems proper.

HARRELL & CHAMBLISS LLP

BY 

CERTIFICATE

On this 1st day of October, I hereby certify that this Motion to Withdraw as Counsel was delivered first class mail, postage prepaid to the following:

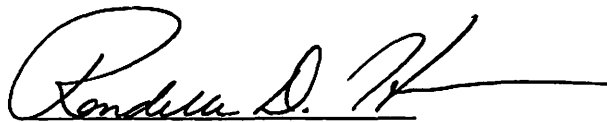
Janet C. Williams,
Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23224

E. Livingston Haskell, Esquire
Williams Mullen
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, Virginia 23218-1320

Joshua N. Lief, Esquire
Sands, Anderson, Marks & Miller, PC
801 East Main Street
P. O. Box 1998
Richmond, Virginia 23218-1398

William R. Baldwin, Esquire
Cherry, Seymour & Hundley, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219

James C. Skilling, Esquire
Butler, Williams, Pantele & Skilling, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219


Rondelle D. Herman

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C. G. MITCHELL CONSTRUCTION, INC.

Plaintiff,

v.

NATIONS ENVIRONMENTAL SERVICES, INC.,

and

AMERICAN SAFETY CASUALTY
INSURANCE COMPANY, et al.

Defendants.

Case No. LP 937-1

ORDER TO WITHDRAW AS COUNSEL

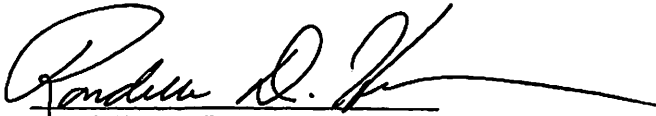
This day came Harrell & Chambliss LLP, counsel for Nations Environmental Services, Inc. (the "Client") and moves this Honorable Court, with the consent of the Client, for leave to withdraw as counsel pursuant to Virginia Rules of Professional Conduct 1.16. And it appearing that such motion should be granted, it is hereby **ORDERED** that Harrell & Chambliss LLP is granted leave to withdraw as counsel and is relieved of its duties as Counsel for the Client.

ENTER:

11/2/03

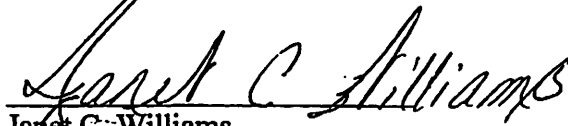
Judge

I ask for this:



Rondelle D. Herman
Harrell & Chambliss LLP
Eighth and Main Building
707 East Main Street
Suite 1000, P. O. Box 518
Richmond, VA 23218-0518

Seen and Agreed:



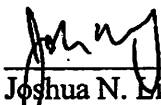
Janet C. Williams,
Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23224
Defendant

Seen and _____:




E. Livingston Haskell, Esquire
Williams Mullen
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, Virginia 23218-1320
Counsel for Plaintiff

Seen and Objected to _____:



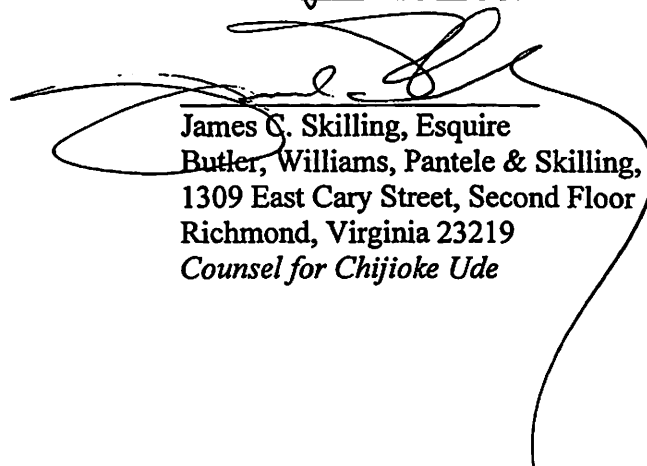
Joshua N. Mef, Esquire
Sands, Anderson, Marks & Miller, PC
801 East Main Street
P. O. Box 1998
Richmond, Virginia 23218-1398
Counsel for American Safety Casualty Insurance Company

Seen and Collected to :



William R. Baldwin, Esquire
Cherry, Seymour & Hundley, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet Williams

Seen and JCS :


James C. Skilling, Esquire
Butler, Williams, Pantele & Skilling, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

VIRGINIA:

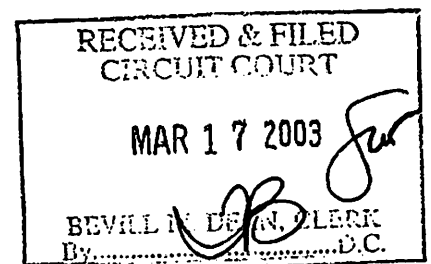
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL02P-937
)	
NATIONS ENVIRONMENTAL)	
SERVICES, INC., <u>et al.</u>)	
)	
Defendants.)	

AMENDED MOTION FOR SANCTIONS AND/OR TO COMPEL

Plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, pursuant to Rule 4:12 of the Rules of the Supreme Court of Virginia, moves for entry of an order (1) sanctioning Defendant Nations Environmental Services, Inc. ("Nations") for the failure of its corporate designee to appear for a Rule 4:5(b)(6) deposition, and/or (2) compelling Nations' corporate designee to appear for a deposition. In support thereof, Mitchell states as follows:

1. On April 19, 2002, Mitchell filed the Motion for Judgment herein naming Nations as a defendant.
2. On or about April 30, 2002, Nations filed a Grounds of Defense. At that time, Nations was represented by Rondelle D. Herman, Esq. and Adam N. Harrell, Jr., Esq. of the firm of Harrell & Chambliss, LLP.
3. On or about October 1, 2002, Ms. Herman, on behalf of Harrell & Chambliss, LLC, filed a Motion to Withdraw as Counsel.



4. On October 29, 2002, Mr. Harrell resigned as Nations' registered agent. Nations has not listed a new registered agent with the State Corporation Commission ("SCC").

5. The SCC terminated Nations' corporate status on December 31, 2002.

6. On January 2, 2003, the Court entered an order (the "Order") granting the Motion to Withdraw as Counsel.

7. Since the entry of the Order, no attorney has noted an appearance for Nations.

8. On February 12, 2003, counsel for Mitchell sent a letter to counsel for the parties and to Janet C. Williams, President of Nations, indicating Mitchell's intention to take the deposition of Nations' corporate designee pursuant to Rule 4:5(b)(6). Mitchell sent the letter to Ms. Williams at the address for Nations set forth on the Order. A copy of the letter is attached hereto as Exhibit A.

9. After receiving no response to its letter, Mitchell issued a Notice of Rule 4:5(b)(6) Deposition for the corporate designee of Nations for March 7, 2003, at 1:00 p.m. (the "Notice"). The Notice was served by mail on counsel for the parties and Nations at its last known address. A copy of the Notice is attached hereto as Exhibit B.

10. Thereafter, Mitchell had the Notice served by private process server on Ms. Williams and Ethel Holmes, Director of Nations. Copies of the Affidavits of Process Server for service on Ms. Williams and Ms. Holmes are attached hereto as Exhibits C and D, respectively.

11. James, C. Skilling, Esq. accepted service of the Notice on behalf of his client, Chijioke Ude, Vice-President of Nations. A copy of the Acceptance of Service is attached hereto as Exhibit E.

12. In violation of the Rules of the Supreme Court of Virginia, no corporate designee from Nations appeared on March 7, 2003 pursuant to the Notice.

13. The failure of a corporate designee from Nations to appear for a deposition pursuant to the Notice prevents Mitchell from obtaining information needed to prosecute its claims in this case.

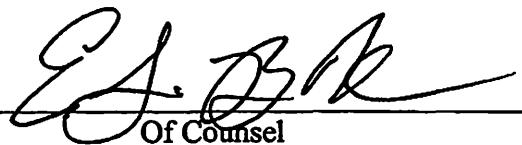
14. Rule 4:12(d) provides, inter alia, that the Court may make such orders as it deems just, including the rendering of judgment by default, for the failure of Nations to have its corporate designee appear for a deposition pursuant to the Notice.

15. Rule 4:12(a) provides, inter alia, that upon motion of a party, the Court may issue an order compelling discovery.

WHEREFORE, Plaintiff C.G. Mitchell Construction, Inc., respectfully requests that this Court enter an order (1) granting one or more of the sanctions set forth in Rule 4:12(b)(2)(A)-(C), and/or compelling the appearance of Nations' corporate designee for a Rule 4:5(b)(6) deposition; (2) awarding to Mitchell its costs and expenses, including attorney's fees, caused by Nations' disobedience of the Rules of Court; and (3) granting such other relief as it may deem proper.

C.G. MITCHELL CONSTRUCTION, INC.

By


Of Counsel

William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

CERTIFICATE OF SERVICE

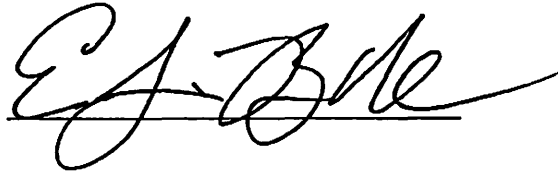
I hereby certify that on the 17th day of March 2003, a copy of the foregoing Amended Motion for Sanctions and/or to Compel was forwarded by first class, postage prepaid mail, to:

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

William R. Baldwin, Esq.
CHERRY, SEYMOUR & HUNDLEY, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet C. Williams

A handwritten signature in black ink, appearing to read "E. J. B. M.", written over a horizontal line.

I:\WMCDLIB\HASKELL\0912352.01



WILLIAMS MULLEN

Direct Dial: 804.783.6927
lhaskell@williamsmullen.com

February 12, 2003

Elaine R. Jordan, Esq.
Sands Anderson Marks & Miller, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998

James C. Skilling, Esq.
Butler, Williams & Skilling, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

William R. Baldwin, Esq.
Cherry, Seymour & Hundley, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219

Re: C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc. and
American Safety Casualty Insurance Company
Case No. CL02P-937

Dear Sir/Madam:

Pursuant to Rule 4:5(b)(6), C.G. Mitchell Construction, Inc. intends to take the deposition of the corporate designee of Nations Environmental Services, Inc. in the above-referenced matter. For purposes of scheduling the deposition, I ask that you contact me with regard to any conflicts that you may have during the week of March 3-7, 2003. Once I receive your responses, I will notice the deposition for a mutually agreeable time.

I look forward to hearing from you shortly.

Sincerely,



E. Livingston B. Haskell

ELBH

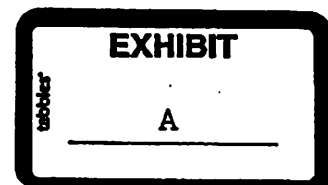
cc: Charles G. Mitchell
William R. Mauck, Jr., Esq.

1:\WMCD\LIB\HASKELL\09031134.01

A Professional Corporation

MICHIGAN • VIRGINIA • WASHINGTON, D.C. • LONDON

Two James Center 1021 East Cary Street (23219) P.O. Box 1320 Richmond, VA 23218-1320 Tel: 804.643.1991 Fax: 804.783.6507
www.williamsmullen.com



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

Case No. CL02P-937

NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

Defendants.)

NOTICE OF RULE 4:5(b)(6) DEPOSITION

PLEASE TAKE NOTICE that on March 7, 2003, at 1:00 p.m., plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, will take the deposition of the corporate designee of defendant Nations Environmental Services, Inc. ("Nations"), at the law offices of Williams Mullen, Two James Center, 17th Floor, 1021 East Cary Street, Richmond, Virginia 23219, pursuant to Rule 4:5(b)(6) of the Rules of the Supreme Court of Virginia. Nations shall designate one or more of its officers, directors, managing agents or other persons to testify on its behalf, before a notary public or other officer authorized to administer oaths, concerning the following matters:

1. The allegations of the Motion for Judgment;
2. The assertions and defenses set forth in Nations' Grounds of Defense;
3. Nations's answers to interrogatories propounded in this case;
4. The formation, structure, finances, officers, employees, operational history, and assets of Nations;
5. The agreement between Nations and Mitchell whereby Mitchell was to perform services, supply equipment and/or provide materials related to the demolition of the Richmond Convention Center in the City of Richmond, Virginia (the "Project");

EXHIBIT

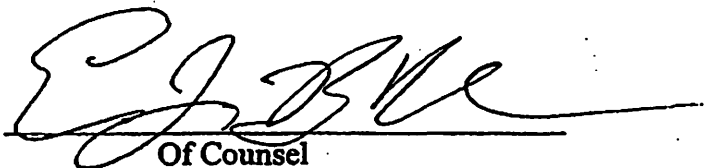
tabbier

B

6. Any contracts between Nations and any person, company, organization, or entity for work, materials or services related to the Project;
7. The payment bond issued by American Safety Casualty Insurance Company ("American Safety") as surety and Nations as principal for the Project;
8. Communications between Nations and Mitchell regarding the Project;
9. Communications between American Safety and Nations regarding Mitchell's claims;
10. Communications between Nations and Truner Construction regarding the Project;
11. Nations's dispute of any invoice issued by Mitchell for the Project;
12. Nations's bid for the Project;
13. Nations's contract with Turner Construction for the Project;
14. The work, services, and equipment supplied to the Project;
15. Any problems, difficulties, or complaints regarding the work, services, and equipment supplied by Nations and/or Mitchell to the Project;
16. The projected and actual costs for Nations for its involvement with the Project;
17. The profit or loss incurred by Nations resulting from its involvement with the Project; and
18. Any other matter reasonably related to Nations's involvement with the Project.

This deposition will be taken for purposes of discovery and any and all permissible uses at trial. The deposition shall continue from day to day and time to time as necessary until completion.

C.G. MITCHELL CONSTRUCTION, INC.

By 
Of Counsel

Affidavit of Private Process Server

Court: Richmond Circuit Court

Case: C.G. Mitchell Construction, Inc. vs. Nations Environmental Services, Inc., et al.
Plaintiff/Petitioner Defendant/Respondent

Case No.: CL02P-937

Service Information: Janet C. Williams, President, Nations Environmental Services, Inc.

20100 College Park Avenue, Ettrick, VA
NAME AND ADDRESS OF PERSON/ENTITY BEING SERVED

Address (If different from above) _____

Document(s): Notice of Deposition

I, D.M. Hester, Sr., being duly sworn, declare that I am a citizen of the United States, over the age of eighteen and not a party to the action, nor otherwise interested in the subject matter in controversy.

Service was completed on 2/25/03, at 2:45 p.m.
Date Time

MANNER OF SERVICE:

- () Personal Service – By delivering a copy of the above described process in writing to him/her or the entity in person.
() Substitute Service (Residence) – Being unable to make personal service and not finding the above mentioned person at his/her usual place of abode by delivering a copy of the said process and giving information of its purport at his/her usual place of residence to: _____ who is a member of his/her family and is the _____ of the mentioned person, other than a temporary sojourner or guest, and who is of the age of 16 years or older.
() Substitute Service (Business) – By leaving, during office hours, copies, at the person/entity being served, leaving same with person apparently in charge thereof: _____

Name/Title

☒ Posted Service – By posting on front door or such other as appears to be the main entrance of the usual place of abode, address listed above (other authorized recipient not found).

ADDRESS VERIFIED, THIS IS A PRIVATE RESIDENCE.

() Non-Service (Not Found) – After due diligence search, careful inquiry and diligent attempts at the address listed above, I have been unable to effect process upon the person/entity being served.

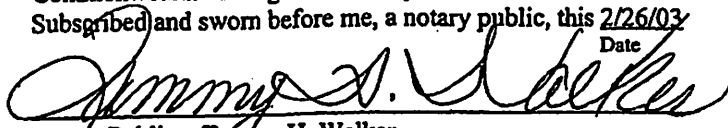
Reason for non-service: _____

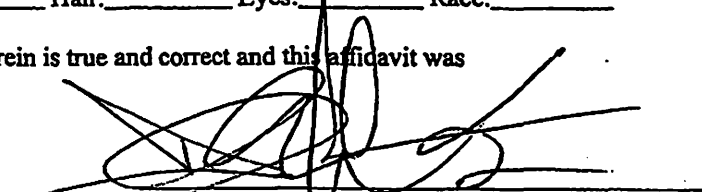
Service Attempts: (1) _____ (2) _____

Description: Age: _____ Sex: _____ Ht: _____ Wt: _____ Hair: _____ Eyes: _____ Race: _____

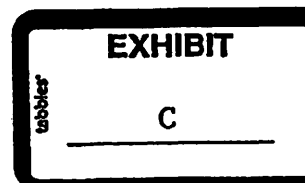
I declare under penalty of perjury that the information contained herein is true and correct and this affidavit was executed on: 2/26/03 at Richmond, Virginia
Date City/State

Commonwealth of Virginia / County of Chesterfield
Subscribed and sworn before me, a notary public, this 2/26/03
Date


Notary Public – Tammy H. Walker
My commission expires: 8/31/03


Signature of Process Server

Hester Investigations & Process Service
4224 Inca Drive, Richmond, VA 23237
(804) 271-0298
DCJS License I.D. # 11-2666



Name of Court: RICHMOND CITY ..CUIT COURT-Case No: V02-P-937C.G. MITCHELL CONSTRUCTION INC

Plaintiff/Petitioner

v.

NATIONS ENVIROMENTAL SERVICES, INC., ET AL

Defendant/Respondent

Serve: ETHEL HOLMES, C/O NATIONS ENVIROMENTAL SERVICES, INCAddress: 1412 DUCK RUN COURT, VIRGINIA BEACH, VA 23455, (RESIDENCE)Document(s): NOTICE OF DEPOSITION

I, CAROL A WINDLEY being duly sworn, declare that I am a citizen of the United States, over the age of eighteen and not a party to this action, nor otherwise interested in subject matter in controversy.

Service was completed on 3/3/03 at 9:20AM
 Date Time

MANNER OF SERVICE

☒ **Personal Service** - By personally delivering a copy of the above described process in writing to him/her or entity in person.

☐ **Substitute Service (Residence)** - Being unable to make personal service and not finding the above mentioned person at his/her usual place of abode by delivering a copy of the said process and giving information of its purport at his/her usual place of residence to: _____ who is a member of his/her family and is the _____ of the above mentioned person, other than a temporary sojourner or guest, and who is of the age of 16 years or older.

☐ **Substitute Service (Business)** - By leaving, during office hours, copies, at the person/entity being served, leaving same with person apparently in charge thereof. _____

Name

Title

☐ **Posted Service** - Being unable to make personal service not finding the above mentioned person at his/her usual place of abode nor any member of his/her family of the age of 18 years or older at said above by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode.

Comments: _____

☐ **() Non-Service (Not Found):** On the _____ day of _____, 2003, at _____, After due diligence search, careful inquiry and diligent attempts at the address listed above, I have been unable to effect process upon the person/entity being served.

Reason for non-service: _____

Description: Age: 30'S, Sex: F, Skin: BLK, Ht. 5'3, Wt. 175, Hair: BLK, Glasses: NO

Attempts: (1) 2/28/03 5:26P (2) 3/1/03 9:30A (3) 3/1/03 2:44P (4) 3/1/03 6:55PM

I declare under penalty of perjury that the information contained herein is true and correct and this affidavit

was executed on: 3/3/03 at Virginia Beach, VIRGINIA
 Date City State

State of Virginia
 City of Virginia Beach


 Signature of Process Server

Subscribed and sworn before me, a notary public, this 3 day of MARCH, 2003.


 Notary Public

My Commission expires: 5-31-05

REF # 03-3985

Quality Process Services, Inc.
 P.O. BOX 61129
 Virginia Beach, VA 23466-1129
 (757) 486-9600

EXHIBIT

D

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,

Plaintiff,

v.

NATIONS ENVIRONMENTAL SERVICES, INC.,
and AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,

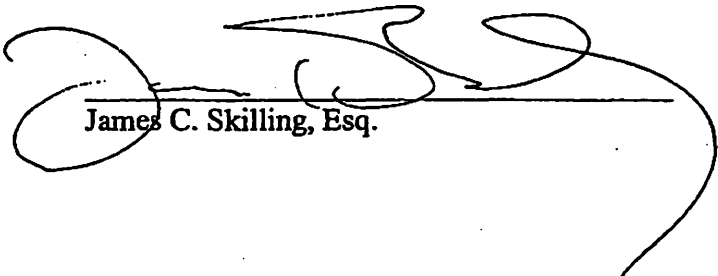
Defendants.

Case No. CL02P-937

ACCEPTANCE OF SERVICE

I, James C. Skilling, Esq., attorney and authorized agent for Chijoke Ude, hereby accept service of the Notice of Rule 4:5(b)(6) Deposition issued by C.G. Mitchell Construction, Inc. for the deposition of the corporate designee of Nations Environmental Services, Inc. in the above-styled matter.

DATE: 3.3.03


James C. Skilling, Esq.

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of Richmond to-wit:

Subscribed and sworn to before me, the undersigned Notary Public, this 3rd day of March, 2003.


Notary Public

My commission expires: June 30, 2005.

EXHIBIT

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E

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)
)
Plaintiff,)
)
v.)
)
NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)
)
Defendants.)

Case No. CL02P-937

ORDER

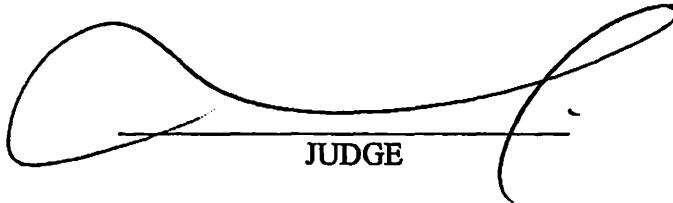
CAME THIS DAY Plaintiff, C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, to argue its Amended Motion for Sanctions and/or to Compel (the "Motion") filed herein.

The Court FINDS that after receiving proper notice, a corporate designee from Nations Environmental Services, Inc. ("Nations") failed to appear for a deposition pursuant to Rule 4:5(b)(6).

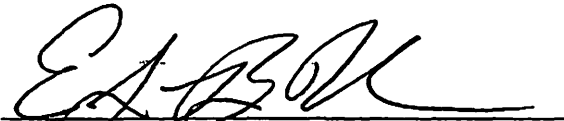
Accordingly, for the reasons stated in the Motion and for other good cause shown, the Motion is hereby GRANTED and it is ADJUDGED, ORDERED and DECREED that a corporate designee of Nations shall appear for a deposition pursuant to Rule 4:5(b)(6) at a time and place designated by Mitchell, but no later than fourteen (14) days from the entry of this Order. It is further ORDERED that Mitchell shall recover from Nations the sum of \$ 250.00 as its reasonable expenses and attorney's fees in obtaining this Order.

The Clerk of this Court shall forward a certified copy of this Order to counsel of record and any unrepresented parties.

ENTER: 31251 03


JUDGE

WE ASK FOR THIS:


William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
P.O. Box 1320
Two James Center, 11th Floor
1021 East Cary Street
Richmond, Virginia 23218-1320
(804) 643-1991; Fax (804) 783-6507
Counsel for C.G. Mitchell Construction, Inc.

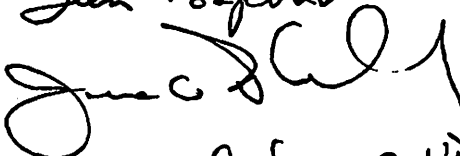
Seen and objected to:

Elaine Jordan

Sandra Anderson, Mark Miller

Counsel for American Safety Caseworking Ins. Co.

Seen & objected to:



Counsel for MR. VDE

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

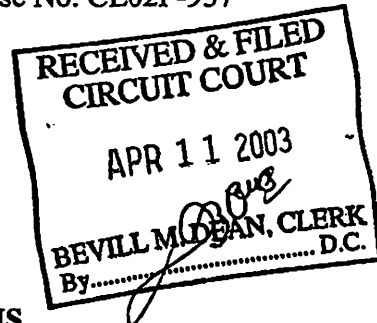
Plaintiff,)

v.)

NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

Defendants.)

Case No. CL02P-937



MOTION FOR SANCTIONS

Plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, pursuant to Rule 4:12(d) of the Rules of the Supreme Court of Virginia, moves for entry of an order sanctioning Defendant Nations Environmental Services, Inc. ("Nations") for its failure to comply with a prior order from this Court. In support thereof, Mitchell states as follows:

1. On March 25, 2003, the Court entered an order (the "Order") granting the Amended Motion for Sanctions and/or to Compel previously filed by Mitchell. A copy of the Order is attached hereto as Exhibit A.

2. Pursuant to the Order, a corporate designee of Nations was to appear for a deposition at a time and place designated by Mitchell.

3. On March 25, 2003, counsel for Mitchell faxed a letter to counsel for the parties indicating Mitchell's intention to take the deposition of Nations' corporate designee pursuant to Rule 4:5(b)(6) and the Order. Williams also sent the letter to Nations at its last known address. A copy of the letter is attached hereto as Exhibit B.

4. After receiving communications from counsel regarding their availability and/or intention to appear for the deposition, Mitchell issued a Notice of Rule 4:5(b)(6) Deposition for the corporate designee of Nations for April 8, 2003, at 9:00 a.m. (the "Notice"). The Notice was served by mail on counsel for the parties and Nations at its last known address. A copy of the Notice is attached hereto as Exhibit C.

5. Thereafter, Mitchell had the Notice served by private process server on Ethel Holmes, Director of Nations. A copy of the Affidavit of Process Server evidencing personal service on Ms. Holmes is attached hereto as Exhibit D.

6. In violation of the Rules of the Supreme Court of Virginia and the Order, no corporate designee from Nations appeared on April 8, 2003 pursuant to the Notice.

7. The failure of a corporate designee from Nations to appear for a deposition pursuant to the Notice prevents Mitchell from obtaining information needed to prosecute its claims in this case.

8. Rule 4:12(d) provides, inter alia, that the Court may make such orders as it deems just, including the rendering of judgment by default, for the failure of Nations to have its corporate designee appear for a deposition pursuant to the Notice and the Order.

WHEREFORE, Plaintiff C.G. Mitchell Construction, Inc., respectfully requests that this Court enter an order (1) granting one or more of the sanctions set forth in Rule 4:12(b)(2)(A)-(C); (2) awarding to Mitchell its costs and expenses, including attorney's fees, caused by Nations' disobedience of the Rules of Court; and (3) granting such other relief as it may deem proper.

C.G. MITCHELL CONSTRUCTION, INC.

By 
Of Counsel

William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

CERTIFICATE OF SERVICE

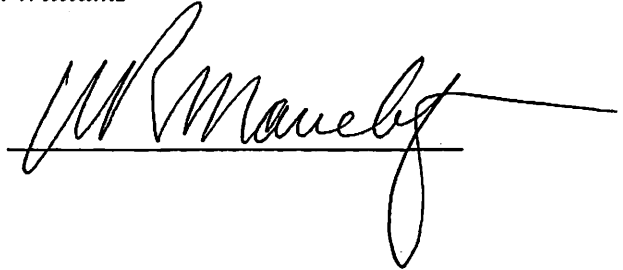
I hereby certify that on the 11th day of April 2003, a copy of the foregoing Motion for Sanctions was forwarded by first class, postage prepaid mail, to:

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

William R. Baldwin, Esq.
CHERRY, SEYMOUR & HUNDLEY, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet C. Williams

A handwritten signature in black ink, appearing to read "J. R. Manely", is written over a horizontal line.

I:\WMC\LIBAL\HASKELL\0909962.02

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

- Plaintiff,)

v.)

Case No. CL02P-937

NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

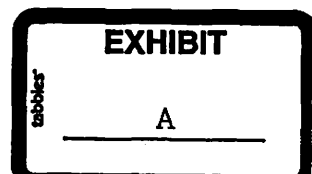
Defendants.)

ORDER

CAME THIS DAY Plaintiff, C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, to argue its Amended Motion for Sanctions and/or to Compel (the "Motion") filed herein.

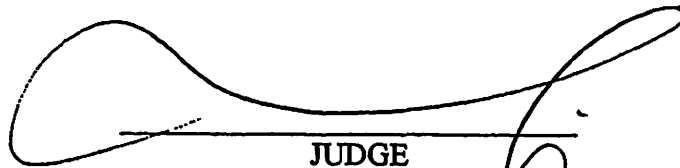
The Court FINDS that after receiving proper notice, a corporate designee from Nations Environmental Services, Inc. ("Nations") failed to appear for a deposition pursuant to Rule 4:5(b)(6).

Accordingly, for the reasons stated in the Motion and for other good cause shown, the Motion is hereby GRANTED and it is ADJUDGED, ORDERED and DECREED that a corporate designee of Nations shall appear for a deposition pursuant to Rule 4:5(b)(6) at a time and place designated by Mitchell, but no later than fourteen (14) days from the entry of this Order. It is further ORDERED that Mitchell shall recover from Nations the sum of \$ 2,500.00 as its reasonable expenses and attorney's fees in obtaining this Order.

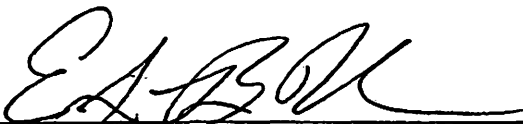


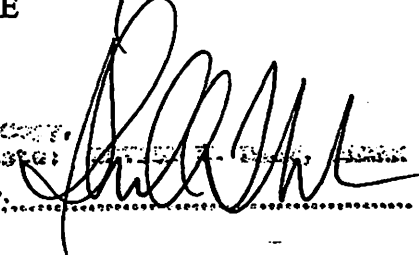
The Clerk of this Court shall forward a certified copy of this Order to counsel of record and any unrepresented parties.

ENTER: 3 1 251 03

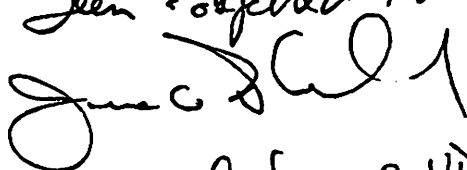

JUDGE

WE ASK FOR THIS:


William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
P.O. Box 1320
Two James Center, 11th Floor
1021 East Cary Street
Richmond, Virginia 23218-1320
(804) 643-1991; Fax (804) 783-6507
Counsel for C.G. Mitchell Construction, Inc.

A COPY
FILED: 3 1 251 03
BY:  D.C.

Seen and objected to:
Elaine Jordan
Sands Anderson Markert Miller
Counsel for American Safety Casework Inc. Co.

Seen & objected to:

Counsel for MR. VDE



WILLIAMS MULLEN

Direct Dial: 804.783.6927
lhaskell@williamsmullen.com

March 25, 2003

BY FACSIMILE (783-7291)

Elaine R. Jordan, Esq.
Sands Anderson Marks & Miller, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998

BY U.S. MAIL

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

BY FACSIMILE (646-6814)

James C. Skilling, Esq.
Butler, Williams & Skilling, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219

BY FACSIMILE (648-5811)

William R. Baldwin, Esq.
Cherry, Seymour & Hundley, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219

Re: C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc. and
American Safety Casualty Insurance Company
Case No. CL02P-937

Dear Sir/Madam:

Pursuant to Rule 4:5(b)(6) and the Order entered by the Court this morning, C.G. Mitchell Construction, Inc. intends to take the deposition of the corporate designee of Nations Environmental Services, Inc. in the above-referenced matter. Please contact me regarding your availability on March 28, 2003 (afternoon), April 4, 2003 (afternoon) and April 8, 2003 (all day).

I look forward to hearing from you shortly.

Sincerely,


E. Livingston B. Haskell

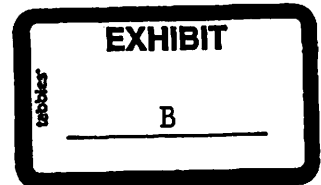
ELBH

cc: Charles G. Mitchell
William R. Mauck, Jr., Esq.

A Professional Corporation

MICHIGAN • VIRGINIA • WASHINGTON, D.C. • LONDON

Two James Center 1021 East Cary Street (23219) P.O. Box 1320 Richmond, VA 23218-1320 Tel: 804.643.1991 Fax: 804.783.6507
www.williamsmullen.com



VIRGINIA:

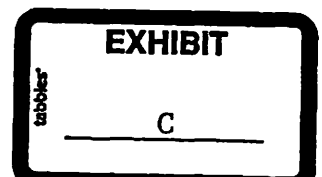
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL02P-937
)	
NATIONS ENVIRONMENTAL)	
SERVICES, INC., <u>et al.</u>)	
)	
Defendants.)	

NOTICE OF RULE 4:5(b)(6) DEPOSITION

PLEASE TAKE NOTICE that on April 8, 2003, at 9:00 a.m., plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, will take the deposition of the corporate designee of defendant Nations Environmental Services, Inc. ("Nations"), at the law offices of Williams Mullen, Two James Center, 17th Floor, 1021 East Cary Street, Richmond, Virginia 23219, pursuant to Rule 4:5(b)(6) of the Rules of the Supreme Court of Virginia. Nations shall designate one or more of its officers, directors, managing agents or other persons to testify on its behalf, before a notary public or other officer authorized to administer oaths, concerning the following matters:

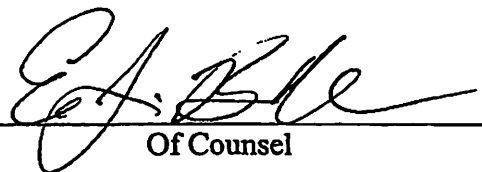
1. The allegations of the Motion for Judgment;
2. The assertions and defenses set forth in Nations' Grounds of Defense;
3. Nations's answers to interrogatories propounded in this case;
4. The formation, structure, finances, officers, employees, operational history, and assets of Nations;
5. The agreement between Nations and Mitchell whereby Mitchell was to perform services, supply equipment and/or provide materials related to the demolition of the Richmond Convention Center in the City of Richmond, Virginia (the "Project");



6. Any contracts between Nations and any person, company, organization, or entity for work, materials or services related to the Project;
7. The payment bond issued by American Safety Casualty Insurance Company ("American Safety") as surety and Nations as principal for the Project;
8. Communications between Nations and Mitchell regarding the Project;
9. Communications between American Safety and Nations regarding Mitchell's claims;
10. Communications between Nations and Truner Construction regarding the Project;
11. Nations's dispute of any invoice issued by Mitchell for the Project;
12. Nations's bid for the Project;
13. Nations's contract with Turner Construction for the Project;
14. The work, services, and equipment supplied to the Project;
15. Any problems, difficulties, or complaints regarding the work, services, and equipment supplied by Nations and/or Mitchell to the Project;
16. The projected and actual costs for Nations for its involvement with the Project;
17. The profit or loss incurred by Nations resulting from its involvement with the Project; and
18. Any other matter reasonably related to Nations's involvement with the Project.

This deposition will be taken for purposes of discovery and any and all permissible uses at trial. The deposition shall continue from day to day and time to time as necessary until completion.

C.G. MITCHELL CONSTRUCTION, INC.

By  Of Counsel

William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March 2003, the original of the foregoing was mailed, first-class postage prepaid, to the following:

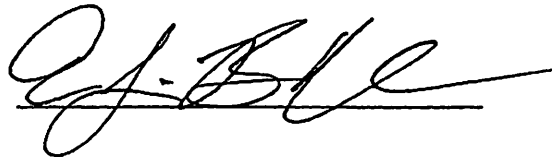
Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

and copies of the foregoing were mailed to the following:

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

William R. Baldwin, Esq.
Cherry, Seymour & Hundley, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet C. Williams



AFFIDAVIT OF PROCESS SERVER

VA CODE 8.01-293, 8.01-296, 8.01-320, 8.01-325

Court: RICHMOND CIRCUIT COURT - LAW

Case No: CL02-P-937

C.G. MITCHELL CONSTRUCTION

Plaintiff/Petitioner

v.

NATIONS ENVIROMENTAL SERVICES, INC., ET AL.

Defendant/Respondent

SERVE: ETHEL HOLMES, DIRECTOR

Address: Nations Enviromental Services, INC. 1412 Duck Run Ct., VA Beach, VA

Document(s): NOTICE OF DEPOSITION

I, MICHAEL A. WINDLEY, being duly sworn, declare that I am a citizen of the United States, over the age of eighteen, competent to testify, and not a party to this action, nor otherwise interested in the subject matter in controversy.

☒ **PERSONAL SERVICE** - On the 1ST day of APRIL 2003, at 3:13PM, By delivering a copy of the above described in writing to him/her or entity in person.

ETHEL HOLMES

Name

DIRECTOR

Title

☐ **SUBSTITUTE SERVICE** - On the _____ day of _____ 2003, at _____, By leaving, during office hours, copies, at the person/entity being served, leaving same with person apparently in charge thereof, and is authorized to accept process.

Name

Title

☐ **Non-Service (Not Found)** - On the _____ day of _____ 2003, at _____, After due diligence search, careful inquiry and diligent attempts at the address listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Moved, Left no forwarding ☐ Unknown at Address ☐ Address does not exist

☐ Other/Explanation: _____

Attempts: 4/1/03, 11:27AM

I solemnly affirm under penalties of perjury that the contents of the foregoing affidavit are true to the best of my knowledge, information, and belief.

Executed On: 4/2/03 at VIRGINIA BEACH, VIRGINIA

Date

City/County

State

State of Virginia

County of Virginia Beach

Signature of Process Server

Subscribed and sworn before me, a notary public, this 2 day of April, 2003.

NOTARY PUBLIC

My Commission expires: 5-31-05

EXHIBIT

D

REF # 03-4137

Quality Process Services, Inc.
P.O. Box 61129
Virginia Beach, VA 23466-1129
(757) 486-9600

VIRGINIA :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

Case No. CL02P-937

NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

Defendants.)

ORDER

CAME THIS DAY Plaintiff, C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, to argue its Motion for Sanctions (the "Motion") filed herein.

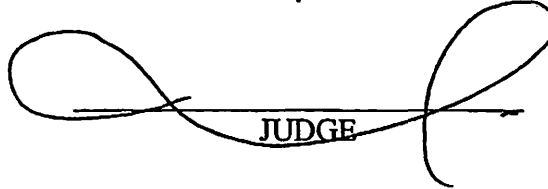
The Court FINDS that Nations Environmental Services, Inc. ("Nations") violated the Order entered by the Court on March 25, 2003 when a corporate designee from Nations failed to appear for a deposition pursuant to Rule 4:5(b)(6) after receiving proper notice.

Accordingly, for the reasons stated in the Motion and for other good cause shown, the Motion is hereby GRANTED and it is ADJUDGED, ORDERED and DECREED that judgment be entered in favor of Mitchell and against Nations Environmental Services, Inc. in the amount of \$312,500.09, together with interest at a rate of nine percent (9%), as provided by law, until paid, plus costs of \$184.00.

It is further ORDERED that Mitchell shall recover from Nations the sum of \$ _____ as its reasonable expenses and attorney's fees in obtaining this Order.

The Clerk of this Court shall forward a certified copy of this Order to counsel of record and any unrepresented parties.

ENTER: 5/20/03

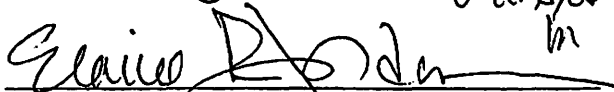

JUDGE

WE ASK FOR THIS:



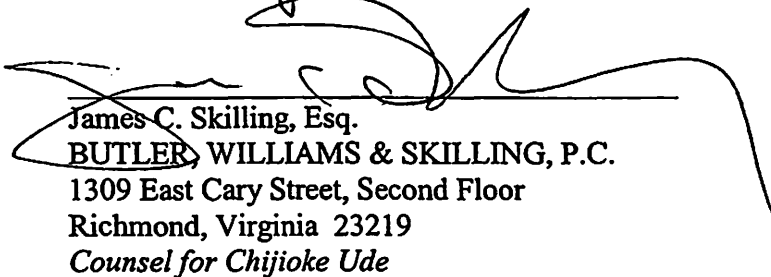
William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
P.O. Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

SEEN AND objected to ^{for granting default judgment} _{and/or without allowing defenses to be raised} ^{and for the amount claimed without evidence}



Elaine R. Jordan, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

SEEN AND objected to :


James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

I:\WMCDLIB\HASKELL\0914854.02

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

Case No. CL02P-937

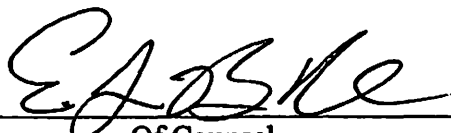
NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

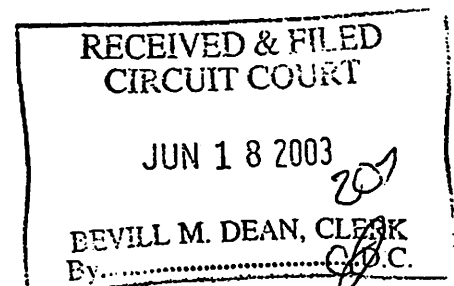
Defendants.)

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST
DEFENDANT AMERICAN SAFETY CASUALTY INSURANCE COMPANY**

Plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, pursuant to Rule 3:18 of the Rules of the Supreme Court of Virginia, hereby moves the Court for entry of summary judgment against defendant American Safety Casualty Insurance Company ("American Safety"). In support thereof, Mitchell submits the accompanying Plaintiff's Memorandum in Support of Motion for Summary Judgment Against Defendant American Safety Casualty Insurance Company. For the reasons expressed therein, there are no material facts genuinely in dispute and Mitchell is entitled to judgment against American Safety as a matter of law.

C.G. MITCHELL CONSTRUCTION, INC.

By 
Of Counsel



William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Tel: 804.643.1991
Fax: 804.783.6507

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June 2003, a copy of the foregoing was delivered
by hand to:

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

and a copy of the foregoing was forwarded by first class, postage prepaid mail, to:

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

William R. Baldwin, Esq.
CHERRY, SEYMOUR & HUNDLEY, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet C. Williams



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

NATIONS ENVIRONMENTAL
SERVICES, INC., et al.)

Defendants.)

Case No. CL02P-937

RECEIVED & FILED
CIRCUIT COURT

JUN 18 2003

BEVILL M. DEAN, CLERK
By.....D.C.

**PLAINTIFF'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT AGAINST
DEFENDANT AMERICAN SAFETY CASUALTY INSURANCE COMPANY**

Plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, submits this memorandum in support of its motion for summary judgement against defendant, American Safety Casualty Insurance Company ("American Safety").

I. STATEMENT OF THE CASE

This is an action to collect sums due for labor, materials and equipment furnished by Mitchell to defendant Nations Environmental Services, Inc. ("Nations") in connection with construction of the Richmond Convention Center Exhibition Hall (the "Project"). Turner Construction Company ("Turner") served as prime contractor for the Project. Nations subcontracted with Turner to provide demolition and related services for the Project. As part of its subcontract with Turner, Nations, as principal, procured a Labor and Material Payment Bond, Bond No. ASB-45-03-0007 (the "Bond"), from American Safety as surety. Turner is the obligee on the Bond. A true copy of the Bond, executed by American Safety, is attached to the Motion

for Judgment herein, and to this Memorandum, as Exhibit A. The Bond describes American Safety's obligation as surety as follows:

THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Subcontract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions: . . .

Exh. A at 1.

Nations subcontracted a portion of its work to Mitchell. Mitchell is therefore a "Claimant" as defined in the Bond.¹ Mitchell brought this action against Nations and American Safety to recover amounts due for work Mitchell furnished to Nations on the Project.

Prior to this case, Mitchell pursued recovery of amounts due for its work on the Project by filing a Complaint against American Safety, but not Nations, in the United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 3:02cv67. Thereafter, American Safety, by its counsel, sent written notice to Mitchell demanding that Mitchell bring suit against American Safety's principal, Nations. A copy of American Safety's written demand is attached hereto as Exhibit B. As a consequence of American Safety's demand, Mitchell dismissed the federal court action against American Safety and filed the instant action against both American Safety and Nations.

The Motion for Judgment alleges, as to Nations, an action on a contract for the payment of money. Pursuant to Va. Code § 8.01-28, Mitchell filed with the Motion for Judgment an affidavit setting forth a statement of Mitchell's account with Nations and stating that to the best

¹ "A Claimant is defined as one having a direct contract with the Principal . . . for labor, material, or both, used or reasonably required for use in the performance of the Subcontract. . . ." Exh. A at 1.

of its belief the amount sued for was justly due.²

Nations chose not to deny Mitchell's verified claim under oath; it filed an unverified Grounds of Defense. Mitchell subsequently filed a Motion to Strike Unverified Pleading and for Entry of Judgment against Nations. After notice and hearing, the Court denied Mitchell's motion allowing Nations' unverified pleading to stand.³

In response to the Motion for Judgment, American Safety, *inter alia*, filed a Cross-Claim against Nations and a Third-Party Motion for Judgment against Janet C. Williams ("Williams") and Chijioke Ude ("Ude"). The Cross-Claim and Third-Party Motion for Judgment collectively seek indemnity from Nations, Williams and Ude pursuant to the terms of a General Agreement of Indemnity dated May 23, 2000 (the "Indemnity Agreement"). A copy of the Indemnity Agreement is attached to American Safety's Third-Party Motion for Judgment as Exhibit B. A copy is also attached to this Memorandum as Exhibit C for the Court's convenience.

Pursuant to the Indemnity Agreement, Nations, Williams and Ude (the "Indemnitors") assigned to American Safety a variety of rights and granted American Safety broad authority in the event of default by Nations. Among other things, the Indemnitors (a) assigned all right, title and interest of Nations in any subcontracts of Nations for work on the Project to American Safety, (b) irrevocably appointed American Safety their attorney-in-fact to exercise all rights assigned to American Safety under the Indemnity Agreement, and (c) agreed that in the "Event of Default," American Safety could defend, adjust, settle or compromise any claim against the Contract or Bond as it saw fit. See various provisions of the Indemnity Agreement, Exh. C.

² The legislative purpose of § 8.01-28 "is to place upon the defendant the burden of filing a *written* pleading under oath, denying his indebtedness, if he wishes to preclude the entry of judgment on the affidavit without further evidence." Snead v. Bendigo, 240 Va. 399, 402, 397 S.E.2d 849, 851 (1990) (emphasis in original).

³ No Order to this effect has been entered by the Court.

By Order dated May 20, 2003, the Court entered judgment against Nations as a sanction for Nations' violating the Court's Order of March 25, 2003, by failing to appear at a duly noticed deposition to be taken of Nations pursuant to Rule 4:5(b)(6) of the Rules of the Supreme Court of Virginia. Mitchell now moves for summary judgment against American Safety on the grounds that American Safety is preclusively bound by the default judgment entered against its principal.

II. ARGUMENT

In general, where a surety's liability for the principal's obligation has been established, the surety is liable for the whole debt. Board of Supervisors of Fairfax County v. Southern Cross Coal Corp., 238 Va. 91, 96, 380 S.W.2d 636, 639 (1989). The surety's liability is measured by that of its principal; the liability of both is primary. Id. A surety defending a suit on its principal's bonded obligation stands in the principal's shoes and may assert only those defenses available to its principal. Id.

A. American Safety Had Notice Of The Action Against Its Principal And An Opportunity to Defend.

The issue addressed by the instant motion, whether a default judgment rendered against a principal is binding upon the principal's surety, is apparently one of first impression in Virginia. See Airlines Reporting Corp. v. Auto-Owners Ins. Co., 53 Va. Cir. 192 (2000) (discussed infra). Other jurisdictions reach differing conclusions on this issue.

A number of courts hold that a default judgment is conclusive upon the surety where the surety has notice of the action against the principal and the opportunity to defend. See, e.g., Drill South, Inc. v. International Fidelity Ins. Co., 234 F.3d 1232 (11th Cir. 2001); Lake County ex rel. Baxley v. Massachusetts Bonding & Ins. Co., 75 F.2d 6, 8 (5th Cir. 1935) ("where it appears that the judgment against the [principal] was obtained in a suit of which the surety had full

knowledge, and which it had full opportunity to defend, the judgment therein is not only evidence, but conclusive evidence, against every defense except that of fraud and collusion obtaining it.”); Kentucky Ins. Guaranty Assoc. v. Dooley Construction Co., 732 S.W.2d 887 (Ky. Ct. App. 1987) (liability of surety on construction contract bond is coextensive of principal and where surety has notice and opportunity to defend, it is bound by default judgment unless procured by collusion or fraud); First Mobile Home Corp. v. Little, 298 So. 2d 676, 682 (Miss. 1974) (surety bound by default judgment against principal when sued in the same suit because had same right to defend as principal); Massachusetts Bonding & Ins. Co. v. Central Fin. Corp., 237 P.2d 1079 (Colo. 1951) (default judgment against principal is conclusive on surety); Home Ins. Co. v. Savage, 103 S.W.2d 900 (Mo. App. 1937).

Other courts hold that where the surety does not know of the suit against its principal and has no opportunity to defend, a default judgment against the principal is *prima facie* evidence that the surety is liable. See, e.g., Heritage Ins. Co. of Amer. v. Foster Elec. Co., 393 So. 2d 28 (Fla. Dist. Ct. App. 1981); Seaboard Surety v. Westwood Lake, Inc., 277 F.2d 397 (5th Cir. 1960); Escambia Chem. Corp. v. Rucker, 184 S.E.2d 31 (Ga. App. 1971).

A minority of courts hold that a default judgment against the principal is inadmissible in an action against the surety. See, e.g., U.S. ex rel Vigilanti v. Pfeiffer-Neumeyer Constr. Corp., 25 F.Supp. 403 (E.D.N.Y. 1938); Gearhart v. Pierce Enters., Inc., 779 P.2d 93 (Nev. 1989).

At least one Virginia circuit court has considered the issue, determined that the principles of collateral estoppel apply to bind the surety, and awarded summary judgment on the issue of liability against the surety on that basis. See Airlines Reporting, Exhibit D hereto, discussed infra.

Mitchell urges this Court to follow what appears to be the emerging trend among the courts on this issue – that a surety is bound by any judgment against its principal, default or otherwise, when the surety had full knowledge of the action against the principal and an opportunity to defend. See Drill South, 234 F.3d at 1235. Drill South is in many respects similar to the case at bar and presents a well-reasoned and detailed analysis of the issue.

In Drill South, Enviro-Group, the prime contractor, contracted with the United States to perform a construction project. Enviro-Group then subcontracted work to Drill South which in turn subcontracted to Miller Drilling. Miller Drilling brought suit for unpaid invoices against Drill South, Enviro-Group and Enviro-Group's payment bond surety, International Fidelity. Drill South, in turn, cross-claimed against Enviro-Group and International Fidelity. Subsequently, Drill South requested and received a default judgment against Enviro-Group. The trial court subsequently concluded that International Fidelity, as surety for Enviro-Group, was bound by the default judgment against Enviro-Group and entered final judgment in favor of Drill South against International Fidelity. International Fidelity appealed.

The Court of Appeals affirmed, determining that "a surety is bound by any judgment against its principal, default or otherwise, when the surety had full knowledge of the action against the principal and an opportunity to defend." Id. The court noted that International Fidelity "had full knowledge of the potential for the default judgment against Enviro-Group and possessed numerous opportunities to defend the ultimate judgment." Id. Furthermore, the court found that the surety "had the legal right to step in and defend Enviro-Group against the default judgment at every stage of the proceedings pursuant to its Agreement of Indemnity with Enviro-Group." Id. The court recognized that under the terms of that agreement, the surety designated Enviro-Group as attorney-in-fact and was given broad rights to defend Enviro-Group as its

surety and attorney-in-fact. Id. The court was unimpressed with the surety's argument that it had no obligation to defend its principal:

We believe the issue is not whether the Agreement of Indemnity imposed an obligation on International Fidelity to defend Enviro-Group, but whether it conferred a right to defend. The law requires only that a surety have notice and an opportunity to defend before it is bound by a judgment against its principal. We believe International Fidelity had this right and opportunity, and simply chose, for whatever reason, not to exercise its right.

Id. Moreover, said the court,

Contrary to International Fidelity's argument, the simple fact that International Fidelity had asserted a cross-claim against Enviro-Group does not affect International Fidelity's "right" to step in and defend Enviro-Group as its attorney-in-fact. We do not believe that there is anything unusual about an insurance company or surety defending a principal or insured against suits by third parties, while simultaneously maintaining an action against the insured or principal, or taking such action under a "reservation of rights."

Id., n. 6.

The case at bar is similar in several respects to Drill South. First, because Mitchell proceeded against both Nations and American Safety in the same action, American Safety obviously had notice of Mitchell's claim against Nations. Indeed, it was American Safety that demanded that Mitchell proceed against Nations. See Exhibit B. That notice required Mitchell to dismiss its federal action against American Safety and proceed against American Safety and Nations in state court.

American Safety also had the opportunity to defend Nations. American Safety was granted broad rights in the Indemnity Agreement to take all manner of actions to defend.⁴ When the deposition of Nations was first noticed, counsel for American Safety, as well as counsel for the individual Indemnitors, Williams and Ude, received timely and proper notice. Apparently, American Safety took no advantage of the broad rights granted to it in the Indemnity Agreement including the right to defend the suit against Nations. Rather than defending its principal, or at a minimum endeavoring to assure that its principal would appear at the deposition, American Safety stood idly by, knowing the whereabouts of Nations' principals (two of whom were represented by counsel), knowing that no one would appear at the deposition on behalf of Nations, and knowing that Mitchell would be frustrated in its effort to obtain discoverable information from Nations. When Nations failed to appear at its deposition, Mitchell was forced to file a motion compelling the deposition of Nations. At the hearing on the motion to compel, counsel for American Safety argued that Mitchell should take the deposition of Williams in her individual capacity to obtain discoverable information and that compelling a designee to appear for the corporate deposition of Nations was unnecessary. The Court disagreed and, by Order entered March 25, 2003, granted Mitchell's motion and ordered that Nations appear within 14 days for a deposition. This Order was obviously known to American Safety, Nations, the individual Indemnitors and their respective counsel.

⁴ The Indemnity Agreement appoints American Safety as the attorney-in-fact for Nations as follows:

[Nations] hereby irrevocably nominate[s], constitute[s], appoint[s], and designate[s] [American Safety] to make, execute, and deliver any and all additional or other assignments, documents, or papers deemed necessary and proper by [American Safety] in order to give . . . the full protection intended to be herein given to [American Safety] under all other provisions of this Agreement. [Nations] hereby ratify[ies], and confirm[s] all acts and actions taken and done by [American Safety] as such attorney-in-fact.

This language is identical to the attorney-in-fact appointment provision relied upon by the court in Drill South, 234 F.2d at 1236, n. 4.

Following entry of the March 25 Order, Mitchell again obtained from counsel for American Safety and the individual Indemnitors mutually agreeable dates for the deposition of Nations. Again, no one appeared at the deposition. Again, American Safety took no action to see that a representative of Nations would attend or to defend Nations at the deposition or to take advantage of any other rights granted to it under the Indemnity Agreement. It again sat idle, surely knowing that Mitchell would be caused to return to the Court to seek appropriate relief for the failure of American Safety's principal to comply with the Court's order and surely knowing that Mitchell would seek a default judgment as one of the sanctions available to the Court under Rule 4:12.

On May 20, 2003, the parties appeared on Mitchell's Motion for Sanctions against Nations for failing to comply with the Court's discovery Order. Counsel for American Safety again argued that Mitchell could pursue discovery through a deposition of the individual Williams but offered no defense of Nations. Consistent with the discretion granted the Court under Rule 4:12, the Court properly awarded default judgment against Nations for the full amount sought in Mitchell's Motion for Judgment, which amount was verified by affidavit and not denied by Nations under oath.

American Safety had every opportunity to defend and/or assume the defense of Nations. It chose not to. It apparently operated under the belief that it need not defend its principal, or stand in the shoes of its principal, or assure that its principal participate in discovery in this action because any default judgment taken against Nations would not be binding upon it. Yet, as the Eleventh Circuit said in Drill South, the surety "should not be permitted to stand back and allow a judgment to be taken setting the amount of its recovery against its principal without

similarly being bound by the judgment.” Id. at 1236. For these reasons, summary judgment against American Safety is warranted as a matter of law.

B. Summary Judgment Against American Safety Is Appropriate Under The Doctrine of Collateral Estoppel.

In order for the doctrine of collateral estoppel to apply, (1) the parties to the two proceedings, or their privies, must be the same, (2) the factual issue sought to be litigated must have been actually litigated in the prior action and must have been essential to the prior judgment, and (3) the prior action must have resulted in a valid, final judgment against the party sought to be precluded in the present action. TransDulles Center, Inc. v. Sharma, 252 Va. 20, 22-23, 472 S.E.2d 274, 275 (1996) (“TransDulles”). Additionally, collateral estoppel requires mutuality, that is, a party is generally prevented from invoking the preclusive force of a judgment unless that party would have been bound had the prior litigation of the issue reached the opposite results. Id.

TransDulles considered whether and under what circumstances a default judgment can be regarded as “actual litigation” of the essential issue in the prior action to establish collateral estoppel. The Supreme Court of Virginia, noting that evidence was presented ex parte at the default judgment hearing, disagreed with defendant’s argument that the “actually litigated” element of collateral estoppel could only be satisfied if the defendant personally appeared and contested the matter against him. Id. at 24, 472 S.E.2d at 276.

In the instant case, the parties, Nations and American Safety, as principal and surety, are the privies for purposes of collateral estoppel. See Southern Cross Coal, 238 Va. at 95, 380 S.E.2d at 639 (“Because principal and surety are in privity, the defenses available to both may be asserted by either.”); see also Nero v. Ferris, 222 Va. 807, 813, 284 S.E.2d 828, 831 (1981) (noting that privity generally involves a party so identical in interest with another that he

represents the same legal right). There is a valid final judgment against Nations and there is mutuality. Most importantly, as explained below, the issues of liability and damages were “actually litigated” against Nations to the extent necessary to establish collateral estoppel.

In Airline Reporting, the Circuit Court of Arlington County (Alper, J.) applied collateral estoppel to award summary judgment against the surety where the principal had suffered a default judgment. Summary judgment was awarded only on the issue of liability, however, as the court determined that the issue of damages had not been “actually litigated.” 53 Va. Cir. at 196. In Airline Reporting, the principal failed to answer the suit against it.

In the case at bar, however, Mitchell proceeded under Va. Code § 8.01-28 by filing a sworn statement of account. Unlike Airline Reporting, Nations appeared and answered Mitchell’s suit. It did not, however, deny Mitchell’s claim under oath as required by statute. See Snead v. Bendigo, 240 Va. 399, 402, 397 S.E.2d 849, 851 (1990).

Moreover, unlike the default judgment awarded in Airline Reporting for failing to answer a suit, Nations suffered a default judgment pursuant to Rule 4:12 as a sanction for failing to provide discovery. Nations actively participated in this litigation until its counsel was permitted to withdraw. See Order to Withdraw as Counsel, entered January 2, 2003. It filed grounds of defense and participated in discovery by answering interrogatories and producing documents. Its president and vice-president remain third-party defendants in this case and are represented by counsel. Under similar circumstances, several federal courts, including the Fourth Circuit Court of Appeals, have held that a default judgment, entered as a discovery sanction, collaterally estopped further litigation of issues previously litigated. See In re Ansari, 113 F.2d 17 (4th Cir. 1997) (following TransDulles); Gober v. Terra & Corp., 100 F.3d 1195, 1205-06 (5th Cir. 1996) (fact that state court default judgment was entered “only after Gober had repeatedly impeded the

course of the proceedings by refusing to comply with discovery and by defying court orders” bolstered court’s conclusion that the bankruptcy court “properly afforded collateral estoppel effect” to the state court default judgment); Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d 1319, 1325 (11th Cir. 1995) (“Where a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently chooses not to do so, and even attempts to frustrate the [proceedings] a district court [may] apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior litigation”); FDIC v. Daily, 47 F.3d 365, 368 (9th Cir. 1995) (“A party who deliberately precludes resolution of factual issues through normal adjudicative procedures may be bound, in subsequent, related proceedings involving the same parties and issues, by a prior judicial determination reached without completion of the usual process of adjudication.”).

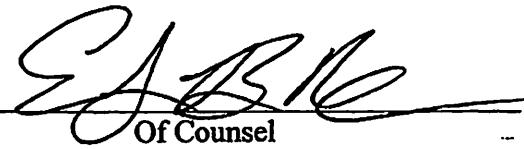
Mitchell had the right to discover from Nations all information relevant to Nations’ unsworn denials of and defenses to Mitchell’s claim. Having posited the denials and defenses, Nations then deprived Mitchell of the right to discover the bases, if any, for such denials and defenses by violating the Court’s order and failing to participate in discovery. The Court was well within its discretion to sanction Nations by awarding summary judgment against it.

American Safety, no doubt, wishes to assert whatever defenses Nations could have asserted, but for its default. That would be unfair to Mitchell, in that it has never been permitted to discover the factual basis for such defenses, and unjustly reward American Safety for standing by while its principal was held in default. The Court should now be reluctant to give American Safety “a second bite at the apple,” see Bush, 62 F.3d at 1324. The issues of liability and damages have indeed been “actually litigated.” Collateral estoppel should bar any further litigation of this matter and the Court should award summary judgment to Mitchell.

CONCLUSION

For all of the foregoing reasons, plaintiff C.G. Mitchell Construction, Inc. respectfully moves for summary judgment against defendant American Safety Casualty Insurance Company in the amount of \$312,500.09, together with interest at the rate of 9% per annum from May 20, 2003 until paid, plus costs of \$184.00.

C.G. MITCHELL CONSTRUCTION, INC.

By 
Of Counsel

William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Tel: 804.643.1991
Fax: 804.783.6507

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June 2003, a copy of the foregoing was delivered
by hand to:

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

and a copy of the foregoing was forwarded by first class, postage prepaid mail, to:

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

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BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

William R. Baldwin, Esq.
CHERRY, SEYMOUR & HUNDLEY, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet C. Williams



938513.01

LABOR and MATERIAL PAYMENT BOND

Bond # ASB-45-03-0007KNOW ALL MEN BY THESE PRESENTS; that.....
(Name of Subcontractor)

Nations Environmental Services, Inc.

A..... corporation with principal offices located at
10 S. 14th Street, Richmond, VA 23219(Address)
as Principal (hereinafter "Principal"), and American Safety Casualty Insurance Company
(Name of Surety)as Surety, a corporation with home offices located at
1845 The Exchange, Suite 200, Atlanta, GA 30339(Address)
(hereinafter "Surety") are held and firmly bound unto TURNER
CONSTRUCTION COMPANY, a New York corporation (hereinafter "Obligee"), in the sum
of
Eight Hundred Twenty Four Thousand Eight Hundred Dollars (\$ 824,870.00),
for the payment whereof the Principal and Surety bind themselves, and their respective heirs,
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.WHEREAS, Principal has by written agreement dated 4/7/00 entered into subcontract
with Obligee for the performance of demolition of curb to curb including sidewalks, curbside
wall, construction, roofing & flooring of Richmond Centre (Subcontract Work) Exhibition Hall,
hereinafter ("the Subcontract Work"), for and at the The Greater Richmond Convention Center Expansion
(Name of Project)
(hereinafter the "Project") located at Richmond, Virginia
(Address)in accordance with Drawings and Specifications prepared by
Thompson, Ventulett, Stainback & Associates, Inc. (Architect/Engineer)

which subcontract is by reference made a part hereof, and is hereinafter referred to as the "Subcontract".

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal
shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or
reasonably required for use in the performance of the Subcontract, then this obligation shall be void;
otherwise it shall remain in full force and effect, subject, however, to the following conditions:1) A Claimant is defined as one having a direct contract with the Principal or with a
subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the
performance of the Subcontract, labor and material being construed to include that part of water, gas,
power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the
Subcontract.

6477YBD.DOC

RECEIVED & FILED
CIRCUIT COURT

JUN 18 2003

BEVILL M. DEAN, CLERK
By..... D.C.

EXHIBIT

A

2) The above named Principal and Surety hereby jointly and severally agree with the Obligor that every Claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The Obligor shall not be liable for the payment of any costs or expenses of any such suit.

3) No suit or action shall be commenced hereunder by any Claimant:

a) Unless Claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Obligor, or the Surety above named, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligor or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which the Principal ceased performing Subcontract Work, it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanic's liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

FORM 647 REV. 3/98

IN WITNESS WHEREOF, the Principal and Surety have hereunto caused this Bond to be duly executed and acknowledged as set forth below this 9th day of June, 2000

(Impress Corporate Seal)

Nations Environmental Services, Inc. Principal
(Name of Subcontractor / Principal)

ATTEST:

By _____

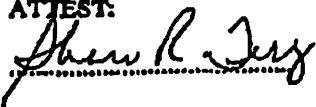
Janet Williams (Officer)

Title President

(Impress Corporate Seal)

American Safety Casualty Insurance Co. Surety
(Name of Surety)

ATTEST:



By _____


Herman Glover, III (Attorney-in-Fact)

NOTE: An original Power of Attorney bearing same date as Bond must be attached.

477Y2D.DOC

3



NUMBER
ASB-45-03-0007

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that American Safety Casualty Insurance Company has made, constituted and appointed, and by these presents does make, constitute and appoints

**HERMAN GLOYER III
OF RICHMOND, VIRGINIA**

its true and lawful attorney-in-fact, for it and its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertaking and contracts of suretyship to be given to

ALL OBLIGES

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

*****ONE MILLION DOLLARS***(\$1,000,000) DOLLARS*****

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company on the Twenty-Ninth day of January, 1999.

RESOLVED, that the President in conjunction with the Secretary or any Assistant Secretary may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the Company, to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any power of attorney previously granted to such persons.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company:

(i) when signed by the President or any Vice-President and attested and sealed (if a seal be required) by any Secretary or Assistant Secretary or (ii) when signed by the President or any Vice-President or Secretary or Assistant Secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or (iii) when duly executed and sealed (if a seal be required) by one or more attorney-in-fact or agents pursuant to and within the limits of the authority evidenced by the power of attorney issued by the Company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effects as though manually affixed.

IN WITNESS WHEREOF, American Safety Casualty Insurance Company has caused its official seal to be hereunto affixed, and these presents to be signed by its President and attested by its Secretary this Twenty-Ninth day of January, 1999.

Attest:

Fred J. Pinckney
Fred J. Pinckney, Secretary



Lloyd A. Fox
Lloyd A. Fox, President

STATE OF GEORGIA

COUNTY OF COBB

On this Twenty-Ninth day of January, 1999, before me personally came Lloyd A. Fox, to me known, who, being by me duly sworn, did depose and say that he is the President of American Safety Casualty Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



Dorothy J. Giglio
Dorothy J. Giglio, Notary Public

I, the undersigned, Secretary of American Safety Casualty Insurance Company, a Delaware corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and Sealed at the City of Atlanta, in the State of Georgia.



Dated the 9th day of June, 2000

Fred J. Pinckney
Fred J. Pinckney, Secretary

ORIGINALS OF THIS POWER OF ATTORNEY ARE PRINTED WITH RED NUMERICAL NUMBERS.
DUPLICATES SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORIGINAL ONLY WHEN ISSUED IN CONJUNCTION WITH THE ORIGINAL

**SANDS ANDERSON
MARKS & MILLER**
A PROFESSIONAL CORPORATION

*RICHMOND • RADFORD • RESEARCH TRIANGLE
FREDERICKSBURG*

Joshua N. Lief
Attorney

Direct: (804) 783-7273
E-mail: JLief@SandsAnderson.com

801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Main: (804) 648-1636
Fax: (804) 783-7291

March 29, 2002

BY FAX AND REGULAR MAIL

William R. Mauck, Jr., Esquire
Williams Mullen
Two James Center, 11th Floor
1021 East Cary Street
PO Box 1320
Richmond, VA 23218-1320

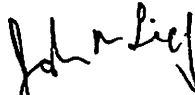
Re: Notice Pursuant to Va. Code § 49-25

Dear Mr. Mauck:

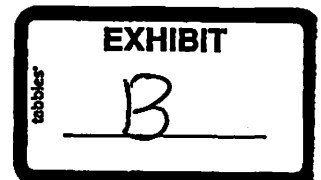
As you know, you have brought suit on behalf of C.G. Mitchell Construction, Inc. ("Mitchell") against American Safety Casualty Insurance Co. ("American Safety") as surety on a labor and material payment bond. We hereby notify you, as counsel to Mitchell, that pursuant to Va. Code § 49-25, American Safety requires that you institute suit against the principal to the bond, Nations Environmental Services, Inc. You are hereby notified that failure to act will result in the loss of the surety as security for the debt in accordance with Va. Code § 49-26.

Please let me know if you have any questions.

Very truly yours,


Joshua N. Lief

cc: W. R. Baldwin, III, Esquire
Elaine R. Jordan, Esquire
Douglas P. Rucker, Jr., Esquire



CORPORATE RESOLUTION AND CERTIFICATION

WHEREAS, the President and Vice-President of Nations Environmental Services, Inc. have executed a certain Indemnity Agreement in favor of American Safety Casualty Insurance Company, dated April 15, 1999, protecting it in connection with its assuming suretyship as more fully described therein, said Indemnity Agreement having been read at this meeting and fully considered and approved by the directors present; and

WHEREAS, the said Indemnity Agreement has been accepted by American Safety Casualty Insurance Company, upon the warranty of said officers that this Corporation has such an interest in said suretyship as to empower it to make said Indemnity Agreement;

NOW THEREFORE, BE IT RESOLVED, that the acts of the said officers in executing the said Indemnity Agreement on behalf of this Corporation be, and they are hereby, unanimously ratified and confirmed as the acts of this Corporation;

BE IT FURTHER RESOLVED, by the aforesaid warranty, that this Corporation has such an interest in said suretyship as to empower it to make said Indemnity Agreement, and it is hereby ratified and confirmed as a warranty of this Corporation;

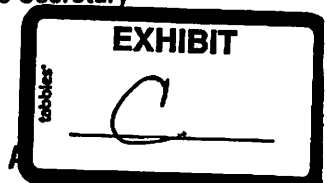
BE IT FURTHER RESOLVED, that said officers are empowered on behalf of the Corporation to do such acts and execute such other documents as may be necessary to protect American Safety Casualty Insurance Company, and induce it to assume said suretyship, including but not limited to the execution of a Collateral Agreement and the assignment of such collateral to American Safety Casualty Insurance Company as American Safety Casualty Insurance Company may require, and such acts are hereby unanimously ratified and confirmed as the acts of this Corporation.

I hereby certify that I am the Corporate Secretary, of Nations Environmental Services, Inc., and that the above resolution is a true and accurate copy of a resolution unanimously adopted by the Board of Directors at a meeting duly called held on the 22 day of May, 192000, in the office of said Corporation, at which meeting a quorum of the Directors were present.

IN WITNESS WHEREOF, I have hereunto set my hand and the corporate seal of the Corporation, this 23 day of May, 192000.

[AFFIX CORPORATE SEAL]

John C. Williams
Corporate Secretary



GENERAL AGREEMENT OF INDEMNITY

THIS General Agreement of Indemnity (hereinafter called Agreement), made and entered into this 28RD day of May, 2000 by the undersigned as: **CONTRACTOR AND INDEMNITORS**, and American Safety Casualty Insurance Company, as **SURETY**,
WHEREAS, the CONTRACTOR, in the performance of contracts and the fulfillment of obligations generally, whether solely in its own name or as co-venturer with others, may be required, or be required, to give or procure certain BONDS; and
WHEREAS, at the request of the CONTRACTOR and the INDEMNITORS and upon the express understanding that this Agreement should be given, the SURETY has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said BONDS on behalf of the CONTRACTOR; and
WHEREAS, the INDEMNITORS have a substantial, material or beneficial interest in the obtaining, renewing, continuing or substituting of the BONDS; and
WHEREAS, SURETY has relied upon and will continue to rely upon the representations of CONTRACTOR and INDEMNITORS as to their character, identity, control, beneficial ownership, financial condition and existence in executing or procuring BONDS;
NOW THEREFORE, in consideration of the above stated premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by CONTRACTOR and each of the INDEMNITORS, the CONTRACTOR and INDEMNITORS for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, hereby covenant and agree with the SURETY, its successors and assigns, as follows:

DEFINITIONS. Wherever they appear in this Agreement, the following terms are defined as set forth in this section: A. **BOND** means an undertaking, a contract of suretyship, guaranty or indemnity, an agreement, consent or letter to provide such an undertaking or contract, before or after the date of this Agreement, and the construction, extension, alteration, renewal or substitution of such an undertaking, contract, agreement, consent or letter, whether with the same or different penalties and conditions, secured, provided, or procured by the SURETY. B. **CONTRACT** means an agreement between CONTRACTOR and a third party, together with all associated documents including but not limited to general and special conditions, specifications and drawings) for which SURETY executes or procures the execution of a BOND. C. **CONTRACTOR** means any one, combination of, or all of the named individuals, firms or corporations set forth below as CONTRACTOR including any of their present or future subsidiary corporations and any corporations or other persons or entities with which they may now or hereafter be controlled or affiliated, or their successors in interest, whether alone or joint venture with others not named herein, including any such entity for which SURETY executes BONDS. D. **INDEMNITOR** means any one, combination of, or all of the named individuals, firms or corporations set forth below as INDEMNITOR(S) including any of their present or future subsidiary corporations and any corporations or other persons or entities with which they may now or hereafter be controlled or affiliated, or their successors in interest, whether alone or in joint venture with others not named herein, including any such person or entity who hereafter agrees to become an INDEMNITOR under this Agreement. E. **SURETY** means AMERICAN SAFETY CASUALTY INSURANCE COMPANY, its reinsurers, and any other person(s) or entity(ies) which the SURETY may procure to act as a SURETY or as a co-surety of any BOND, or any other person or entity who executes a BOND at the request of the SURETY, and the successors, assigns, affiliates, associates and subsidiary companies of any of the foregoing. F. **EVENT OF DEFAULT** means any one or more of the following: (i) Any declaration of default by an obligee on any BOND, or any actual or alleged abandonment, forfeiture, or breach of, or surety, refusal or inability to perform, any CONTRACT or obligation contained in a BOND, or the filing of any suit or commencement of any action or proceeding by a creditor or obligee of an obligation against CONTRACTOR or any INDEMNITOR, or any suspension, revocation or other material adverse change in the status of any license, permit or other right or permission to bid or perform work of CONTRACTOR with any applicable licensing board or agency; (ii) Any actual or alleged failure, delay, refusal or inability of the CONTRACTOR to pay claims, bills or other indebtedness incurred in, or in connection with, the performance of any CONTRACT; (iii) The actual or alleged failure to perform, or comply with, any of the terms, covenants, conditions or obligations in this Agreement, or of any BOND or obligation issued by SURETY pursuant to this Agreement, including a failure to pay or discharge, when due, any indebtedness or other obligation of the CONTRACTOR to the SURETY, and the failure of CONTRACTOR or any INDEMNITOR to promptly furnish accurate, complete and up-to-date financial statements or other information upon request of SURETY, or the furnishing of a financial statement or other information by CONTRACTOR or any INDEMNITOR which contains any material misstatement or misrepresentation, or which fails to contain information necessary for an accurate presentation of CONTRACTOR'S or any INDEMNITOR'S financial condition; (iv) an assignment by the CONTRACTOR or any INDEMNITOR for the benefit of creditors, the appointment, or an application by the CONTRACTOR or any INDEMNITOR for the appointment of a receiver or trustee for the CONTRACTOR or any INDEMNITOR or for property, whether insolvent or not, or an application by the CONTRACTOR or any INDEMNITOR for reorganization or arrangement under any bankruptcy laws of the United States or of any State, possession or territory of the United States, or if proceedings for the appointment of a receiver or trustee, for liquidation of, for the reorganization or arrangement of the CONTRACTOR or any INDEMNITOR shall be initiated by other persons; (v) If the CONTRACTOR or any INDEMNITOR is an individual, the CONTRACTOR'S INDEMNITOR'S dying, absconding, disappearing, incompetency, being convicted of a felony or imprisoned, becoming a fugitive from justice, or marrying (without the spouse coming an INDEMNITOR); or, if the CONTRACTOR or INDEMNITOR is any other type of entity, any change or threat of change in the character, identity, control, management, management, beneficial ownership or existence of the CONTRACTOR or INDEMNITOR, any discontinuance or cessation of operations, being convicted of a felony, being debarred from bidding on any federal, state or local governmental projects, any material adverse change in the financial condition of the CONTRACTOR or any INDEMNITOR or any transfer of assets, by CONTRACTOR or INDEMNITOR, not in the ordinary course of business to a person or entity not an INDEMNITOR; (vi) Any recording or the exercise of any rights by any individual or entity, including CONTRACTOR or any INDEMNITOR, which deprives or impairs CONTRACTOR'S use of its plant, machinery, equipment, plans, drawings, tools, supplies or materials; (vii) The happening of any event other than those specified in (i) through (vi) which, in the SURETY'S sole non, may expose SURETY to loss, cost or expense.

INDEMNITY AND HOLD HARMLESS. A. The CONTRACTOR and INDEMNITORS, jointly and severally, shall exonerate, hold harmless, indemnify and keep indemnified the SURETY from and against any and all claims, demands, liability, losses, costs, and expenses of whatsoever kind or nature, including court costs, attorneys' fees, adjusting costs, investigative costs, and from and against any and all other such losses and expenses which the SURETY may sustain, suffer or incur: (i) By reason of having executed or procured the execution of BONDS; (ii) By reason of the failure of the CONTRACTOR or INDEMNITORS to perform or comply with any of the covenants or conditions of this Agreement, including but not limited to the payment of all premiums due for BONDS; (iii) In enforcing any of the covenants, obligations or conditions of this Agreement; (iv) In carrying out an investigation, obtaining or attempting to obtain a release under or exoneration of a BOND or of CONTRACTOR or SURETY, or recovering or attempting to recover or expense paid or unpaid bond premium in connection with this Agreement or any BOND; (v) In prosecuting or defending any action or claim in connection with any BOND, or other SURETY at its sole option elects to employ its own counsel, or permits or requires CONTRACTOR and INDEMNITORS to make arrangements for the SURETY'S legal representation; (vi) By reason of the occurrence of any Event of Default by CONTRACTOR or any INDEMNITOR; (vii) As a result of liability incurred or amounts paid in satisfaction or settlement of any or all claims, demands, damages, costs, losses, suits, proceedings or judgments relating to the CONTRACTOR'S non-performance of an action, CONTRACT, or any other matter under or covered by a BOND; (viii) As a result of liability incurred or expenses paid in connection with claims, suits or judgments relating to an obligation, CONTRACT, or a BOND, including, without limitation, attorney's fees and all legal expenses, including in-house attorney's fees, adjusting fees or investigative fees, and all fees and costs for investigation, accounting, adjusting, engineering or other professional services related to the adjustment of claims and losses and necessary or appropriate in the sole discretion of SURETY. B. Payment shall be made to the SURETY by the CONTRACTOR and INDEMNITORS as soon as liability is or is asserted against the SURETY, or upon the demand of SURETY, whether or not the SURETY shall have made any payment therefor. Such payment shall be either in full to the amount of any reserve set by the SURETY, or equal to such amount as the SURETY, in its sole judgment, shall deem sufficient to protect it from loss. The SURETY shall have the right to use the payment, or any part thereof, in payment or settlement of any liability, loss, cost or expense for which CONTRACTOR or the INDEMNITORS would be obligated to indemnify the SURETY under the terms of this Agreement. C. In the event of any payment by the SURETY, the CONTRACTOR and INDEMNITORS further agree that in any accounting between the SURETY and the CONTRACTOR, or between the SURETY and the INDEMNITORS, or either or both of them, SURETY shall be entitled to reimbursement for any and all disbursements made by it in good faith in and about the matters contemplated by this Agreement under the belief it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity, or deficiency existed; and, that the vouchers or other evidence of any such payments made by the SURETY shall be prima facie evidence of the fact and amount of the liability of CONTRACTOR and INDEMNITORS to the SURETY. In addition to the payments to be made to SURETY as set forth above, CONTRACTOR and INDEMNITORS agree to pay to SURETY interest on all disbursements made by SURETY at the maximum rate permitted by law calculated from the date of each disbursement.

ASSIGNMENT. A. The CONTRACTOR, and the INDEMNITORS as their interests may appear in the following subsections of this paragraph, hereby assign, transfer, pledge and set over to SURETY effective as of the effective date of each BOND executed by SURETY, the rights and property described hereafter, as collateral, to secure any and all obligations in this Agreement and any other indebtedness or liabilities of the CONTRACTOR or INDEMNITORS to the SURETY, whether heretofore or hereafter incurred: (i) All rights of the CONTRACTOR or INDEMNITORS in, and arising in any manner out of any CONTRACT; (ii) All the right, title and interest of the CONTRACTOR or INDEMNITORS in and to all machinery, equipment, plant, tools, inventory and materials which are now, or may hereafter be utilized in connection with any CONTRACT, regardless of whether they are located at a construction site, in storage elsewhere, or in transit anywhere; (iii) All the right, title and interest of the CONTRACTOR or INDEMNITOR in and to all subcontracts and purchase orders let or to be let in connection with any CONTRACT and in and to all surety bonds supporting such subcontracts or lease orders; (iv) All the right, title and interest of the CONTRACTOR or INDEMNITORS in and to any actions, causes of action, claims or demands whatsoever which the CONTRACTOR or INDEMNITORS may have or acquire against any party to any CONTRACT, or actions, causes of action, claims or demands arising out of or in connection with any CONTRACT including but not limited to those against obligees on bonds, design professionals, general contractors, subcontractors, laborers or materialmen or any person hiring or agreeing to furnish or supply labor, material, supplies, machinery, tools, inventory or other equipment in connection with or on account of any CONTRACT and its surety or sureties of any obligee, general contractor, subcontractor, laborer, or materialman; (v) All monies retained and any and all monies that may be due or which may hereafter become due on account of any CONTRACT, bonded or unbonded, or on any promissory note or account receivable; (vi) Any and all right, title, interest in, or use of patent, copyright or trade secret which is or may be necessary for the completion of any bonded work; (vii) All monies due or to become due to CONTRACTOR or INDEMNITORS on any policy of insurance relating to any claims arising out of the performance of any CONTRACT, including, but not limited to, claims under builders risk, v. fire, employee dishonesty or workers compensation insurance policies, including premium refunds; and (viii) Any and all undistributed loan funds, deposits or interest accounts to which CONTRACTOR or INDEMNITORS may be entitled, and any and all collateral for and undertakings given by the CONTRACTOR or INDEMNITORS in connection with any CONTRACT or obligation. B. SURETY shall have the full and exclusive right (but not the obligation), in its name or in the name of the CONTRACTOR or INDEMNITORS, to prosecute, compromise, release or otherwise resolve any of the claims, causes of action or other rights assigned to SURETY, upon such terms as SURETY, in its discretion shall deem appropriate. C. The CONTRACTOR and INDEMNITORS hereby irrevocably nominate, constitute, appoint and designate the SURETY, or its agents, through its or their authorized representative(s), as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the CONTRACTOR and INDEMNITORS assigned, transferred and set over to SURETY in this Agreement, and in the name of the CONTRACTOR and INDEMNITORS to make, execute, and deliver any additional or other assignments, documents, papers, checks, drafts, warrants or other instruments made or issued in payment of any obligation to which SURETY has the receipt of payment pursuant to this Agreement deemed necessary and proper by the SURETY in order to give full effect not only to the intent and meaning of the terms made in this Agreement, but also to the full protection intended to be herein given to the SURETY under all other provisions of this Agreement. The CONTRACTOR and INDEMNITORS hereby ratify and confirm all acts and actions taken and done by SURETY or its designee(s) as such attorney-in-fact.

RESERVE DEPOSIT. A. If for any reason SURETY shall deem it necessary to establish or to increase a reserve to cover any possible liability or loss for which the CONTRACTOR or INDEMNITORS will be obligated to indemnify SURETY under the terms of this Agreement, or to establish a collateral deposit in connection with the issuance or procurement of any BOND for CONTRACTOR, the CONTRACTOR or INDEMNITORS will deposit with SURETY, immediately upon demand, a sum of money equal to such reserve and any increase thereof as collateral security to SURETY for such liability or loss. SURETY shall have the right to use the deposit, or any part thereof, in payment or retention of any liability, loss, expense or other matter for which the CONTRACTOR or INDEMNITORS would be obligated to indemnify SURETY under the terms of this Agreement. SURETY shall have no obligation to invest, or to provide a return or interest on the deposit. SURETY'S demand shall be sufficient if sent by registered or certified mail to the CONTRACTOR or INDEMNITORS at the addresses stated herein or at the addresses of the CONTRACTOR or INDEMNITORS last known to SURETY, regardless of whether such demand is actually received by the CONTRACTOR or INDEMNITORS. B. SURETY may seek a mandatory injunction to compel the deposit of such collateral together with any other remedy at law or in equity that SURETY may have. SURETY shall have the right to retain such collateral until SURETY has received satisfactory evidence of SURETY'S complete discharge and exoneration from any claim or potential claim under all BONDS and until SURETY has been fully reimbursed for any and all duty incurred from claims, demands, damages, costs, loss, expense, attorney's fees, or other items for which CONTRACTOR and INDEMNITORS are liable hereunder.

REMEDIES UPON DEFAULT. A. In the event of any EVENT OF DEFAULT as described in this Agreement, SURETY shall have the right, at its option, and in its sole and absolute discretion, and is hereby so authorized by CONTRACTOR and INDEMNITORS to take any one or more of the following actions: (i) To consent to any change in or creation in any CONTRACT or in any and all plans and specifications relating thereto; (ii) To take over any CONTRACT and arrange for its completion; (iii) To take possession of CONTRACTOR'S equipment, materials and supplies at the site of the work or elsewhere, and CONTRACTOR'S office equipment, books and records as are necessary and use the same for completion of any CONTRACT; (iv) To advance or loan such funds or guarantee a loan for funds either prior to or after default, as SURETY shall deem necessary for the completion of any CONTRACT and for the discharge of SURETY in connection with any CONTRACT. The repayment of such advance or loan shall be the responsibility of the CONTRACTOR and INDEMNITORS; (v) To file an immediate suit to enforce the provisions of this Agreement; (vi) To take possession of the work performed to be performed pursuant to all or any part of any CONTRACT, and at the expense of CONTRACTOR and INDEMNITORS, to complete the performance required by the CONTRACT or CONTRACT to cause the same to be completed by others or to consent to the completion thereof, and to take any other action which SURETY may deem appropriate in connection therewith; (vii) in its name or in the name of the CONTRACTOR or INDEMNITORS to adjust, settle or compromise any claim, counterclaim, demand, suit or judgment involving any BOND or to take whatever other action it may deem necessary, expedient or appropriate with respect to such matter. SURETY'S determination as to whether any such claim, counterclaim, demand, suit or judgment should be settled or defended shall be binding and conclusive upon the CONTRACTOR and INDEMNITORS. B. Such action may be taken by SURETY with or without SURETY exercising any other right or option conferred upon SURETY by law, equity or the terms of this Agreement, without waiving any other right or option so conferred upon SURETY. C. At its sole option, SURETY may reduce the amount of CONTRACTOR'S and INDEMNITORS' liability to SURETY hereunder by applying to such liability any money payable to CONTRACTOR and/or INDEMNITORS by SURETY. The money payable to CONTRACTOR or INDEMNITORS may be, but is not limited to, any money payable by SURETY, in the event SURETY, by separate contract is an insurer of CONTRACTOR or INDEMNITORS or is insurer of any other individual or legal entity, or any money payable to CONTRACTOR or INDEMNITORS as a return of unearned or other premiums, or money payable to the claim of CONTRACTOR or INDEMNITORS against SURETY or any individual or other legal entity insured or bonded by SURETY. Nothing contained herein shall operate to merge any obligations of SURETY to CONTRACTOR or INDEMNITORS beyond those contained in this Agreement or in any such other contract of insurance. D. CONTRACTOR and INDEMNITORS agree that all amounts due SURETY hereunder, and all liabilities of CONTRACTOR and INDEMNITORS to SURETY are separate and independent from any actual or alleged liability of SURETY to CONTRACTOR and INDEMNITORS, and that no set-off of any such amounts or claims shall be permitted to be claimed by CONTRACTOR and INDEMNITORS against SURETY nor used as a defense against any claim of SURETY. The CONTRACTOR and INDEMNITORS waive and abdicate all rights of indemnity, subrogation and contribution each against the other until all obligations to the SURETY under this Agreement, at law or in equity, have been satisfied in full.

PREMIUMS. The CONTRACTOR and INDEMNITORS will pay to the SURETY all premiums and charges of the SURETY for the BONDS (including but not limited to initial, well, additional, and contract overrun premiums according to the SURETY'S current rate manual) immediately upon issuance of each BOND, or as such premiums may arise. Billing practice, delay in payment or other payment variance procedure shall not constitute a waiver of SURETY'S rights to obtain full payment upon the issuance of any BOND, or as such premiums may arise. The initial premium is fully earned upon execution of the BOND.

TRUST FUND. A. The CONTRACTOR and INDEMNITORS covenant and agree that all payments received for or on account of any CONTRACT shall be held in trust as a fund for the payment of obligations incurred or to be incurred in the performance of any CONTRACT and used for labor, materials, and services furnished in the execution of the work in any CONTRACT or any extension or modification thereof. It is expressly understood and declared that all monies due and to become due under any CONTRACT are also trust funds, whether in the possession of the CONTRACTOR or INDEMNITORS or otherwise. The trust funds shall be for the benefit and payment of all claims for which the SURETY may be liable under any BONDS. The trust(s) shall inure to the benefit of the SURETY for any liability or loss it may have or sustain under any BOND, and for any and all obligations of CONTRACTOR and INDEMNITORS under this Agreement, and this Agreement and declaration constitute notice of such trust. B. If SURETY discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds, and CONTRACTOR and INDEMNITORS shall, upon demand of SURETY and in implementation of the trust or trusts hereby created, open an account or accounts with a bank selected by SURETY which shall be designated as a trust account for the deposit of such trust funds, and shall thereupon deposit therein all monies received pursuant to said CONTRACT or CONTRACTS. Withdrawals from such trust(s) shall be by check or similar instrument signed by the CONTRACTOR and countersigned by a representative of SURETY. Said trust(s) shall terminate on the payment by CONTRACTOR of all the obligations for the payment of which the trust(s) are hereby created or upon the expiration of twenty years from the date hereof, whichever shall occur.

PERFECTION OF SECURITY INTEREST. This Agreement shall constitute a Security Agreement for the benefit of the SURETY and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code or any similar statute, ordinance or regulation of any jurisdiction or agency, and may be so used by the SURETY without in any way abrogating, restricting or limiting the rights of the SURETY under this Agreement or under law or in equity. SURETY may add such schedules to this Agreement describing specific items of security covered hereunder as shall be necessary or appropriate. The SURETY may, at its option, file or record this Agreement or any document executed by any or all of the CONTRACTOR or INDEMNITORS in connection with the application, issuance or execution of any BOND(S), or renewal thereof, within the scope of this instrument as a security agreement or as part of a financing statement or, as notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency. The failure to so file shall not release or discharge any of the obligations of the CONTRACTOR or INDEMNITORS under this Agreement.

CHANGES. The SURETY, at its sole option, is authorized and empowered, without notice to or knowledge of CONTRACTOR or the INDEMNITORS, to agree or refuse to: (i) change whatsoever in any BOND, or any CONTRACT, including, but not limited to, any change in the time for the completion of any CONTRACT and to payments thereunder before the same may be due, and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, renewals, enlargements, modifications, changes or alterations of any BOND and to execute any substitute or substitutes therefor, with the same or different terms, provisions and obligations and with the same or larger or smaller penalties. It is expressly understood and agreed that the CONTRACTOR and INDEMNITORS shall be bound under the terms of this Agreement even though any such assent by the SURETY does or might substantially increase the liability of said CONTRACTOR or INDEMNITORS.

ADVANCES TO CONTRACTOR. The SURETY, at its sole option, is authorized and empowered to guarantee loans, to advance or lend to, or for the account of, the CONTRACTOR any money, which the SURETY in its sole discretion may see fit to do, reserving to itself, however, the absolute right to cancel any such guarantee and to cease making or lending money to the CONTRACTOR or for the account of the CONTRACTOR with or without cause and with or without notice to CONTRACTOR or INDEMNITORS. SURETY shall not be held responsible for application of the proceeds of such loan or advance. All money expended by the SURETY, or lent or advanced from time to time, or for the account of, the CONTRACTOR or guaranteed by the SURETY, and all related cost and expense incurred by the SURETY, shall be loss to the SURETY and the CONTRACTOR and the INDEMNITORS shall be responsible, notwithstanding that said money or any part thereof should not be so used by the CONTRACTOR.

BOOKS AND RECORDS. At any time, and until such time as the liability of the SURETY under all BONDS is terminated or SURETY is fully reimbursed all amounts due to it under this Agreement, the SURETY shall have the right of access to the books, records, accounts and documents of the CONTRACTOR and INDEMNITORS, wherever located, for the purpose of inspection, copying or reproduction. Any financial institution, depository, materialman, supply house, obligee, general contractor, subcontractor, or other firm, or corporation, when requested by the SURETY, is hereby authorized by CONTRACTOR and INDEMNITORS to furnish the SURETY any information requested by it, including, but not limited to, the status of the work under any CONTRACT being performed by the CONTRACTOR, the status, extent or condition of the performance of any other CONTRACT and payment of accounts. Upon the request of any Event of Default, CONTRACTOR and INDEMNITORS, upon SURETY'S request, shall immediately turn over to SURETY, or its designee, at a place and in a designated by SURETY, such books, records, accounts, documents and CONTRACTS in whatever form, as requested by SURETY. The expense of any inspection and of providing the records so specified, shall be borne by CONTRACTOR and INDEMNITORS. SURETY may furnish any information, which it now has or hereafter acquires concerning the CONTRACTOR and INDEMNITORS, to other persons, firms or entities for the purpose of procuring co-suretyship or reinsurance or of such persons, firms, or entities as it may deem appropriate.

DECLINE OF EXECUTION. CONTRACTOR and INDEMNITORS are not obligated to request the SURETY to execute, provide or procure any BOND required of them in the event and fulfillment of obligations; however, CONTRACTOR shall not, during the term of this Agreement and while any Bond is outstanding or remains in effect, without the written consent of SURETY, engage any other person or entity to provide bonds for CONTRACTOR. Furthermore, the SURETY has the right in its sole and absolute discretion, to decline to execute, provide or procure any BOND requested by CONTRACTOR. If SURETY does execute, provide or procure the execution of a bid bond or bond, or agrees or consents to provide such contract of suretyship, SURETY retains the right in its sole and absolute discretion to decline to execute the final bond or bond, but not limited to, performance, payment or maintenance bond(s) that may be required in connection with any award that may be made under the bid proposal or proposal which the bid proposal bond or agreement or consent to provide such contract of suretyship is given, without relieving CONTRACTOR or INDEMNITORS from their obligations under this Agreement in connection with the provision of the bid bond or proposal bond. SURETY shall not be liable to CONTRACTOR or INDEMNITORS for any such refusal to release from any and all liability, cost or expense arising out of, relating to or resulting from any such action.

WARRANTIES BY CONTRACTOR AND INDEMNITORS. The CONTRACTOR and INDEMNITORS hereby waive and agree not to assert any of the following, to the end and to the extent that CONTRACTOR and INDEMNITORS shall be and continue to be liable hereunder: (i) Any defense that this Agreement was executed subsequent to the date of any being expressly understood and agreed that the CONTRACTOR and INDEMNITORS hereby admit and covenant that the BOND was executed by SURETY pursuant to the terms of the CONTRACTOR and INDEMNITORS and in reliance on the promise by the CONTRACTOR and INDEMNITORS to execute and perform this Agreement; (ii) Any claim that any of their property, including homesteads, is exempt from levy, execution, sale or other legal process under the laws of any state, territory or possession in which brought by SURETY under this Agreement; (iii) Any right to require SURETY to proceed against CONTRACTOR or INDEMNITORS or any other person, firm or entity used against or exhaust any security or remedy held by SURETY at any time or to pursue any other remedy in SURETY'S power; (iv) The defense of the statute of limitations in any action hereunder for the collection of any claim or amount due under this Agreement, or the performance of any obligation indemnified hereby; (v) Any defense on an election of remedies by SURETY, which election may destroy or otherwise impair subrogation rights of CONTRACTOR or any INDEMNITOR or the right of CONTRACTOR to proceed against the CONTRACTOR or to realize upon any security; (vi) Any right to notice of the execution of any BOND and of the acceptance of this BOND; (vii) Any right to notice of any default, payment or any other act or acts giving rise to any claim under any BOND, as well as notice of any and all liability of the CONTRACTOR and INDEMNITORS under any BOND, and any and all liability on the part of the CONTRACTOR and INDEMNITORS hereunder.

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V. SUITS. A. Separate suits may be brought by SURETY against any or all of the CONTRACTOR or INDEMNITORS to enforce the terms of this Agreement as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether previously or subsequently arising. B. The CONTRACTOR and each INDEMNITOR is the agent for the CONTRACTOR and all INDEMNITORS for the purpose of accepting service of any process in the jurisdiction in which the CONTRACTOR or INDEMNITORS accepting the process resides, is domiciled, is doing business or is found.

OTHER SURETIES. If the SURETY procures the execution of any BOND by other sureties, or executes the BONDS with co-sureties or reinsures any portion of said BONDS with reinsuring sureties, then all the terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and reinsuring sureties, as their interests may appear.

TERMINATION. A. This Agreement is a continuing obligation of the CONTRACTOR and INDEMNITORS, and their successors, legal representatives, estates, heirs and assigns, unless terminated by written notice to SURETY as hereinafter provided, and such termination by a particular person or entity shall in no way affect the obligation of any person or entity who has not given such notice. If CONTRACTOR or INDEMNITORS have previously executed an Agreement in favor of SURETY, the acceptance by SURETY of this Agreement shall not relieve CONTRACTOR or INDEMNITORS from liability to SURETY under such prior Agreement. B. This Agreement may be terminated by CONTRACTOR or any INDEMNITOR upon written notice to SURETY by CONTRACTOR or INDEMNITORS, or by CONTRACTOR'S or INDEMNITOR'S legal representatives or successors, by Registered or Certified Mail addressed to SURETY at its home office shown in this Agreement, as such may be changed from time-to-time. Termination of this Agreement as to such person providing notice shall not be effective until thirty (30) days after receipt of said written notice by SURETY. It is understood and agreed that oral notice to or constructive notice to any agent or employee of SURETY shall not constitute effective notice of termination under this Agreement. C. Termination of this Agreement shall not relieve the CONTRACTOR or INDEMNITORS from liability to SURETY arising out of any BOND executed, authorized, provided or procured by SURETY on or after the date of such termination and for which this Agreement is part of the consideration on which SURETY relied in executing, authorizing, providing or procuring such BONDS, including any renewals, substitutions and extensions thereof, and any BONDS executed pursuant to a bid or proposal bond issued or authorized prior to such effective date of termination, and any renewals, substitutions and extensions thereof, and any maintenance or guarantee bonds executed pursuant to any other BOND, and any renewals, substitutions and extensions thereof. D. The liability of the INDEMNITORS hereunder as to existing or future BONDS of the CONTRACTOR shall not terminate by reason of the failure of SURETY to disclose facts known about CONTRACTOR, even though such facts materially increase the risk beyond which the INDEMNITORS might intend to assume. Whether SURETY may have reason to believe such facts are unknown to the INDEMNITORS, or whether SURETY may have a reasonable opportunity to communicate such facts to the INDEMNITORS, the INDEMNITORS hereby waive notice of such facts, and of any obligation of SURETY to notify INDEMNITORS of same.



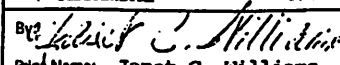

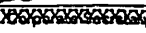

NOTIFICATION. A. The INDEMNITORS agree among themselves and hereby acknowledge to SURETY that notification by SURETY to any one INDEMNITOR shall constitute notice to all INDEMNITORS. Any notice permitted to CONTRACTOR or INDEMNITOR may be sent by SURETY to their respective addresses shown in this Agreement, but failure of CONTRACTOR or INDEMNITOR to receive such notice shall not operate as a waiver of SURETY'S rights or a bar to enforcement of SURETY'S rights. CONTRACTOR and INDEMNITORS shall notify SURETY promptly of any change of address. Written notice must be given by CONTRACTOR or INDEMNITORS to SURETY at its home office, as shown in this Agreement and as same may be changed from time-to-time, or at such other address as SURETY may provide to CONTRACTOR or INDEMNITORS from time-to-time, at the earliest practical time of any anticipated change or negotiations entered into by CONTRACTOR or INDEMNITORS for any anticipated change in the character, identity, control, management, beneficial ownership (including, if a corporation, ownership of more than 5% of the stock of CONTRACTOR or INDEMNITOR), or existence of the CONTRACTOR or INDEMNITORS. B. The CONTRACTOR and INDEMNITORS shall promptly provide written notice to SURETY at its home office as shown in this Agreement, as such address may be changed from time-to-time, of any of the following events: (i) Notice by any obligee on any BOND to the CONTRACTOR that the CONTRACTOR is in default or has failed or refused to perform any CONTRACT obligation; or that CONTRACTOR has failed to pay any amount due; and (ii) Notice by any obligee on any BOND to the CONTRACTOR that the CONTRACTOR cure its performance or show cause as to why the CONTRACTOR should be terminated for default.

INSPECTIONS. The SURETY, by and through its authorized representatives, shall have the right, but not the obligation to inspect the CONTRACTOR'S property, plants and operations, including projects on which the CONTRACTOR is performing work, whether bonded or not, at any time and from time-to-time. The CONTRACTOR shall assure access by the SURETY'S representative to all areas of the CONTRACTOR'S property and operations. Neither the SURETY'S right to make inspections nor the right thereof, nor the making of any report as a result thereof, shall constitute an undertaking, by the SURETY or its representatives, of or for the benefit of the CONTRACTOR or INDEMNITORS or any other person, firm, organization or entity to determine, warrant or guarantee that such property or operations are safe, appropriate or in compliance with any law, rule, regulation, or the CONTRACT; the CONTRACTOR and INDEMNITORS shall defend, indemnify and hold harmless the SURETY from any claims, liability or loss arising out of the performance of such inspections.

GENERAL PROVISIONS. (i) If any provision or provisions, or portion thereof, of this Agreement shall be void or unenforceable under the laws of any jurisdiction governing this Agreement, this Agreement shall not be void or vitiated thereby, but shall be construed and enforced with the same effect as though such provision or provisions, or portion thereof, were omitted. (ii) In case any of the parties mentioned in this Agreement fail to execute the same, or in case the execution hereof by any of the parties shall be void or invalid for any reason, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any of the parties performing the same, but each and every party executing same shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not occurred. (iii) All rights and remedies of SURETY under this Agreement or however otherwise derived shall be cumulative, and the exercise of or failure to exercise any right or remedy at any time shall not be an election of remedy or a waiver of any other right or remedy. Failure of SURETY to pursue any remedy against any one or more of the CONTRACTOR or INDEMNITORS shall not release or waive any right against any other of the CONTRACTOR or INDEMNITORS. The SURETY is not required to exhaust its rights or rights against CONTRACTOR or to await receipt of any dividends from the legal representatives of CONTRACTOR before asserting its rights under this Agreement against the INDEMNITORS. The rights, powers and remedies given to SURETY by this Agreement shall be and are in addition to, and not in lieu of, any and all rights, powers and remedies which SURETY may have or acquire against the CONTRACTOR or INDEMNITORS or others whether by the terms of any other agreement, by operation of law or otherwise. (iv) The CONTRACTOR or INDEMNITORS shall continue to remain bound under this Agreement even though SURETY may, from time-to-time and with or without notice or knowledge of the CONTRACTOR or INDEMNITORS, have heretofore accepted or released, or shall hereafter accept or release, other Agreements of Indemnity or Exchange or return collateral of the CONTRACTOR or INDEMNITORS or others. Failure of CONTRACTOR to sign any BONDS shall not relieve the CONTRACTOR or INDEMNITORS of liability under this Agreement. (v) The CONTRACTOR and INDEMNITORS will, on request of SURETY, procure the discharge of SURETY from any BOND, and liability by reason thereof. (vi) SURETY shall have every right, defense, or remedy which a personal surety without compensation would have, including the right of subrogation. The SURETY shall have the right to fill in any blanks left herein and to correct any errors in filling in any blanks herein. (vii) This Agreement may not be changed or modified orally. No change or modification shall be effective unless specifically agreed to in writing, and signed by an officer of the SURETY. (viii) Wherever used in this Agreement the plural shall include the singular, the singular shall include the plural, and the neuter shall include both genders as the circumstances require. (ix) This Agreement is hereby construed so as to protect, exonerate and indemnify SURETY. (x) The paragraph titles as contained in this Agreement are descriptive only and do not restrict or limit the terms of the Agreement. In the event of any inconsistency between the paragraph titles and the terms of this Agreement, the terms of this Agreement shall control. This Agreement shall be interpreted in accordance with the laws of the State of Delaware.

ENTIRE AGREEMENT AND CONSOLIDATION. THE CONTRACTOR AND INDEMNITORS HAVE READ AND UNDERSTAND THIS AGREEMENT, AND HAVE CONSULTED WITH SUCH ATTORNEYS AND OTHER PROFESSIONAL ADVISORS AS THEY DEEM NECESSARY PRIOR TO EXECUTING THIS AGREEMENT. EXCEPT FOR ANY PREVIOUS INDEMNITY AGREEMENT OR AGREEMENTS EXECUTED BY CONTRACTOR OR INDEMNITORS, THIS AGREEMENT OF INDEMNITY CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THEM. NO OTHER SEPARATE AGREEMENTS OR UNDERSTANDINGS, PAST, PRESENT OR FUTURE, WHETHER ORAL OR WRITTEN, CHANGE THE TERMS OF THIS AGREEMENT.

WITNESS WHEREOF, the CONTRACTOR and INDEMNITORS, intending to be legally bound hereby, have signed and sealed this Agreement the day and date above written.

CONTRACTOR	
WITNESS: 	Contractor Name Nations Environmental Services, Inc. Address 10 South 14th Street, Suite 103 City Richmond State VA Zip 23219
CORPORATE SEAL: 	By:  Title: President Print Name: Janet C. Williams
INDEMNITOR	
WITNESS: 	Corporate Indemnitor Name Janet C. Williams Address 10 South 14th Street, Suite 103 City Richmond State VA Zip 23219
CORPORATE SEAL: 	By:  Title: President Print Name: Janet C. Williams

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INDIVIDUAL INDEMNITOR(S)			
Signature <u>Janet C. Williams</u>	(SEAL)	Signature <u>Chijioke Ude</u>	(SEAL)
Name <u>Janet C. Williams</u>		Name <u>Chijioke Ude</u>	
Residence Address <u>20100 College Park Rd</u>		Residence Address <u>4108-N Townhouse Rd</u>	
City <u>Ettrick</u> State <u>VA</u> Zip <u>23803</u>		City <u>Richmond</u> State <u>VA</u> Zip <u>23228</u>	
Res. Phone # <u>804-520-5878</u> SS # <u>229-76-8712</u>		Res. Phone # <u>804-266-1935</u> SS # <u>231-23-9732</u>	
Signature _____	(SEAL)	Signature _____	(SEAL)
Name _____		Name _____	
Residence Address _____		Residence Address _____	
City _____ State _____ Zip _____		City _____ State _____ Zip _____	
Res. Phone # _____ SS # _____		Res. Phone # _____ SS # _____	

INDIVIDUAL ACKNOWLEDGEMENTS	
<p>STATE OF <u>Virginia</u> }</p> <p>COUNTY OF <u>Richmond</u> }</p> <p>I, this <u>23rd</u> day of <u>May</u>, 19<u>2000</u>, before me personally appeared <u>Janet C. Williams</u>, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.</p> <p>Worn to and subscribed before me this <u>23rd</u> day of <u>May</u>, 19<u>2000</u>.</p> <p>Notary Public: <u>Babara L. Hovea</u></p> <p>My Commission Expires: <u>11-30-00</u></p>	

<p>STATE OF <u>Virginia</u> }</p> <p>COUNTY OF <u>Richmond</u> }</p> <p>I, this <u>24th</u> day of <u>MAY</u>, 19<u>2000</u>, before me personally appeared <u>Chijioke Ude</u>, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.</p> <p>Worn to and subscribed before me this <u>24th</u> day of <u>May</u>, 19<u>2000</u>.</p> <p>Notary Public: <u>Juliana G. Smith</u></p> <p>My Commission Expires: <u>7-31-00</u></p>	
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<p>STATE OF _____ }</p> <p>COUNTY OF _____ }</p> <p>I, this _____ day of _____, 19____, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.</p> <p>Worn to and subscribed before me this _____ day of _____, 19____.</p> <p>Notary Public: _____</p> <p>My Commission Expires: _____</p>	
--	--

<p>STATE OF _____ }</p> <p>COUNTY OF _____ }</p> <p>I, this _____ day of _____, 19____, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.</p> <p>Worn to and subscribed before me this _____ day of _____, 19____.</p> <p>Notary Public: _____</p> <p>My Commission Expires: _____</p>	
--	--

PARTNERSHIP ACKNOWLEDGEMENTS	
<p>STATE OF _____ }</p> <p>COUNTY OF _____ }</p> <p>I, this _____ day of _____, 19____, before me personally appeared _____, a member of the partnership of _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument, and acknowledged to me that (s)he executed the same as and for the act and deed of the said partnership.</p> <p>Worn to and subscribed before me this _____ day of _____, 19____.</p> <p>Notary Public: _____</p> <p>My Commission Expires: _____</p>	

CORPORATE ACKNOWLEDGEMENTS	
<p>STATE OF <u>Virginia</u> }</p> <p>COUNTY OF <u>Richmond</u> }</p> <p>I, this <u>25</u> day of <u>May</u>, 19<u>2000</u>, before me, personally appeared <u>Janet C. Williams</u>, personally known to me or proved to me on the basis of satisfactory evidence to be the person who is subscribed to in this instrument, who, being duly sworn, did depose and say that (s)he is in the city of <u>Richmond</u>, and (s)he is the <u>President</u> of <u>Nations Environmental Services</u>, the corporation described in, and which executed, the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it is so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order; and the deponent further said that (s)he is acquainted with <u>Janet C. Williams</u>, and knows that (s)he is the <u>Corporate</u> Secretary of said corporation.</p> <p>Witness my hand and that (s)he subscribed his/her name to the within instrument by a like order of the said Board of Directors.</p> <p>Worn to and subscribed before me this <u>25</u> day of <u>May</u>, 19<u>2000</u>.</p> <p>Notary Public: <u>Babara L. Hovea</u></p> <p>My Commission Expires: <u>11-30-00</u></p>	

<p>STATE OF _____ }</p> <p>COUNTY OF _____ }</p> <p>I, this _____ day of _____, 19____, before me, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who is subscribed to in this instrument, who, being duly sworn, did depose and say that (s)he is in the city of _____, and (s)he is the _____ of _____, the corporation described in, and which executed, the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it is so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order; and the deponent further said that (s)he is acquainted with _____, and knows that (s)he is the _____ Secretary of said corporation.</p> <p>Witness my hand and that (s)he subscribed his/her name to the within instrument by a like order of the said Board of Directors.</p> <p>Worn to and subscribed before me this _____ day of _____, 19____.</p> <p>Notary Public: _____</p> <p>My Commission Expires: _____</p>	
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AmSaf 00176

CIRCUIT COURT OF ARLINGTON COUNTY

Airlines Reporting Corp.

v.

Auto-Owners Ins. Co.
and Sentinel Travel Bureau, Inc.

August 18, 2000

Case No. (Law) 00-148

HEADNOTE: In this case, the issue of liability was precluded by a prior default judgment against the defendant's privy, but the issue of damages was never litigated and thus was not precluded.

BY JUDGE JOANNE F. ALPER

This matter comes before the Court on a Motion for Summary Judgment filed by plaintiff Airlines Reporting Corporation (henceforth "ARC"). After hearing oral argument on August 4, 2000, and carefully reviewing the pleadings, case law, and facts of this case, the Court sets forth its ruling below.

Factual Background

Plaintiff, ARC, serves as a national clearinghouse for issuing documents and other forms ("ARC traffic documents") to travel agents. These forms are used as air passenger tickets and other tour and travel documents by the travel agents to their customers. ARC maintains an agency list of persons and entities accredited to serve as travel agents and to issue ARC traffic documents. In order to be ARC accredited, an agent must submit a detailed application to ARC for approval and inclusion on the agency list. ARC enters into Agent Reporting Agreements ("ARA") with each of the accredited travel agents, which governs the issuance of the ARC traffic documents. As a condition of approval, an agent is required to obtain a surety bond in favor of ARC and the carriers as partial security for its performance.

Under the ARA, agents sell tickets to the public and remit the proceeds, minus their commissions, to ARC to distribute among the air carriers. The ARA directs agents to hold the tickets and the proceeds therefrom in trust.

EXHIBIT

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Furthermore, the ARA requires that agents prepare weekly sales reports detailing all ARC traffic documents issued to the travel agent's clients during the previous Monday through Sunday. Based on these sales reports, the ARC area bank is then authorized to draw a check in the amount indicated on the travel agent's account in that amount, payable to ARC.

Occasionally, agents report sales to ARC for which the agents have failed to make funds available. This results in "Dishonored Drafts" when ARC attempts to debit their designated account. At other times, agents fail to report all of their sales and also fail to make payment therefor as required by the ARA. These are termed "Unreported Sales." Both types of conduct result in the default of the agent and loss to ARC.

On or about December 12, 1997, defendant Sentinel Travel Bureau, Inc. (henceforth "Sentinel") entered into an ARA with plaintiff ARC. As required, defendant Sentinel obtained a surety bond in the amount of \$70,000 from co-defendant Auto-Owners Insurance Company (henceforth "Auto-Owners"). The agreement between the two defendants specified that Auto-Owners would act as the surety for Sentinel. The terms and conditions of the bond issued by Auto-Owners on behalf of Sentinel and in favor of ARC states in relevant part:

[T]he Surety shall cover all amounts owed by the Principal to the carriers or to ARC for tickets or instruments of value issued on ARC traffic documents (in both paper or electronic format) unless the Principal is otherwise relieved of liability for such amounts owed pursuant to the terms of the ARA.

On or about March 18, 1998, ARC discovered that Sentinel failed or refused to make sufficient funds available from the area bank ("Dishonored Drafts") and notified Sentinel that it was in default. On April 2, 1998, the ARA between ARC and Sentinel was terminated. On February 25, 2000, ARC filed a Motion for Judgment against defendants Sentinel and Auto-Owners, seeking payment in the amount of \$71,878.29. Sentinel failed to file an answer, motion, or other responsive pleading to the Motion for Judgment, and on June 2, 2000, this Court entered a default judgment against Sentinel in the amount of \$71,878.29.

ARC claims that it is entitled to collect payment from Auto-Owners, as the surety for the bond. ARC claims that under the Surety Bond Agreement, the surety stands in the place of the principal and is liable for any default by the principal. Since judgment was granted against Sentinel (principal), ARC alleges that Auto-Owners is liable as a matter of law for the amount demanded

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under the bond. ARC now moves for Summary Judgment against Auto-Owners.

ARC'S Claim Against Auto-Owners

The central issue to be determined in this case appears to be one of first impression in Virginia. The Court is asked to determine the legal effect upon a surety of a default judgment entered against its principal.

ARC argues that it is entitled to judgment as a matter of law under the doctrine of collateral estoppel, since the liability of the principal has already been determined by this Court.

The Virginia Supreme Court recently defined the elements of collateral estoppel in *Transduller Center, Inc. v. Sharma*, 252 Va. 20, 472 S.E.2d 274 (1996):

For [collateral estoppel] to apply, the parties to the two proceedings, or their privies, must be the same; the factual issue sought to be litigated must have been litigated in the prior action and must have been essential to the prior judgment; and the prior action must have resulted in a valid, final judgment against the party sought to be precluded in the present action. *Glasco v. Ballard*, [249 Va. 61, 452 S.E.2d 854, 855 (1995)]. Additionally, collateral estoppel in Virginia requires mutuality. . . .

Transduller, 472 S.E.2d at 275.

Auto-Owners contends that a default judgment cannot be the basis for the application of collateral estoppel in Virginia. Defendant does not dispute that the judgment against it meets the majority of Virginia's requirements for collateral estoppel: identical parties, a valid, final judgment, and mutuality. Defendant argues, however, that because the judgment against Sentinel was a default judgment entered as a result of Sentinel's failure to respond to the Motion for Judgment, the parties never "actually litigated" the merits of the case. Under Virginia case law, an issue must have been the subject of *actual* litigation for collateral estoppel to apply. Auto-Owners maintains that, contrary to the requirements of collateral estoppel, nothing is actually litigated in a default judgment.

In *Transduller*, the Virginia Supreme Court discussed at length whether and under what circumstances a default judgment can be regarded as "actual litigation" of essential issues in a prior action for collateral estoppel purposes. Therefore, *Transduller* controls the Court's inquiry here.

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In *Transduller*, a landlord brought suit against a tenant for possession of commercial property and for delinquent rent and fees. *Transduller*, 472 S.E.2d at 275. The tenant did not appear in court at the scheduled trial, and the landlord "presented testimonial evidence and exhibits in the tenant's absence." *Id.* The trial court entered a default judgment against the tenant for back rent and fees, as well as awarding possession to the landlord. *Id.* The tenant did not appeal and the judgment became final. *Id.* A year later the landlord sued the tenant again for the rent that had accrued under the lease since the previous judgment. The trial court refused to apply collateral estoppel to the issue of the tenant's liability for the rent, and entered judgment for the landlord, holding that "a default judgment does not actually litigate issues for the purposes of collateral estoppel." *Id.*

On appeal to the Virginia Supreme Court, the tenant argued that, as evidenced by the Restatement of Judgments, "[a] default judgment cannot be used for collateral estoppel purposes, because no issues are 'actually' litigated." *Id.* at 276 (quoting *United States v. Ringley*, 750 F. Supp. 750, 759 (W.D. Va. 1990)), and citing Restatement (Second) of Judgments, § 27, cmt. e (1982). The Supreme Court expressly rejected the "view typified by the Restatement." *Transduller*, 472 S.E.2d at 276, concluding that "Virginia law does not support a blanket exemption from the application of collateral estoppel in the case of a default judgment." *Id.* The tenant also contended that because he had not personally appeared in court before entry of the default judgment, no issue had actually been litigated. Again, the Virginia Supreme Court "disagree[d] with the tenant's argument." *Id.* Rather, it reasoned that because "documentary evidence was presented *ex parte* in the district court hearing" the necessary issues had been litigated. *Id.* Accordingly, the *Transduller* court concluded that the default judgment did act as collateral estoppel in the second action and reversed the trial court's contrary holding.

Clearly, under Virginia law, the preclusive effect of collateral estoppel *can* apply to default judgments. This precedent was relied on and followed by the United States Court of Appeals for the Fourth Circuit in *Pahlavi v. Ansari*, 113 F.3d 17 (4th Cir. 1997), where the Court held that a default judgment previously entered against a Chapter 7 debtor as a discovery sanction in a Virginia state court action collaterally estopped the debtor from arguing that the compensatory portion of the state court award represented debt incurred for debtor's "fraud or defalcation while acting in a fiduciary capacity." With controlling Virginia law in mind, the Court turns to the case at hand.

In this case, a default judgment was entered when defendant Sentinel failed to respond to ARC's Motion for Judgment. The Court has reviewed the bond obtained by Sentinel from Auto-Owners. According to the terms of the

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bond, Auto-Owners agreed to act as surety for Sentinel. By definition, a surety is one who is primarily liable for the payment of another's debt or the performance of another's obligation. Furthermore, the bond plainly states on its face:

[T]he Surety shall cover all amounts owed by the Principal to the carriers or to ARC for tickets or instruments of value issued on ARC traffic documents (in both paper or electronic format) unless the Principal is otherwise relieved of liability for such amounts owed pursuant to the terms of the ARA.

As set out in the Motion for Summary Judgment, Auto-Owners does not deny the validity of the policy or its liability thereunder. Accordingly, the default judgment entered against Sentinel is binding upon Auto Owners as surety as to liability, and Summary Judgment on this issue is appropriate. Auto-Owners stands in the place of Sentinel and is collaterally estopped from litigating the issue of liability in this case. However, collateral estoppel here only applies to the issue of liability. Auto-Owners is liable to ARC under the bond as a matter of law, but the issue of damages remains before the Court for trial.

In *Transdullles*, the Virginia Supreme Court reasoned that because "documentary evidence was presented *ex parte* in the district court hearing" the necessary issues had been litigated. *Transdullles*, 472 S.E.2d at 276. Likewise, in *Pahlavi*, the United States Court of Appeals for the Fourth Circuit reasoned that because "prior to the default, multiple depositions were taken, many documents exchanged, and the court and commissioner held numerous hearings in which defendant appeared in person or by counsel," the necessary issues had been litigated. *Pahlavi*, 113 F.3d at 21.

In this case, the issue of damages was never litigated between ARC and Sentinel. There was no hearing on damages prior to default, and the only evidence presented was an affidavit from an ARC employee. Relying on case law, the Court finds that this evidence alone does not rise to the level of "actual litigation," required to trigger the preclusive effect of collateral estoppel in Virginia. Accordingly, collateral estoppel does not bar litigation of damages in this case. The parties are free to litigate damages before the Court.

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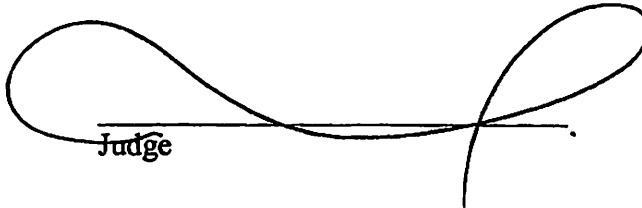
Conclusion

Based on the foregoing, the Court grants summary judgment in favor of plaintiff ARC on the issue of liability. The Court will hear arguments on the issue of damages due plaintiff under the surety bond.

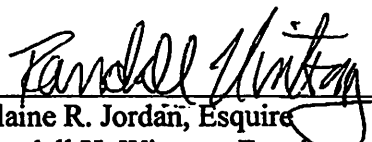
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The Clerk of this Court is directed to send attested copies of this order to all counsel of record once entered.

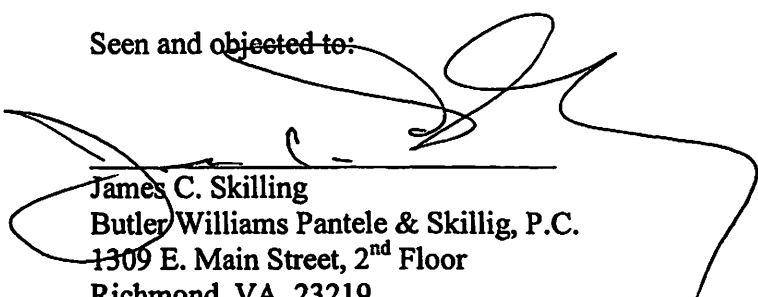
ENTERED this 25 day of June, 2003.


Judge


I ask for this:


Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands, Anderson, Marks & Miller, P.C.
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291
Counsel for American Safety Casualty Insurance Company

Seen and objected to:


James C. Skilling
Butler Williams Pantele & Skillig, P.C.
1309 E. Main Street, 2nd Floor
Richmond, VA 23219
Tel (804) 648-4848
Counsel for Chijioke Ude

Seen:


William R. Mauck, Jr., Esquire
E. Livingston B. Haskell, Esquire
Williams Mullen, Clark & Dobbins
1021 E. Cary St
Richmond, VA 23219
Tel. (804) 783-6927
Counsel for C. G. Mitchell Construction

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

Case No. LP-937-1

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*)

Defendants.)

-----)
AMERICAN SAFETY CASUALTY INSURANCE CO.,)

Third-Party Plaintiff,)

v.)

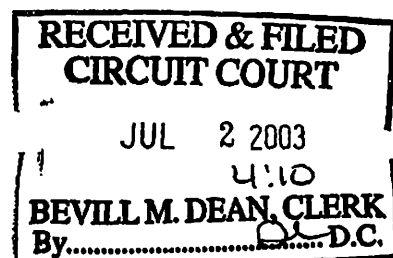
CHIJOKE UDE,)

Third-Party Defendant.)

MOTION TO WITHDRAW AS COUNSEL

COMES NOW, Butler Williams & Skilling, P.C., counsel for third party defendant Chijoke Ude ("Ude"), and pursuant to the Virginia Rules of Professional Conduct, Rule 1.16, hereby moves this Court for leave to withdraw as counsel on the following grounds:

1. In accordance with Virginia Rules of Professional Conduct Rule 1.16, counsel of record may not withdraw "except by leave of court after compliance with notice requirements"
2. Under Rule 1.16, counsel may withdraw from representation under certain specified conditions that exist in this case, that include:



a. the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

b. the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; and

c. other good cause for withdrawal exists.

3. The undersigned counsel has mailed a copy of this Motion to Mr. Ude.

WHEREFORE, Butler Williams & Skilling, P.C., respectfully moves this Court for leave to withdraw as counsel for third party defendant Chijoke Ude and that the Court enter an order granting that relief hereto after such hearing as the Court deems proper.

Respectfully submitted,

BUTLER WILLIAMS & SKILLING, PC

By: 

James C. Skilling (VSB #27998)
Butler Williams & Skilling, PC
1309 East Cary Street, 2nd Floor
Richmond, VA 23219
Telephone: (804) 648-4848
Facsimile: (804) 648-6814

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Withdraw as Counsel was delivered in the manner indicated below on this 2nd day of July, 2003, to the following:

BY HAND

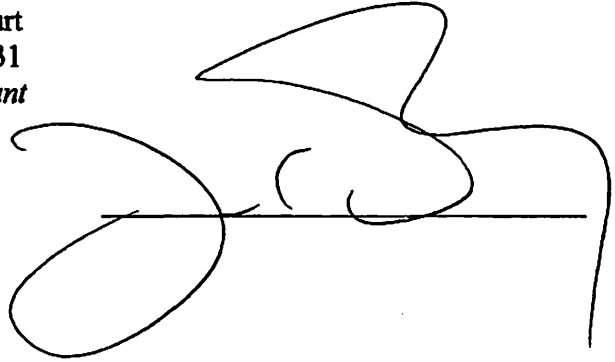
Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands, Anderson, Marks & Miller, P.C.
801 East Main Street
Richmond, Virginia 23219
Counsel for American Safety Casualty Insurance Company

BY HAND

William R. Mauck, Esquire
E. Livingston B. Haskell, Esquire
Williams Mullen
Two James Center, 11th Floor
Richmond, Virginia 23219
Counsel for C.G. Mitchell Construction, Inc.

BY FIRST CLASS MAIL

Mr. Chijioke Ude
1504 Mallicotte Court
Richmond, VA 23231
Third Party Defendant

A large, stylized handwritten signature in black ink, appearing to be 'Chijioke Ude', written over a horizontal line.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.)
)
Plaintiff,)
)
v.) Civil Case No. LP-937-1
)
NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*)
)
Defendants.)

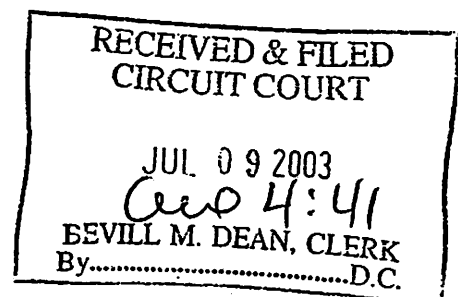
NOTICE AND MOTION

TO: Chijioke Ude and other parties c/o their counsel of record as listed in the Certificate below.

PLEASE TAKE NOTICE that on July 16, 2003, beginning at 3:15 p.m. or as soon thereafter as counsel can be heard, the defendant/third party plaintiff American Safety Casualty Insurance Company ("ASCIC"), by counsel, shall appear before the Honorable Melvin R. Hughes, Jr., Judge of the aforesaid Court, and move for entry of an order in accordance with the following motion for sanctions and to exclude against the defendant, Chijioke Ude ("Ude"), and in support thereof, states the following.

MOTION FOR SANCTIONS AND TO EXCLUDE

1. The trial in this case is scheduled for July 21st and 22nd, 2003.
2. By mail on April 15, 2003, ASCIC, by counsel for the defendants, propounded interrogatories and request for production of documents (the "Discovery") to Ude.
3. On June 23, 2003, ASCIC moved the Court to compel Ude to respond to the Discovery.




4. On June 25, 2003, this Court entered an order (the "Order") requiring Ude to respond to the Discovery by July 2, 2003. A copy of the Order is attached as Exhibit A.

5. As of the date of this motion, Ude has failed to respond to the Discovery and, consequently, Ude is in contempt of the Order.

WHEREFORE, pursuant to Rule 4:12 of the *Rules of the Supreme Court of Virginia*, ASCIC moves the Court to find Ude in contempt and impose sanctions, including but not limited to, refusing to allow Ude to support or opposed certain claims or defenses, or prohibiting him from introducing designated matters in evidence, striking out Ude's pleadings or parts thereof, staying further proceedings, or rendering judgment by default against Ude in favor of ASCIC, to pay ASCIC's reasonable expenses including attorney's fees caused by his failure to comply with the Order, and as such other relief as justice may require.

AMERICAN SAFETY CASUALTY INSURANCE
COMPANY
By Counsel


Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands, Anderson, Marks & Miller, P.C.
801 East Main Street
P. O. Box 1998
Richmond, Virginia 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice and Motion were faxed and mailed this 9th day of July, 2003 to:

James C. Skilling, Esquire
Butler Williams Pantele & Skilling, P.C.
1309 E. Cary Street, 2nd Floor
Richmond, Va 23219
Tel. (804) 648-4848
Fax (804) 648-6177
Counsel for Chijioke Ude

William R. Mauck, Jr., Esquire
E. Livingston B. Haskell, Esquire
Williams Mullen
1021 E. Cary St
Two James Center
Richmond, VA 23219
Tel. (804)783-6927
Fax. (804)783-6507
Counsel for C. G. Mitchell Construction, Inc.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.

Plaintiff,

v.

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*

Defendants.

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)
)
) Civil Case No. LP-937-1
)
)
)

ORDER

On June 25, 2003, came the defendant, American Safety Casualty Insurance Company ("ASCIC") by counsel, on its motion for an order compelling third-party defendant, Chijioke Ude ("Ude"), to answer ASCIC's First Set of Interrogatories and Request for Production of Documents and for an award of ASCIC's reasonable expenses, including attorney's fees, in obtaining the order. Good cause having been shone, and it appearing to the Court that it is proper to do so, it is hereby

ORDERED, that ASCIC's motion be, and the same is hereby, GRANTED, and Ude shall provide full and complete answers under oath to ASCIC's First Set of Interrogatories and Request for Production of Documents within 10 days of entry of this Order (received by ASCIC's counsel by July 2, 2003); and it is further

ORDERED, that ASCIC shall recover from Ude the sum of ~~\$250.00~~ ^{\$150.00}, as its reasonable expenses and attorney's fees in obtaining this Order.

Endorsement of this Order by other counsel of record is dispensed with pursuant to Rule 1:13 of the *Rules of the Supreme Court of Virginia*.




The Clerk of this Court is directed to send attested copies of this order to all counsel of record once entered.

ENTERED this 25 day of June, 2003.


Judge

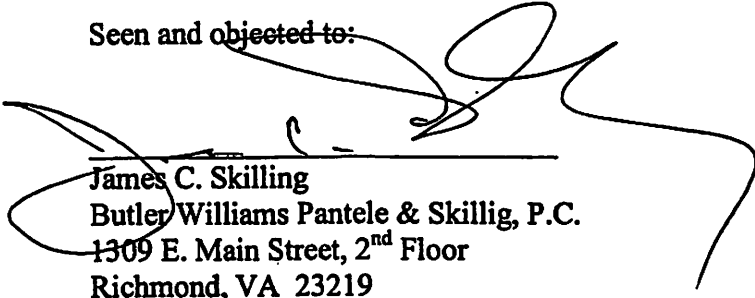
I ask for this:


Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands, Anderson, Marks & Miller, P.C.
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

Counsel for American Safety Casualty Insurance Company


A COPY
BY:  D.C.

Seen and objected to:


James C. Skilling
Butler Williams Pantele & Skillig, P.C.
1309 E. Main Street, 2nd Floor
Richmond, VA 23219
Tel (804) 648-4848

Counsel for Chijioke Ude

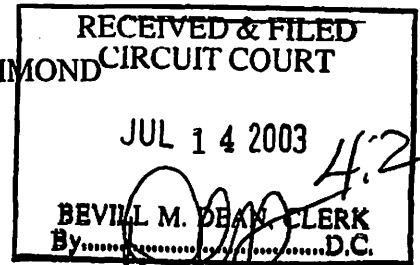
Seen:


William R. Mauck, Jr., Esquire
E. Livingston B. Haskell, Esquire
Williams Mullen, Clark & Dobbins
1021 E. Cary St
Richmond, VA 23219
Tel. (804) 783-6927

Counsel for C. G. Mitchell Construction

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building



C.G. MITCHELL CONSTRUCTION, INC.)

Plaintiff,)

v.)

Civil Case No. LP-937-1

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*)

Defendants.)

**AMERICAN SAFETY'S MEMORANDUM IN OPPOSITION TO
MITCHELL'S MOTION FOR SUMMARY JUDGMENT**

The defendant American Safety Casualty Insurance Company ("American Safety"), by counsel, as and for its memorandum in opposition to the motion for summary judgment filed by the plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), states the following.

**I.
BACKGROUND FACTS**

The present action arises from construction of the Greater Richmond Convention Center Expansion (the "Project"), a public works project undertaken by the Greater Richmond Convention Center Authority. The prime contractor on the Project was a Turner Construction Company in association with H.J. Russell & Company and Davis Brothers Construction Company, which called itself Turner/Russell/Davis ("T/R/D"). T/R/D entered into a subcontract (the "Subcontract") with defendant Nations Environmental Services, Inc. ("Nations"), a minority business enterprise, to provide labor, materials and equipment to perform selective demolition

work on existing structures and elsewhere at the Project for the fixed sum of \$824,870. As required by the Subcontract, Nations furnished a labor and material payment bond (the "Bond").¹

During the course of the Project, Nations entered into a contract with Mitchell (the "Sub-subcontract") to perform a part of the Subcontract work. Rather than a fixed price, lump sum contract, Mitchell performed demolition work at hourly rates for equipment and labor and hauled waste materials to the dump at fixed per-trip charges, which were tracked by daily tickets signed throughout much of the Project by an individual named Steve Godwin. Godwin was a full time employee of Nations during a large part of the Project, serving as Nations' project manager and directly responsible for overseeing and supervising Mitchell's work. Indeed, the evidence will be that Godwin was the one that recommended to Nations that Mitchell be hired.

As Nations later learned, Godwin was also a full time employee of Mitchell, and served as Mitchell's "designated employee"² (so that Mitchell could obtain a contractor's license). In other words, the individual that was responsible for protecting Nations' interests and ensuring that Nations was not charged more than the amount of work actually done by Mitchell was Mitchell's full-time employee. The evidence will be that Nations had no knowledge of Godwin's conflicting employment.

Because of the questionable conduct of Godwin and the uncertainty of the genuineness of the daily tickets, among other things, in Nations' grounds of defense and discovery responses, it questioned the veracity of Mitchell's invoices and maintained that the amounts of the invoices

¹ The copy of a bond attached to Mitchell's motion for judgment is not a true copy of the Bond, for it is not executed by Nations, among other things.

² A "designated employee" is the contractor's full time employee who successfully completes the contractors examination required by the Board for Contractors. *Va. Code* § 54.1-1100. According to DPOR records, Godwin served as the designated employee simultaneously for three different companies, including his own, in contravention of the statutes, regulations and rules of the Board for Contractors – also while being paid by Nations as a full-time employee.

were exaggerated, that Mitchell billed for work that was not actually performed, and billed exaggerated and inflated figures on the invoices. *See* Nations' answers to Mitchell's interrogatories numbered 5 and 7, attached as Exhibit 1.

Mitchell initiated the present action to collect sums allegedly owed to it by Nations for breach of the Sub-subcontract and allegedly owed by American Safety based on Mitchell's claim against the Bond. When Nations failed inadvertently to file a verified denial of Mitchell's verified claim under oath, Mitchell moved to strike and for entry of judgment against Nations. The Court denied Mitchell's motion to strike and permitted Nations' grounds of defense to stand.

In the course of discovery, Mitchell issued a notice of deposition (the "Corporate Notice") pursuant to Rule 4:5(b)(6) for the deposition of an officer, director, managing agent or other persons designated by Nations to testify. At the time Mitchell issued the notice of deposition, the SCC had terminated Nations' corporate existence and counsel for Nations had withdrawn from the case. *See* Mitchell's "Amended Motion For Sanctions And/Or To Compel" (the "First Motion for Sanctions"), filed on March 17, 2003.

Mitchell served the Corporate Notice on individuals who formerly served as Nations' president - Janet C. Williams ("Williams")³ - and vice president - the third-party defendant Chijioke Ude ("Ude"). However, it was the former officers' contention that Nations' corporate existence was terminated, the officers had resigned and, therefore, neither Nations nor the individuals could designate anyone to appear for deposition.⁴ *See* letters attached as Exhibit 2.

³ Williams was initially a party to the case via a third-party indemnity action brought by American Safety, but she later filed for bankruptcy protection.

⁴ Mitchell never noticed the deposition of either Williams or Ude, despite suggestions of that. Mitchell also never noticed the deposition of American Safety. Upon information and belief, Mitchell's counsel has never even bothered to try to call Williams and obtain her version of events.

When no corporate designee appeared for deposition, Mitchell filed the First Motion for Sanctions seeking, among other things, to have a default judgment entered in its favor against Nations or to compel a corporate designee to appear for deposition, pursuant to Rule 4:12 of the *Rules of Court*. The Court granted the motion and ordered that a corporate designee of Nations was to appear for deposition within fourteen days. *See* order entered March 25 , 2003.

When again no corporate designee appeared pursuant to the Court's order, Mitchell moved for sanctions (the "Second Motion for Sanctions), seeking a default judgment against Nations. The Court granted the Second Motion for Sanctions and entered an order granting default judgment against Nations and awarding damages in the sum of \$312,500.09, the amount demanded in the motion for judgment, plus costs. *See* order entered May 20, 2001 (the "Default Judgment Order"). A copy of the Default Judgment Order is attached as Exhibit 3.

Mitchell never proffered any evidence of the damages claimed in the Default Judgment Order, none was any taken by the Court, and, other than the motion for judgment, no evidence regarding damages is in the Court's record. At the hearing, American Safety expressly objected to entry of default judgment against Nations, which objection was noted on the Default Judgment Order as follows: "for granting default judgment and for the amount claimed without evidence and/or without allowing defenses to be raised." *See* Default Judgment Order, Ex. 2. Furthermore, in granting default judgment, the Court did not strike Nations' pleading or discovery responses and Nations' discovery responses were sworn..

Finally, American Safety entered into a "General Agreement of Indemnity" (the "Indemnity Agreement") with Nations, Williams and Ude (the "Indemnitors"), by which the Indemnitors bound themselves to indemnify and hold harmless American Safety in the event

that, among other things, a claim was made on a bond issued by American Safety (e.g., a bid, performance or payment bond). As security for the Indemnity Agreement, the Indemnitors, among other things, assigned certain rights and property to American Safety as collateral. The Indemnitors also assigned “the right, *but not the obligation*,” to “prosecute, compromise, release or otherwise resolve any claims, causes of action or other rights assigned to [American Safety].” *See* § III(B) of the Indemnity Agreement (emphasis added). Additionally, the Indemnitors designated American Safety as their “attorney-in-fact with the right, *but not the obligation*, to exercise all rights of the ... Indemnitors assigned, transferred and set over ...” to American Safety for the purpose of giving full effect to the intent and meaning of the assignments and also the full protection intended to be given American Safety under the Indemnity Agreement. *See* § III(C) of the Indemnity Agreement (emphasis added). Nowhere in the Indemnity Agreement is there a provision that, in the event of the Indemnitors’ default, American Safety had the right or obligation to defend Nations from any claims.

II. STANDARD OF REVIEW

On a motion for summary judgment, the moving party is entitled to summary judgment as a matter of law only if the record clearly demonstrates that no genuine issue of material fact remains. *See Carson ex rel. Meredith v. LeBlanc*, 245 Va. 135, 139-40, 427 S.E.2d 189, 192 (1993); *Renner v. Stafford*, 245 Va. 351, 354, 429 S.E. 2d 218, 220 (1993); Rule 3:18 of the *Rules of the Supreme Court of Virginia* (the “*Rules of Court*”). In considering a motion for summary judgment, the Court must draw all inferences from the underlying facts in the light most favorable to the non-moving party, but the Court is not required to adopt inferences which are strained, forced or contrary to reason. *Id.*; *GSHH-Richmond, Inc. v. Imperial Assocs.*, 253 Va. 98, 102, 480 S.E. 2d 482, 485 (1997). “[T]he decision to grant a motion for summary

judgment is a drastic remedy which is available only where there are no material facts genuinely in dispute.” *Turner v. Lotts*, 244 Va. 554, 556, 422 S.E.2d 765, 766 (1992).

III. ARGUMENT

A. THE DEFAULT JUDGMENT AGAINST NATIONS DOES NOT SUPPORT ENTRY OF SUMMARY JUDGMENT AGAINST AMERICAN SAFETY.

To recover on a bond, Mitchell is required to prove that a bond was properly executed, the principal failed to meet its bonded obligation, proper notice of default and demand for payment was given to the surety, and the amount of damages, if any. *Bd. of Supervisors of Fairfax County v. Southern Cross Coal Corp.*, 238 Va. 91, 95, 380 S.E.2d 636, 639 (1989). By its motion for summary judgment, Mitchell is attempting to obtain judgment against American Safety without presenting any proof of the necessary elements of its bond claim against American Safety. The Default Judgment Order cannot substitute as proof of the required elements. A default judgment against a principal can only be used against the surety as evidence of the fact of its rendition. According to Virginia law and the greater weight of authority, Mitchell is not permitted to use the Default Judgment Order to support its motion for summary judgment in an attempt to prevent this Court from considering American Safety’s evidence and prevent American Safety from having its day in court.

According to Virginia law, a final judgment entered after a trial on the merits against a principal may serve as “prima facie evidence” against a surety. *See, e.g., United States Fidelity & Guaranty Co. v. Jordan*, 107 Va. 347, 58 S.E. 567 (1907) (in suit on county treasurer’s official bond, evidence of status of accounts was only prima facie evidence against surety and surety was entitled to have proceedings enjoined to permit the surety to make its defense); *Carr v. Meade’s Ex’x*, 77 Va. 142 (1883) (in subsequent suit against surety on sheriff’s official bond, it was held

that the record from prior chancery suit was admissible as prima facie evidence against the sureties because suit involved the sheriff's official acts which was the purpose of the bond); *Hobson v. Yancey*, 43 Va. 73, 2 Gratt. 73 (1845) (in case involving claims against executor and his sureties, Virginia Supreme Court held that judgment against the principal was not conclusive against the surety and the sureties were entitled to challenge liability and uncertainties in claimants' evidence regarding amount due); *Munford v. Overseers of the Poor of Nottoway*, 23 Va. 313, 2 Rand. 313 (on claim against sheriff's official bond, evidence of judgment against principal, when admissible, must be taken with the limitation that it is only prima facie evidence against the surety and may be contradicted, repelled or avoided).

"Prima facie evidence" means "... Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence." See Black's Law Dictionary (6th ed. 1990). Accordingly, in Virginia a final judgment on the merits against a principal may be used as prima facie evidence to establish a claim against the surety, but the surety is entitled to explain or contradict the evidence.

-- However, a default judgment entered because the principal failed to file a defensive pleading or as a discovery sanction, as opposed to a judgment on the merits or after consideration of evidence entered into the record, is evidence only of its rendition; it is not prima facie evidence against the surety. *U.S. ex rel. Vigilanti v. Pfeiffer-Neumeyer Constr. Corp.*, 25 F. Supp. 403, 405 (E.D. NY. 1938) (the trial court's exclusion of evidence of default judgment against principal entered after principal failed to answer complaint, offered against surety, was affirmed on appeal on grounds that the case was distinguishable from the general rule that a final judgment against a principal is prima facie evidence against the surety, because the surety was a

party and was defending the claim against it, the surety was not responsible for the principal's default, the surety was entitled to offer its defenses at trial and was not bound by the default of the principal); *Gearhart v. Pierce Enters., Inc.*, 105 Nev. 517, 519-20, 779 P. 2d 93, 94-95 (Nev. 1989) (payment bond) (the appellate court held that it was error for the trial court to enter default judgment against surety before the matter had been adjudicated against the surety, on grounds that default judgment against principal as a sanction for principal's failure to answer subcontractor's interrogatories after order compelling answers, is not conclusive as to co-defendant surety based, among other things, on the fact that the surety was not defending the principal but was defending its own liability, the surety was not responsible for the principal's failure to comply with the trial court's discovery order so that the default could not be imputed to the surety, surety was not responsible for principal's derelictions and surety was not required to defend against such a contingency); *Firedoor Corp. of America, Inc. v. Merlin Industries, Ltd.*, 86 A.D. 2d 577, 577, 446 N.Y.S. 2d 325, 326-27 (Sup. Ct. App. Div. 1st Dept. N.Y. 1982) (appellate court affirmed denial of summary judgment, holding that subcontractor still had an affirmative obligation to show that the amount claimed was due from principal and the surety's evidence of the subcontractor's defective performance raised a factual issue, relying on the general rule that a judgment entered against a principal upon default is on prima facie evidence against the surety, who "remains at liberty to contest its own liability by establishing affirmatively that the principal was not liable"); and *Heritage Ins. Co. of America v. Foster Elec. Co.*, 393 So. 2d 28 (Fla. Dist. Ct. App. 1981) (held that default judgment against principal, entered as sanction for principal's failure to respond to complaint, was not conclusive against co-defendant surety and judgment against surety on that basis was reversed). *See, e.g., Airlines Reporting Corp. v. Auto-Owners Inc. Co.*, 53 Va. Cir. 192 (Arlington Cir. Ct. Aug. 18, 2000)

(Alper, J.) (airline ticket agent bond) (denying summary judgment against surety after summary judgment was entered against principal for failure to file responsive pleading on collateral estoppel grounds where issue of damages was never actually litigated). *And see* Restatement (Third) of Suretyship and Guaranty § 67(3)⁵ (“When, in an action by the obligee against the principal obligor to enforce the underlying obligation, judgment in favor of the obligee is obtained by default, ... the judgment against the principal obligor is evidence only of its rendition in a subsequent action of the obligee against the secondary obligor to enforce the secondary obligation”); and Restatement (First) of Security § 139(3) (“Where, in an action by a creditor against a principal, judgment is obtained by default ... against the principal, and the creditor subsequently brings an action against the surety, proof of the judgment against the principal is evidence only of the fact of its rendition”).

The cases relied on by Mitchell are easily distinguishable and inapposite to this case. For example, in *Drill South, Inc. v. International Fidelity Ins. Co.*, 234 F. 3d 1232 (11th Cir. 2001), the Eleventh Circuit, applying Alabama law, found that the surety was bound by the default judgment against the principal because the surety had numerous opportunities to defend the merits of the claims against the principal, the extent of liability and the ultimate judgment. On the basis of the law, facts and other circumstances in that case, the surety was bound by the

⁵ *And see*, Restatement (Third) of Suretyship And Guaranty, § 67, *comment c*:

Judgment in favor of obligee – default or confession. The rule set forth in subsection (3) differs from that in subsection (2) [judgment other than by default, confession, stipulation, or the like] because the probative significance of a judgment obtained by confession, default, or the like is must less than that of a judgment after trial on the merits. Moreover, the arguments of policy and efficiency against duplication of trials have little weight where there has not been a determination made by a fact finder after consideration of evidence introduced by both sides to the litigation. Thus, a judgment against the principal obligor obtained by default, confession, or the like does not create a presumption in favor of the principal obligor’s liability in the subsequent action by the obligee against the secondary obligor; rather such a judgment is evidence only of its rendition.

default judgment. The facts of this case, however, are very different from *Drill South* and similar cases.

In this case, the Default Judgment Order was entered without any evidentiary hearing, without any evidence being made a part of the record, without American Safety being afforded any opportunity to defend the merits of the claims or the extent of liability, and over the objection of American Safety. Furthermore, the Indemnity Agreement cannot be read to give American Safety a right, duty or obligation to defend Nations from Mitchell's claim.

More importantly, cases cited by Mitchell are inapplicable, because Virginia precedent bars giving conclusive effect to a judgment against a principal, whether by default or otherwise. Consequently, the Default Judgment Order cannot be used as evidence of any fact at issue in Mitchell's claim against American Safety. Because genuine issues of material fact remain, summary judgment must be denied.

B. COLLATERAL ESTOPPEL DOES NOT APPLY

As previously stated, Mitchell must prove all of the elements of its bond claim against American Safety. Mitchell attempts to avoid this burden of proof by invoking erroneously the doctrine of collateral estoppel and arguing the Default Judgment Order alone supports summary judgment against American Safety.

The doctrine of collateral estoppel precludes parties or their privies from re-litigating in a subsequent action a factual issue that was actually litigated in a prior action. *Angstadt v. Atlantic Mutual Insurance Co.*, 249 Va. 444, 446-47, 457 S.E.2d 86, 87 (1995). The elements of collateral estoppel are as follows:

- (1) the parties to the prior and subsequent proceedings, or their privies, must be the same, (2) the factual issue sought to be litigated actually must have been litigated in the prior action, (3) the factual issue must have been essential to the judgment in the prior proceeding and (4) the prior action

must have resulted in a judgment that was valid, final, and against the party against whom the doctrine is sought to be applied. ... There must also be mutuality, *i.e.*, a litigant cannot invoke collateral estoppel unless he would have been bound had the litigation of the issue in the prior action reached the opposite result.

Angstadt, 249 Va. at 446-47, 457 S.E.2d at 87.

Mitchell's argument that the doctrine of collateral estoppel is applicable in this case is without merit. Even if collateral estoppel could be invoked during the pendency of the same litigation (though it cannot), the required elements for its application are not present. Furthermore, the fact of the Default Judgment Order entered against Nations is not determinative or preclusive of those elements or facts necessary to support Mitchell's claim against American Safety, and there remain genuine issues of material fact.

1. Factual issues were not actually litigated.

Collateral estoppel requires that the factual issue must have been actually litigated. *Horton v. Morrison*, 248 Va. 304, 306, 448 S.E.2d 629, 631 (1994). Where no factual issues are actually litigated, a default judgment may not, under certain cases, serve as the basis for collateral estoppel. *Feggins v. Booker*, 28 Va. Cir. 461 (City of Richmond Cir. Ct. Aug. 6, 1992) (Harris, J.) (denying summary judgment in case where plaintiff obtained default judgment in general district court for property damage, then sued in circuit court for personal injuries on grounds that defendant's choice to take default judgment should not preclude litigation of issues of liability and damages in the subsequent action); *Horton*, 248 Va. at 306, 448 S.E.2d at 631 (holding that default judgment entered after defendant failed to respond to third-party motion for judgment could not be the basis for collateral estoppel, as no issues relating to the defendant's negligence were "*actually litigated*"); *TransDulles Center, Inc. v. Sharma*, 252 Va. 20, 472 S.E.2d 274 (1996) (doctrine of collateral estoppel precluded tenant from contesting liability for

rent due in second suit where liability for rent was previously as determined by default judgment entered in previous litigation between same parties; even though judgment was by default, tenant's liability was actually litigated and factual issues were established by evidence presented by landlord in *ex parte* hearing and made part of record); *Airlines Reporting*, 53 Va. Cir. 192 (holding that default judgment against principal (airline ticket agent) had effect of collateral estoppel against surety that issued bond to cover amount owed for ticket sales, precluding issues only as to liability but *not* issue of damages; damages had not been actually litigated, because no hearing on damages had been held and only evidence was affidavit of employee which did not rise to the level of "actual litigation" for the purposes of collateral estoppel).

The Default Judgment Order "only admits for the purposes of the action the legality of the demand or claim in suit and does not make the allegation of the declaration or complaint evidence in an action upon a different claim." *Feggins*, 28 Va. Cir. at 464 (quotation marks and brackets omitted). In this case, the Default Judgment Order was entered without the presentation of any evidence or any actual litigation of any factual issues regarding Nations' liability to Mitchell or the amount of damages, if any, owed. Thus, the Default Judgment Order cannot support entry of summary judgment against American Safety on the basis of collateral estoppel, or any other basis⁶.

2. Identity of parties is lacking.

For collateral estoppel to apply, there must be an identity of parties or their privies. Privity involves a "party so identical in interest with another that he represents the same legal right" and a determination of who are privies "requires a careful examination of the

⁶ In addition to the factual defenses raised by Nations, American Safety would have its own defenses to Mitchell's claims. Among other points, Virginia law would preclude a contractor without a valid license from recovering any sums due. Moreover, American Safety has satisfied bond claims for work performed by Mitchell's subcontractors, which payment would reduce the amount owed to Mitchell.

circumstances of each case.” *Angstadt*, 249 Va. at 447, 457 S.E.2d at 87 (concluding that collateral estoppel did not apply due to lack of identity of parties because insured and insurers were adverse parties when insurer denied coverage and withdrew representation of insured).

In this case, identity of parties is lacking. American Safety was not defending Nations in this case and, in fact, American Safety’s cross-claim against Nations made American Safety and Nations adverse parties.

3. Factual issues are not identical.

The factual issues must be identical for collateral estoppel to apply. The factual issues resolved by the Default Judgment Order, if any, have no bearing on Mitchell’s claim against American Safety. The entry of default judgment merely resolved the issue of Nations’ failure to comply with the Court’s discovery order. *See Angstadt*, 249 Va. at 447, 457 S.E.2d at 88. Factual issues regarding Nations’ liability to Mitchell or the amount owed, if any, were not considered or resolved. Moreover, the issues or elements of Mitchell’s claim against American Safety were not considered or resolved.

4. There is no valid final judgment.

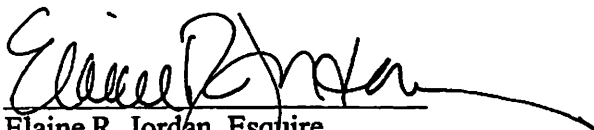
The Default Judgment Order is not a valid final judgment. So long as the Court retains jurisdiction over this case, the Court is empowered to change any legal determination or rulings made before, during or after trial. *See Turner v. Sheldon D. Wexler, D.P.M., P.C.*, 244 Va. 124, 128, 418 S.E.2d 886, 888 (1992) (rejecting plaintiff’s argument that previous ruling by trial court on tolling of statute of limitations became law of the case, which defendant was bound by, and could not be altered by subsequent ruling by a different trial court judge).

**IV.
CONCLUSION**

Drawing all inferences from the underlying facts in the light most favorable to American Safety, the Default Judgment Order may not be used as evidence in support of Mitchell's claim against American Safety. Therefore, the motion for summary judgment is without merit and must be over-ruled.

AMERICAN SAFETY CASUALTY INSURANCE
COMPANY

By Counsel



Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands Anderson Marks & Miller, P.C.
801 East Main Street
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

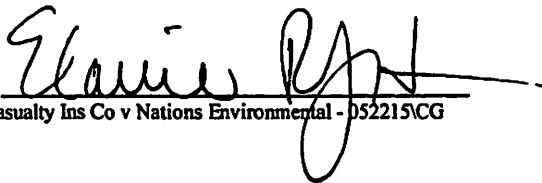
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was hand delivered this 14 day of July, 2003, to:

William R. Mauck, Esquire
Williams Mullen
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

James C. Skilling, Esquire
Butler, Williams & Skilling, P.C.
1309 East Cary Street, Second Floor

Richmond, VA 23219
Counsel for Chijioke Ude



G:\American Safety Insurance Group - 007934\American Safety Casualty Ins Co v Nations Environmental - 052215\CG
Mitchell\Pleadings\ASCIC'S brief in opp to Mitchell's MSJ.doc

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building**

C.G. MITCHELL CONSTRUCTION, INC.,

Plaintiff,

v.

**NATIONS ENVIORNMENTAL SERVICES, INC.
and**

**AMERICAN SAFETY CASULTY INSURANCE
COMPANY,**

Defendants.

Case No.: CL02P-937

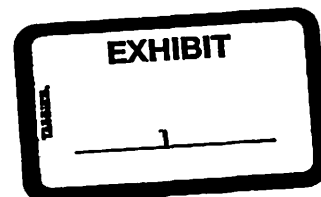
**DEFENDANT NATIONS ENVIRONMENTAL SERVICES, INC'S RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORRIES**

COMES NOW defendant Nations Environmental Services, Inc., who reserves the right to supplement its responses, and as its answers to plaintiff's first set of interrogatories, states as follows:

1. Identify each person who has any information or knowledge, direct or indirect, related to the claims contained in the Motion for Judgment. For each identified person, state the substance and basis of his knowledge or information.

ANSWER: -Tim Ragland; equipment operator
-Janet Williams, President-invoices, possible fraud
-Larry Kersey; former supervisor, information regarding
invoices (no longer with the company)

-Chijioke Ude, Vice President (no longer works with the
company)



ANSWER: Nations agreed to pay Mitchell for actual work completed.

5. Describe the factual basis for your denial that "between May and December 2001, Mitchell supplied labor, materials, and equipment to "the Project" and that to date invoices from Mitchell to Nation the amount of \$312,500.09 remain "outstanding" as stated in paragraph 6 of the Grounds of Defense that you filed herein.

ANSWER: Nations agreed to pay Mitchell for actual work performed. Nations questions the veracity of Mitchell's invoices and maintains that the figures on the invoices are exaggerated. The total Project paid a net of only \$600,000. Mitchell has already been paid over \$200,000, and somehow maintains that it is still owed over \$300,000.

6. Describe the factual basis for your denial the "American Safety " is the surety and Nations is the principal under a Labor and Material Payment Bond (the "Bond") issued by American Safety for a contract between Nations and Turner Construction Company related to "the Project" as stated in paragraph 6 of the grounds of Defense that you filed herein.

ANSWER: American Safety Casualty Insurance Company is the Surety and Nations is the principal for the Project. Defendant reserved the right to amend the Grounds of Defense.

7. Describe the factual basis for your denial that "Nations has breached the Agreement by failing and refusing to pay Mitchell the sums it is due thereunder as stated in paragraph 12 of the Grounds of Defense that you filed herein.

ANSWER: Nations agreed to pay Mitchell fees for actual work

performed. Nation maintains that Mitchell has billed for work that was not actually performed and has billed exaggerated and inflated figures on their invoices. Also, Mitchell agreed to accept payment five (5) days after Nations received payment from Turner Construction. When Turner "back charged" Nations and did not pay, Nations, Mitchell did not receive payment.

8. Identify all invoices and request for payment submitted by Mitchell to you for work or services performed and/or equipment or materials provided that are related to "the Project."

ANSWER: See attached.

9. Identify all payments that you have made to Mitchell for work or services performed and/or equipment or materials provided that are related to "the Project".

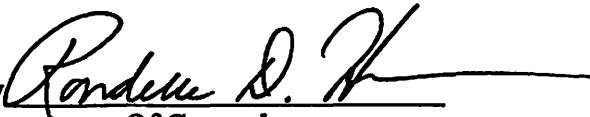
ANSWER: See attached.

10. Identify the work, services, materials, and/or equipment for which you have been billed by Mitchell that you contend you are not obligated to pay. Your answer should include, among other things, a description of the facts that form the basis for your denial that Mitchell is entitled to payment for such work, services, materials and/or equipment.

ANSWER: Nations is disputing all of invoices for on the basis that Nations agreed to pay for work actually completed, equipment actually used and for invoices billed under the standard business practices.

11. Identify the terms of any contract between you and any person whereby the other person agreed to perform work, supply materials and provide equipment related

**NATIONS ENVIRONMENTAL
SERVICES, INC.**

By 
Of Counsel

Rondelle D. Herman, Esquire
Harrell and Chambliss
Eighth and Main Building
707 East Main Street, Suite 1000
Richmond, Virginia 23219

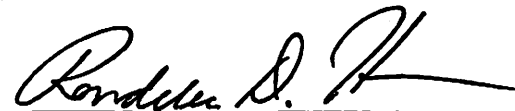
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day the foregoing original of Nations
Environmental Services, Inc.'s Responses to Plaintiff's First Set of Interrogatories was
mailed, postage pre-paid to:

E. Livingston B. Haskell
WILLIAMS AND MULLEN
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, Virginia 233218-1320

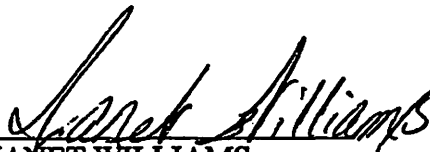
and a copy of the forgoing was mailed to the following:

Joshua N. Lief, Esquire
SANDS, ANDERSON, MARKS & MILLER, P.C.
801 E. Main Street
P.O. Box 1998
Richmond, Virginia 23218-1998


Rondelle D. Herman

SIGNATURE PAGE

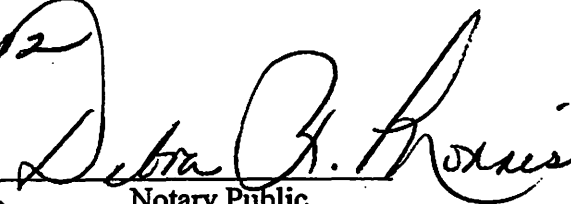
I, Janet Williams, personally appeared before the undersigned Notary Public in and for the aforesaid jurisdiction and acknowledged that the foregoing Response to Plaintiff's First Set of Interrogatories and Request for Production of Documents are true and correct to the best of my information, knowledge and belief.


JANET WILLIAMS

STATE OF VIRGINIA
CITY/COUNTY OF Richmond, to-wit:

Sworn and subscribed to before me, a Notary Public, in and for the State and City/County aforesaid, on this 22nd day of July, 2002.

My Commission expires: 05/31/2002


Notary Public

BUTLER WILLIAMS & SKILLING

A PROFESSIONAL CORPORATION • ATTORNEYS AT LAW

1309 EAST CARY STREET, SECOND FLOOR
RICHMOND, VIRGINIA 23219
TELEPHONE 804 • 648 • 4848
FACSIMILE 804 • 648 • 6814
www.butlerwilliams.com

March 3, 2003

E. Livingston B. Haskell, Esquire
Williams Mullen
P.O. Box 1320
Richmond, VA 23218

Re: *C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc.,
et al.*
Case No. LP-937-1

Dear Livingston:

As we discussed, instead of your office serving Mr. Ude with a corporate notice of deposition for Nations Environmental Services, Inc., as counsel of record for him individually, I agreed to accept service of such notice. Enclosed is my Acceptance of Service.

Nevertheless, as we further discussed, Mr. Ude informed me that he resigned as an officer of the company and as its employee prior to this litigation. Furthermore, he was a minority shareholder and never had the authority to act on behalf of the corporation even when he was so employed by it. Finally, Mr. Ude does not have any of the corporate documents or job file for this project. It is my understanding that you have been informed that Janet Williams has the care, custody and control of those documents. Accordingly, Mr. Ude does not have the authority or right to speak on behalf of the corporation or designate anyone else to appear.

As we specifically discussed, Mr. Ude will not be appearing to testify as a corporate designee pursuant to the notice, which has scheduled the corporate deposition for March 7, 2003 at 1:00 p.m.

EXHIBIT

2

E. Livingston B. Haskell, Esquire

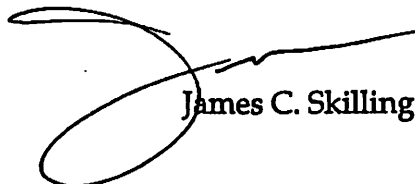
March 3, 2003

Page 2

Nevertheless, should you wish to depose Mr. Ude individually or as a fact witness, please let me know and we can schedule that deposition as our schedules will permit.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



James C. Skilling

JCS/cch

Enclosure

cc: William R. Baldwin, Esquire (w/encl.)
Elaine R. Jordan, Esquire (w/encl.)
Mr. Chijioke Ude (w/encl.)

794

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,

Plaintiff,

v.

NATIONS ENVIRONMENTAL SERVICES, INC.,
and AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,

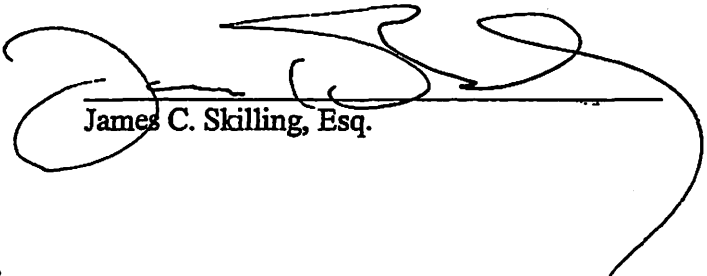
Defendants.

Case No. CL02P-937

ACCEPTANCE OF SERVICE

I, James C. Skilling, Esq., attorney and authorized agent for Chijoke Ude, hereby accept service of the Notice of Rule 4:5(b)(6) Deposition issued by C.G. Mitchell Construction, Inc. for the deposition of the corporate designee of Nations Environmental Services, Inc. in the above-styled matter.

DATE: 3.3.03


James C. Skilling, Esq.

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of Richmond to-wit:

Subscribed and sworn to before me, the undersigned Notary Public, this 3rd day of March, 2003.


Notary Public

My commission expires: June 30, 2005.

BUTLER WILLIAMS & SKILLING

A PROFESSIONAL CORPORATION • ATTORNEYS AT LAW

1309 EAST CARY STREET, SECOND FLOOR
RICHMOND, VIRGINIA 23219
TELEPHONE 804 • 648 • 4848
FACSIMILE 804 • 648 • 8814
www.butlerwilliams.com

March 26, 2003

E. Livingston B. Haskell, Esquire
Williams Mullen
P.O. Box 1320
Richmond, VA 23218

Re: *C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc.,
et al.*
Case No. LP-937-1

Dear Livingston:

Since it is now an uncontested fact that Nations Environmental Services, Inc. is dissolved, or to be dissolved, and will not be designating a corporate representative, my presence is not necessary at any of the proposed deposition dates and therefore you may schedule it without regard to my conflicts.

Pursuant to my prior correspondence dated February 28, 2003 and March 3, 2003, this will confirm that Mr. Ude will not be appearing as a corporate designee on behalf of the corporation. Mr. Ude was a minority shareholder and had previously resigned from the corporation. Nevertheless, if you wish to schedule Mr. Ude's deposition individually to ask him about all discoverable knowledge concerning the project, please contact my office for scheduling that particular deposition.

Very truly yours,

James C. Skilling

JCS/ajlo

cc: William R. Baldwin, Esquire
✓ Elaine R. Jordan, Esquire
Mr. Chijioke Ude

file

BUTLER WILLIAMS & SKILLING

A PROFESSIONAL CORPORATION • ATTORNEYS AT LAW

1309 EAST CARY STREET, SECOND FLOOR
RICHMOND, VIRGINIA 23219
TELEPHONE 804 • 648 • 4848
FACSIMILE 804 • 648 • 8814
www.butlerwilliams.com

February 28, 2003

E. Livingston B. Haskell, Esquire
Williams Mullen
P.O. Box 1320
Richmond, VA 23218

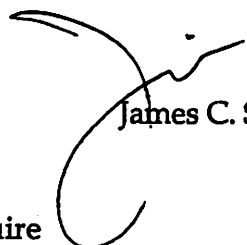
Re: *C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc.,
et al.*
Case No. LP-937-1

Dear Livingston:

This will confirm that Mr. Ude will not be appearing as a corporate designee on behalf of Nations Environmental. As we discussed, Mr. Ude was a minority shareholder and had previously resigned from the corporation. Accordingly, I will not be appearing on March 7, 2003 at 1:00 p.m. for the taking of Nations' deposition.

In the event you would like to schedule Mr. Ude's deposition individually, please contact my office for scheduling. Should you have any questions, please do not hesitate to contact me.

Very truly yours,


James C. Skilling

JCS/cch

cc: William R. Baldwin, Esquire
Elaine R. Jordan, Esquire
Mr. Chijioke Ude

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

Case No. CL02P-937

NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

Defendants.)

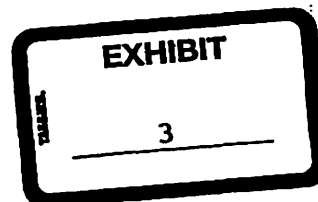
ORDER

CAME THIS DAY Plaintiff, C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, to argue its Motion for Sanctions (the "Motion") filed herein.

The Court FINDS that Nations Environmental Services, Inc. ("Nations") violated the Order entered by the Court on March 25, 2003 when a corporate designee from Nations failed to appear for a deposition pursuant to Rule 4:5(b)(6) after receiving proper notice.

Accordingly, for the reasons stated in the Motion and for other good cause shown, the Motion is hereby GRANTED and it is ADJUDGED, ORDERED and DECREED that judgment be entered in favor of Mitchell and against Nations Environmental Services, Inc. in the amount of \$312,500.09, together with interest at a rate of nine percent (9%), as provided by law, until paid, plus costs of \$184.00.

It is further ORDERED that Mitchell shall recover from Nations the sum of \$ _____ as its reasonable expenses and attorney's fees in obtaining this Order.

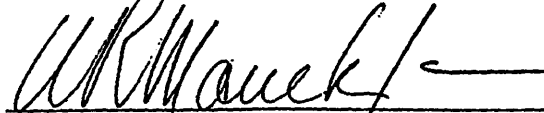


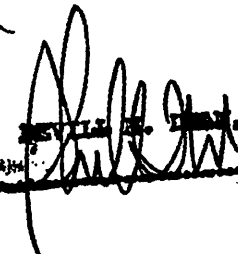
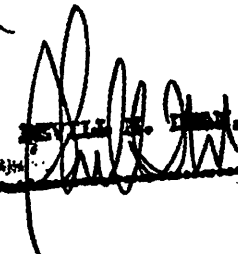
The Clerk of this Court shall forward a certified copy of this Order to counsel of record and any unrepresented parties.


ENTER: 5120102


JUDGE

WE ASK FOR THIS:

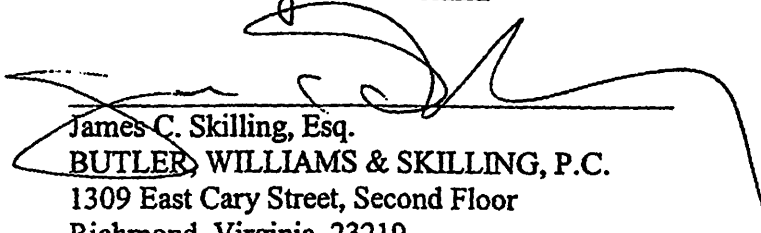

William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
P.O. Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

A COPY:  BY:  D.C.

SEEN AND objected to  for granting default judgment
and/or without allowing defenses to
be raised


Elaine R. Jordan, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

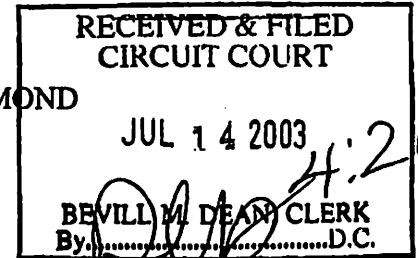
SEEN AND objected to :


James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

\\WMCDLIB\HASKELL\0914854.02

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building



C.G. MITCHELL CONSTRUCTION, INC.)

Plaintiff,)

v.)

NATIONS ENVIRONMENTAL SERVICES, INC., et al.)

Defendants.)

Civil Case No. LP-937-1

MOTION FOR FILING OF DISCOVERY

The defendant American Safety Casualty Insurance Company ("American Safety"), by counsel, pursuant to Rules 4:8 and 4:9 of the *Rules of the Supreme Court of Virginia* (the "*Rules of Court*"), move for entry an order directing the filing of discovery produced by the defendant Nations Environmental Services, Inc. ("Nations"), and in support thereof, states the following.

1. The plaintiff C.G. Mitchell Construction, Inc. ("Mitchell") propounded and served its First Set of Interrogatories (the "Interrogatories") and Request for Production of Documents (the "Requests for Production") (together, the "Written Discovery") on Nations.

2. Nations responded to the Written Discovery by providing answers to the interrogatories and the requests for production of documents and attached certain documents to the answers. A copy of Nations' response to the Interrogatories is attached as Exhibit 1. A copy of Nations' response to the Requests for Production is attached as Exhibit 2.

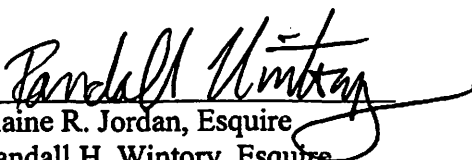
3. Rules 4:8(c) and (e) and 4:9(e) of the *Rules of Court* permit the filing of these discovery responses to make them a part of the record.

4. American Safety is filing contemporaneously with this motion, pleadings which are supported, in part, by Nations' responses and documents produced in response the Written Discovery.

WHEREFORE, American Safety moves that Nations' responses to the Written Discovery, including the documents attached thereto, be filed with the Court and made a part of the record in this case.

AMERICAN SAFETY CASUALTY INSURANCE
COMPANY

By Counsel


Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands Anderson Marks & Miller, P.C.
801 East Main Street
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

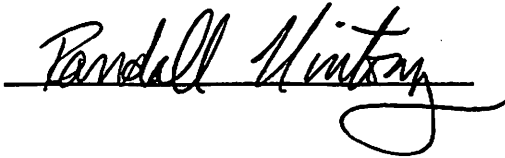
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was hand-delivered this 14 day of July, 2003, to:

William R. Mauck, Esquire
Williams Mullen
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

James C. Skilling, Esquire
Butler, Williams & Skilling, P.C.
1309 East Cary Street, Second Floor
Richmond, VA 23219
Counsel for Chijioke Ude

By U.S. Mail Only:
Janet C. Williams
2100 College Park Avenue
Ettrick, VA 23803

A handwritten signature in cursive script, reading "Randall Hinton", is written over a horizontal line.

7/24/00

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DEFENDANT NATIONS ENVIRONMENTAL SERVICES, INC.'S RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

COMES NOW defendant Nations Environmental Services, Inc., who reserves the right to supplement its responses, and as its answers to plaintiff's first set of interrogatories, states as follows:

1. Identify each person who has any information or knowledge, direct or indirect, related to the claims contained in the Motion for Judgment. For each identified person, state the substance and basis of his knowledge or information.

ANSWER:

- Tim Ragland; equipment operator
- Janet Williams, President-invoices, possible fraud
- Larry Kersey; former supervisor, information regarding invoices (no longer with the company)
- Chijioke Ude, Vice President (no longer works with the company)



2. In accordance with Rule 4:1 (b)(4)(A)(1) of the Rules of the Supreme Court of Virginia, identify each person whom you may expect to call as an expert witness at trial, and for each such expert, state the subject matter upon which the expert is expected to testify, the substance of facts and opinions upon which the expert is expected to testify, and provide a summary of the grounds for each of the expert's opinions.

ANSWER: Defendant has yet to determine which, if any, experts it will call at the trial of this matter. Defendant reserves the right to supplement this Response.

3. Identify and describe any agreement between Nations and Mitchell whereby Mitchell was to perform services, supply equipment and. or provide materials related to the Project. Your answer should include, among other things, a description of the scope of Mitchell's work, the duration of Mitchell's work, the terms of the agreement, and the basis upon which Mitchell was to be paid.

ANSWER: See the attached agreement. According to the agreement, Mitchell was to paid within five (5) days after Nations received payment from Turner Construction. Mitchell was to work on the project until the job was completed.

4. Describe the factual basis for your denial that "in May 2001, Mitchell entered into an agreement (the "Agreement") with Nations to provide labor, equipment, and debris removal services in connection with the demolition of the Richmond Convention Center Exhibition Hall in the City of Richmond, Virginia (the "Project") as stated in paragraph 4 of the Grounds of Defense that you filed herein.

ANSWER: Nations agreed to pay Mitchell for actual work completed.

5. Describe the factual basis for your denial that "between May and December 2001, Mitchell supplied labor, materials, and equipment to "the Project" and that to date invoices from Mitchell to Nation the amount of \$312,500.09 remain "outstanding" as stated in paragraph 6 of the Grounds of Defense that you filed herein.

ANSWER: Nations agreed to pay Mitchell for actual work performed. Nations questions the veracity of Mitchell's invoices and maintains that the figures on the invoices are exaggerated. The total Project paid a net of only \$600,000. Mitchell has already been paid over \$200,000, and somehow maintains that it is still owed over \$300,000.

6. Describe the factual basis for your denial the "American Safety " is the surety and Nations is the principal under a Labor and Material Payment Bond (the "Bond") issued by American Safety for a contract between Nations and Turner Construction Company related to "the Project" as stated in paragraph 6 of the grounds of Defense that you filed herein.

ANSWER: American Safety Casualty Insurance Company is the Surety and Nations is the principal for the Project. Defendant reserved the right to amend the Grounds of Defense.

7. Describe the factual basis for your denial that "Nations has breached the Agreement by failing and refusing to pay Mitchell the sums it is due thereunder as stated in paragraph 12 of the Grounds of Defense that you filed herein.

ANSWER: Nations agreed to pay Mitchell fees for actual work

performed. Nation maintains that Mitchell has billed for work that was not actually performed and has billed exaggerated and inflated figures on their invoices. Also, Mitchell agreed to accept payment five (5) days after Nations received payment from Turner Construction. When Turner "back charged" Nations and did not pay, Nations, Mitchell did not receive payment.

8. Identify all invoices and request for payment submitted by Mitchell to you for work or services performed and/or equipment or materials provided that are related to "the Project."

ANSWER: See attached.

9. Identify all payments that you have made to Mitchell for work or services performed and/or equipment or materials provided that are related to "the Project".

ANSWER: See attached.

10. Identify the work, services, materials, and/or equipment for which you have been billed by Mitchell that you contend you are not obligated to pay. Your answer should include, among other things, a description of the facts that form the basis for your denial that Mitchell is entitled to payment for such work, services, materials and/or equipment.

ANSWER: Nations is disputing all of invoices for on the basis that Nations agreed to pay for work actually completed, equipment actually used and for invoices billed under the standard business practices.

11. Identify the terms of any contract between you and any person whereby the other person agreed to perform work, supply materials and provide equipment related

to the Project. Your answer should include, among other things, the name of the person with whom you contracted, the scope of the work that he was to perform, the materials that he was to supply, the equipment that he was to provide, the sum that he was to be paid, and the timeframe within such work was to be performed, such material were to be supplied or such equipment was to be provided.

ANSWER: Objection to this Interrogatory as the information is not relevant nor reasonably calculated to lead to discovery of admissible evidence. Without waiving this objection, Southide Petroleum, Vision Hauling and W.O. Grubb Steele.

12. Identify and describe the terms of any contract between you and any person whereby you agreed to perform work, supply materials and provide equipment related to the "Project." Your answer should include, among other things, the name of the person with whom you contracted, the scope of the work that you were to perform, the materials that you were to supply, the equipment that you were to provide, the sum that you were to be paid, and the timeframe within such work was to be performed, such material were to be supplied or such equipment was to be provided.

ANSWER: Objection. This interrogatory was asked and answered in Interrogatory #12.

13. Identify all payments that you have received from any person related to work that you performed, materials that you supplied, and equipment that you provided on the "Project." This Interrogatory includes payments that you received for work performed, materials supplied and equipment provided by other persons at your direction.

ANSWER: Payments were received from Turner Construction. See attached partial lien waivers.

15. Identify any payment, performance, bid or other bonds related to the "Project" to which you are a party. Your answer should include, among other things, an identification of the principal, the surety, the obligee and any other parties to the bond, the date of the bond, the amount of the bond, and the work covered by such bond.

ANSWER: See attached bids which were given by Aaron Whitmore, former President of Nations who is no longer with the company. There are no other bonds except for the bond with American Safety Casualty Insurance Company.

15. Identify any indemnity agreement between you and any other person related to the "Project" or any bond associated therewith. Your answer should include, among other things, an identification of the parties to the agreement, the terms of the agreement, the date of the agreement, and the scope of the agreement.

ANSWER: There are no indemnity agreements between this Defendant and any other persons. However, there are agreements between the President and Vice President with the American Casualty and Safety Insurance Company. These documents were attached to the Plaintiff's Motion for Judgment and speak for themselves.

16. Describe the factual basis for your denial the under the terms and conditions of a General Agreement of Indemnity (the Indemnity Agreement) and other applicable law, Nations is obligated to exonerate, hold harmless, indemnify and keep indemnified American Safety from and against any and all claims, demands, liabilities,

losses, costs and expenses, including attorney's fees, by reason of having executed, or procured the execution of the "Bond" as stated in paragraph 5 of the Grounds of Defenses to Cross-Claim that you filed herein.

ANSWER: There are no indemnity agreements between Nations any other person. Therefore, Nations is not obligated to indemnify, exonerate, hold harmless, indemnify and keep indemnified American Safety from and against any and all claims, demands, liabilities, losses, costs and expenses, including attorney's fees

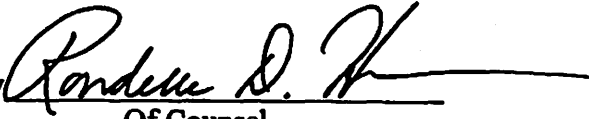
17. If you admit that any portion of the \$312,500.09 sum claimed by Mitchell in the Motion for Judgment is due and payable, state such amount and the basis for your calculations.

ANSWER: Nations does not admit that any portion of the \$312,500.09 is due and payable.

18. Identify all lawsuits that have been filed in any courts that are related to the Project in which Nations is a party. For each, identify the parties to the case, the court in which such suit is pending, the nature of the suit, the amount claimed by the plaintiff(s) in the case, and the present status of the case.

ANSWER: Objection. This interrogatory is overly broad, unduly burdensome and harassing. Without waiving see attached.

**NATIONS ENVIRONMENTAL
SERVICES, INC.**

By 
Of Counsel

Rondelle D. Herman, Esquire
Harrell and Chambliss
Eighth and Main Building
707 East Main Street, Suite 1000
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day the foregoing original of Nations
Environmental Services, Inc.'s Responses to Plaintiff's First Set of Interrogatories was
mailed, postage pre-paid to:

E. Livingston B. Haskell
WILLIAMS AND MULLEN
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, Virginia 233218-1320


and a copy of the forgoing was mailed to the following:

Joshua N. Lief, Esquire
SANDS, ANDERSON, MARKS & MILLER, P.C.
801 E. Main Street
P.O. Box 1998
Richmond, Virginia 23218-1998


Rondelle D. Herman

SIGNATURE PAGE

I, Janet Williams, personally appeared before the undersigned Notary Public in and for the aforesaid jurisdiction and acknowledged that the foregoing Response to Plaintiff's First Set of Interrogatories and Request for Production of Documents are true and correct to the best of my information, knowledge and belief.

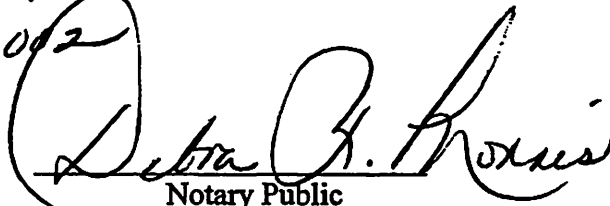


JANET WILLIAMS

STATE OF VIRGINIA
CITY/COUNTY OF Richmond, to-wit:

Sworn and subscribed to before me, a Notary Public, in and for the State and City/County aforesaid, on this 22nd day of July, 2002.

My Commission expires: 05/31/2002



Notary Public

1-800 7-003/000 F-008

Nations Environmental Services, Inc.
10 S. 14th Street, Suite 103
Richmond, VA. 23219
(804) 788-4220 /Fax (804) 788-4506

SERVICE AGREEMENT

Client: Midwest Coast Phone: (804)
Address: _____ Fax: (804)

Contact Person: Charles Mitchell
Type of Service Requested: Demo. Demos
Location of Service: _____
Scope of work: Demo.

NATIONS ENVIRONMENTAL SERVICES IS PLEASED TO OFFER YOU, THE SERVICE AGREEMENT AS SUBCONTRACTOR, PLEASE NOTE THAT NATIONS ENVIRONMENTAL SERVICES, WILL RENDER PAYMENT FOR JOBS COMPLETED FIVE DAYS AFTER NATIONS ENVIRONMENTAL SERVICES HAVE RECEIVED PAYMENT.

I have read and understand all the above

Client: *Charles Mitchell* Date: 7-8-01

For: Nations Environmental Services, Inc.
Frank C. Williams Date: 7-24-01

NATIONS ENVIRONMENTAL SERVICE, INC.

Mitchel Construction

Date	Type	Reference	Original Amt.	Balance Due	11/20/2001	2933
09/30/2001	Bill		98,027.16	98,027.16	Discount	Payment
					Check Amount	35,100.00
						35,100.00

2/20

balance Of \$16,496.00 # 22 & \$9,026.00 towards # 25

Metro County Bank Of Vir

35,100.00

Check Printers, Inc.

ANS ENVIRONMENTAL SERVICES

Mitchel Construction

Date	Type	Reference
10/01/2001	Bill	21
10/01/2001	Bill	22

Original Amt.	Balance Due
21,895.00	21,895.00
22,496.00	22,496.00

10/22/2001
Discount

2874
Payment
18,610.75
6,000.00
24,610.75

Check Amount

Metro County Bank Of Vir

24,610.75

Check Printers, Inc. 0142

L.A. Inc. Pmt
7/17/2001

SERVICES, INC.

Reference

Original Amt.
13,557.30

Balance Due
2,457.30

8/3/2001

Discount

Check Amount

1297

Payment
2,000.00
2,000.00

etro County Bank Of Vir

2,000.00

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315

NATIONS ENVIRONMENTAL SERVICES, INC.

Mitchel Construction

Date	Type	Reference	Original Amt.	Balance Due	7/17/2001	Discount	1471
07/17/2001	Bill		13,557.30	13,557.30			Payment
							8,100.00
					Check Amount		8,100.00

Metro County Bank Of Vir

Mitchell

8,100.00

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NATIONS ENVIRONMENTAL SERVICES, INC.

Mitchel Construction				8/15/2001	
Date	Type	Reference	Original Amt.	Balance Due	Discount
05/11/2001	Bill	5	20,735.00	20,735.00	
05/11/2001	Bill	3	9,617.50	9,617.50	
				Check Amount	
					1697
					Payment
					10,385.20
					9,617.50
					20,002.70

20,002.70

Metro County Bank Of Vir

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NATIONS ENVIRONMENTAL SERVICE INC.

Mitchel Construction

Date	Type	Reference	Original Amt.	Balance Due	9/20/2001 Discount	2769 Payment
05/29/2001	Bill	7	13,129.50	10,627.00		10,627.00
06/01/2001	Bill	8	11,159.00	11,159.00		11,159.00
06/12/2001	Bill	10	475.00	475.00		475.00
06/25/2001	Bill	11	9,180.00	9,180.00		8,531.70
					Check Amount	30,792.70

Metro County Bank Of Vir

30,792.70

Check Printers, Inc

ATIONS ENVIRONMENTAL SERVICES, INC.

Mitchel Construction

Date	Type	Reference
05/11/2001	Bill	5
06/12/2001	Bill	9
05/29/2001	Bill	7

Original Amt.
20,735.00
5,785.00
13,129.50

Balance Due
10,349.80
5,785.00
13,129.50

9/20/2001
Discount

Check Amount

2768
Payment
10,349.80
5,785.00
2,502.50
18,637.30

Metro County Bank Of Vir

18,637.30

Check Printers, Inc. 014251

NATIONS ENVIRONMENTAL SERVICES, INC.

Mitchel Construction

Date
10/02/2001

Type
Bill

Reference
15

Original Amt.
15,060.82

Balance Due
15,060.82

10/19/2001
Discount

Check Amount

2938

Payment
14,307.78
14,307.78

Metro County Bank Of Vir

14,307.78

Check Printers, Inc.

DL

154

320

Mitchel Construction

Date	Type	Reference	Original Amt.	Balance Due	7/27/2001 Discount Check Amount	Payment
07/17/2001	Bill		13,557.30	5,457.30		3,000.00
						3,000.00

Metro County Bank Of Vir

3,000.00

10/11/2001

Mitchel Construction

**7,209.15

Seven Thousand Two Hundred Nine and 15/100*****

C.G. Mitchell Construction
11023 Washington Hwy, Suite 200
Glen Allen, VA. 23059

Mitchel Construction			10/11/2001			
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
07/06/2001	Bill		10,162.50	10,162.50		7,209.15
				Check Amount		7,209.15

Metro County Bank Of Vir

7,209.15

Mitchel Construction			10/11/2001			
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
07/06/2001	Bill		10,162.50	10,162.50		7,209.15
				Check Amount		7,209.15

Metro County Bank Of Vir

7,209.15

11023 Washington Hwy. te 200
Glen Allen, VA 23059

76047836456

T-470 P.004/007

F-297

DATE

1/17/2002

TO:

Nations Environmental
10 South 14TH Street Suite 103
Richmond Va.23219

		AMOUNT DUE	AMOUNT ENC.		
		5312,500.09			
DATE	TRANSACTION	AMOUNT	BALANCE		
04/01/2001	Balance forward		0.00		
05/02/2001	INV #1	8,902.50	8,902.50		
05/09/2001	INV #2	13,485.00	24,387.50		
05/12/2001	INV #3	9,617.50	34,005.00		
05/21/2001	INV #5	20,735.00	54,740.00		
05/29/2001	INV #7	13,129.50	67,869.50		
06/01/2001	INV #8	11,159.00	79,028.50		
06/12/2001	INV #9	5,785.00	84,813.50		
06/22/2001	INV #10	475.00	85,288.50		
06/29/2001	INV #11	9,180.00	94,468.50		
07/06/2001	INV #12	10,162.50	104,631.00		
07/13/2001	INV #15	13,060.82	119,691.82		
07/17/2001	PMT #7-17-01	-8,100.00	111,591.82		
07/19/2001	PMT #To Simons 7-19-01	-3,000.00	108,591.82		
07/23/2001	INV #21	21,895.00	130,486.82		
07/27/2001	INV #22	22,496.00	152,982.82		
07/27/2001	PMT #To Simons 7-27-01	-3,000.00	149,982.82		
08/03/2001	INV #25	31,530.00	181,512.82		
08/03/2001	PMT #1297 8-3-01	-2,000.00	179,512.82		
08/13/2001	INV #31	422.40	179,935.22		
08/15/2001	PMT #1697	-20,002.70	159,932.52		
08/16/2001	INV #29	21,684.00	181,616.52		
08/18/2001	INV #30	19,875.50	201,492.02		
08/24/2001	INV #33	24,454.50	225,946.52		
08/31/2001	INV #35	18,391.00	244,337.52		
09/10/2001	INV #38	14,057.00	258,394.52		
09/20/2001	PMT #2768	-18,637.30	239,757.22		
09/20/2001	PMT #2769	-30,792.70	208,964.52		
09/26/2001	INV #52	17,318.00	226,282.52		
09/26/2001	INV #53	19,001.50	245,284.02		
09/29/2001	INV #54	17,557.00	262,841.02		
10/09/2001	INV #56	17,945.00	280,786.02		
10/11/2001	PMT #2814 (10-11-01)	-7,209.15	273,576.87		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
2,837.00	38,225.00	82,129.75	71,821.50	117,486.84	5312,500.09

Page 1

Jan. 16 2002 01:43PM P4

FAX NO.: 18045507768

COM : CEM

Jan-16-2002 01:23pm From-WILLIAMS MIP:EN
 11023 Washington Hwy. E 400
 Glen Allen, VA 23059

+8047836456

T-470 P.005/007 F-297

1/17/2002

TO:
Nation Environmental 10 South 14TH Street Suite 103 Richmond Va.23219

		AMOUNT DUE	AMOUNT ENC.		
		\$312,500.09			
DATE	TRANSACTION	AMOUNT	BALANCE		
10/19/2001	PMT #2938	-14,307.78	259,269.09		
10/22/2001	INV #57	25,340.00	284,609.09		
10/22/2001	INV #58	27,470.00	312,079.09		
10/23/2001	PMT #10-23-01	-24,610.75	287,468.34		
10/30/2001	INV #59	18,996.00	306,464.34		
11/09/2001	INV #63	10,323.75	316,788.09		
11/19/2001	INV #65	10,140.00	326,928.09		
11/19/2001	INV #66	9,650.00	336,578.09		
11/20/2001	PMT #2933	-35,100.00	301,478.09		
11/30/2001	INV #68	2,875.00	304,353.09		
12/05/2001	INV #71	5,120.00	309,473.09		
12/14/2001	INV #73	6,400.00	315,873.09		
12/17/2001	INV #78	4,040.00	319,913.09		
12/19/2001	INV #79	1,610.00	321,523.09		
01/07/2002	CREDMEM #60	-10,250.00	311,273.09		
01/07/2002	INV #81 Interest	1,227.00	312,500.09		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
2,837.00	38,225.00	82,129.75	71,821.50	117,486.84	\$312,500.09

Page 2

Jan. 16 2002 01:43PM P3

FRX NO.: 18045507768

ROM : COM1

Date	Credit No.
1/7/2002	10

Nations Environmental
10 South 14TH Street Suite 103
Richmond Va. 23219

		P.O. No.	Project
Description	Qty	Rate	Amount
Clean Concrete Dumped, not charged back to C.G. Mitchell	-1	10,250.00	-10,250.00
		Total	\$-10,250.00
		Invoices	\$0.00
		Balance Credit	\$-10,250.00

Jan-16-2002 01:24pm From-WILLIAMS MURPHY
 11023 Washington Hwy. Suite 103
 Glen Allen, VA 23059

+8047836456

T-470 P.007/007 F-207

DATE

1/7/2002

SECTION 8

81 Interest

BILL TO

Nations Environmental
10 South 14TH Street Suite 103
Richmond Va.23219

P.O. NO.

TERMS

DUE DATE

PROJECT

Net 30

2/6/2002

SERVICED	DESCRIPTION OF WORK	QTY	RATE	AMOUNT
1/7/2002	Finance Charges for December	1	1,227.00	1,227.00
			Total	\$1,227.00

Questions Call 837-7124 or 550-7640
 Fax 550-7768

Jan. 16 2002 01:42PM PZ

FRX NO.: 18045507768

ROM: COM1

PARTIAL WAIVER OF LIEN

APR 20 2001

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION

TURNER/RUSSELL/DAVIS

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 02/28/01 are \$26,660.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof. (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 17th day of April, 2001.

NAME: NATIONS ENVIRONMENTAL SERVICE

BY:

Janet C. Williams
President N.E.S.
(TITLE)

STATE OF Virginia
City of Richmond
COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

17th DAY OF April, 2001.

BY Sam S. [Signature] (NOTARY PUBLIC)

My Commission Expires: 10/31/01

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

PARTIAL WAIVER OF LIENProject Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 03/31/01 are \$51,815.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 16 day of MAY, 2001.

NAME: NATIONS ENVIRONMENTAL SERVICES, INC

BY: Robert C. WilliamsPresident / CEO
(TITLE)STATE OF VIRGINIACITY OF RICHMOND

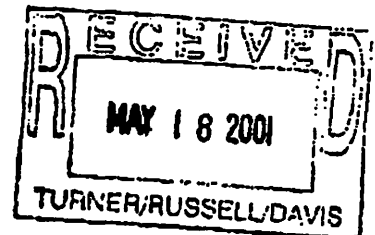
CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS16th DAY OF MAY, 2001.BY Robert C. Williams (NOTARY PUBLIC)My Commission Expires: 6/30/2003

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED



PARTIAL WAIVER OF LIEN

JUN 14 2001

Project Description GREATER RICHMOND CONVENTION CENTER EXPANTION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 04/30/01 are \$141,784.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 12th day of June, 2001.

NAME: NATIONS ENVIRONMENTAL SERVICES, INC

BY: [Signature]
Vice President
(TITLE)

STATE OF Virginia
COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

12th DAY OF June, 2001.

BY [Signature] (NOTARY PUBLIC)

My Commission Expires: 10-31-01

PLEASE REMIT ORIGINAL TO: TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANTION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 05/31/01 are \$214,684.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 10 day of August, 2001.

NAME: NATIONS ENVIRONMENTAL SERVICES, INC

BY: Susan C Williams

President / CEO
(TITLE)

STATE OF Virginia
City
COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

10 DAY OF August, 2001.

BY Anne W. Bryant (NOTARY PUBLIC)

My Commission Expires: 5/31/05

PLEASE REMIT ORIGINAL TO: TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 06/30/01 are \$298,004.00.

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver

WITNESS the signature and seal of the undersigned as of this 11th day of September 2001.

NAME: NATIONS ENVIRONMENTAL

BY: [Signature]

(TITLE)

STATE OF VA

CITY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC

SWORN TO BEFORE ME ON THIS

11th DAY OF September 2001.

BY [Signature] (NOTARY PUBLIC)

My Commission Expires.

My Commission Expires May 31 2005

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Jeff Maday

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS
WAIVER IS RECEIVED

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 07/31/01 are \$441,447.00.

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 13th day of Dec., 2001.

NAME: NATIONS ENVIRONMENTAL

BY: Susan C. Williams

President / CEO
(TITLE)

STATE OF VA

COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC

SWORN TO BEFORE ME ON THIS

13th DAY OF Dec., 2001.

BY [Signature] (NOTARY PUBLIC)

My Commission Expires:

Mar 31, 2003
PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Jeff Maday

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS
WITNESSED 227

PARTIAL WAIVER OF LIENProject Description GREATER RICHMOND CONVENTION CENTER EXPANSION

The total payments received from TURNER CONSTRUCTION COMPANY through the period ending 08/31/00 are \$ 18,560.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or hereafter have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 12th day of October, 2000.

NAME: NATIONS ENVIRONMENTAL SERVICES, INC.BY: Robert C. WilliamsPresident / CEO
(TITLE)

STATE OF Virginia
City of Richmond
COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

12th DAY OF October, 2000.

By Thomas R. Dury (NOTARY PUBLIC)

My Commission Expires: January 31, 2003

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E. CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

TOTAL P.03

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 09/30/01 are \$653.192.00.

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this _____ day of _____, 2001.

NAME: NATIONS ENVIRONMENTAL

BY: _____

(TITLE)

STATE OF _____

COUNTY OF _____

CORPORATE SEAL

NOTARY PUBLIC

SWORN TO BEFORE ME ON THIS

_____ DAY OF _____, 2001.

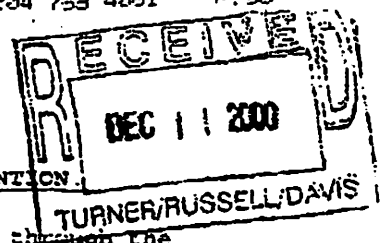
BY _____ (NOTARY PUBLIC)

My Commission Expires:

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Jeff Maday

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS
WAIVER IS RECEIVED

PARTIAL WAIVER OF LIENProject Description GREATER RICHMOND CONVENTION CENTER EXPANTION

The total payments received from TURNER CONSTRUCTION COMPANY through the period ending 10/31/00 are \$21,260.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 5 day of December, 2000.

NAME: NATIONS ENVIRONMENTAL SERVICESBY: Mark C. WilliamsPresident

(TITLE)

STATE OF VACOUNTY OF Richmond

NOTARY PUBLIC

SWORN TO BEFORE ME ON THIS

5th DAY OF December, 2000.BY Deborah A. Jenkins (NOTARY PUBLIC)My Commission Expires: July 31, 2004

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

MINORITY BUSINESS/PARTICIPATION COMMITMENT FORM

The bidder agrees to expend at least 90 % of the contract if awarded for minority enterprises. For purposes of this commitment, the term "minority business enterprise" means a business at least fifty percent (50%) of which is owned and controlled by minority group members or, in case of a publicly-owned business, at least fifty-one percent (51%) of the stock of which is minority owned; and the business is controlled by minority group members. For the purposes of the preceding sentence "minority group members" are citizens of the United States who are Black, Hispanics, Asians, Pacific Islanders and American Indians. Minority Business Enterprises may be employed as construction subcontractors or as vendors or suppliers. The bidder must indicate the minority business enterprises it intends to utilize in this contract as follows:

A.	Names and Addresses Of Minority Firms	Nature of Work for Participation in this Contract	Percent
1.	Nations Environmental Services, Inc. 10 S. 14th St. Ste 103 Richmond, VA 23219	Building Demolition Coordination	60
2.	Pryors Hauling Inc. 4509 Pouncey Tract Rd Glen Allen, VA 23060	Hauling & Disposal	30
3.			

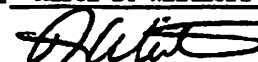
\$ 90 %
(Total)

- B. Indicate below percentage of ownership by minority category for each minority contractor (or in joint venture):
- C. Bidder and the MBE(s) agree that the MBE shall not subcontract or assign any work described herein to another entity without the prior written approval.

	Firm	Black	Hispanics	Asians	Pacific Islanders	American Indians	Other	Total
1.	NES	51%						51%
2.	Pryors	100%						100%
3.								

- D. The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Contractor Nations Environmental Services, Inc.
Name of Authorized Officer Aaron B. Whitmore



Revision Date of October 7, 1999

Bid Proposal Form

By submitting this proposal the undersigned certifies that this bid is made in good faith without fraud, collusion or connection of any kind with any other bidder, and that the Bidder is competing in its best interest and on its own behalf without connection or any obligation to any undisclosed person, and has made its own examination and estimates regarding said bid.

This Proposal is submitted by: Aaron B. Whitmore
Name of Contractor: Nations Environmental Services, Inc.
Address: 10 S. 14th St., Suite 103
Richmond, VA 23219
Virginia Unemployment Ins. No.: 0005395267
Virginia Sales Tax I.D. No.: n/a
Contractors License No.: 2705 035454A
Federal I.D. No.: 54-1814426
By: Aaron Whitmore Title: CEO
Date: October 21, 1999
Contact Person: Aaron Whitmore

The above Bidder hereby acknowledges to be one of the following:

- A. ☒ A Corporation only incorporated under the laws of Virginia
having its principal office of Richmond
- B. ☐ A Partnership existing under the laws of _____
- C. ☐ An Individual.
- D. ☐ Other.

BID BONDBond # ASB-400306

KNOW ALL MEN BY THESE PRESENTS; that

(Name of Subcontractor)

Nations Environmental Services

a Virginia corporation with principal offices located at

10 S 14th Street Richmond, VA 23219

(Address)

as Principal (hereinafter "Principal") and American Safety Casualty Insurance Company as Surety,

(Name of Surety)

a Delaware corporation with home offices located at

1845 The Exchange, Suite 200 Atlanta, GA 30339

(Address)

(hereinafter "Surety"), are held and firmly bound unto TURNER CONSTRUCTION COMPANY, a New

York corporation, (hereinafter "Obligee"), in the sum of Forty Two Thousand Five Hundred and 00/100ths (\$42,500.00)

(Enter dollar amount required or percent of Bid price) for the payment whereof Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted to Obligee a certain bid, dated 19... for the performance of Demolition of curb to curb including sidewalks, curbside wall construction, roofing and flooring of Richmond Centre Exhibition Hall.

(Description of Work)

(hereinafter "Bid").

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Obligee shall accept the Bid of Principal and the Principal shall in accordance with the terms of such Bid:

- 1) enter into a contract with the Obligee;
- 2) furnish a bond for the faithful performance of such contract and for the payment of all persons performing labor or furnishing materials in connection therewith; and
- 3) shall in all other respects perform the agreement created by the acceptance of such Bid.

Then this obligation shall be null and void; otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the Principal and Surety have hereunto caused this Bond to be duly executed and acknowledged as set forth below this 20th day of October, 1999

(Impress Corporate Seal)

Nations Environmental Services Principal
(Name of Subcontractor/Principal)

ATTEST:
Barbara Hoyer

By: Aaron B. Whit
(Agent) AARON B. WHITMORE

Title: CEO

(Impress Corporate Seal)

American Safety Casualty Insurance Company Surety
(Name of Surety)

ATTEST:
Chandra Harmon

By: Judy J. Richardson
(Agent-in-Fact)
Judy J. Richardson

NOTE: An original Power of Attorney bearing same date as Bond must be attached.



Nations Environmental Services, Inc.

THE FOLLOWING ARE BID ADDITIVES:

1. **Angle Braces (Provide and Install) as per detail drawing 2 on drawing S5-7.02, 55-7.04, 55-7.05. Consists of a W12X30 steel I beam with flanges.
\$28,640.00**
2. **Covered Sidewalk at 5th street: 640 feet as per Note 2 on sheet A1-2.5
Covered Sidewalk at 4th Street: 500 feet as per Note 3 on sheet A1-2.50
\$79,800.00**
3. **Temp partition as per Note 4 on A1-2.50
\$1,100.00**
4. **Temp floor over escalator pit as per Note 3 on A1-2.50
\$2,600.00**
5. **Bridge connector enclosure wall as per Note 6 on A1-1.00
\$9,100.00**
6. **Provide escalator pit as per Note 7 on A1-1.00
\$900.00**



Nations Environmental Services, Inc.

EXCLUSIONS

- 1. Site Demolition on sheets C1-1 and C1-2, Volume 1**

AWT

PHASE I

FRED Pryor PHASE I
 Nations Site Supervision
 Plans for Temp prot/Dust control etc

\$22860
 2000
 1000
 25860
~~22860~~ \$29860

X

Phase II

FRED Pryor \$624 600
 Temp Systems catwalks \$79800
 other Temps \$13700
 ANGLE BRACES per Detail 2 on Sheet \$28960
 \$55-7.02

Reof Main building \$30000

PROJECT Management
 Site Assistant
~~\$40,000~~ 20,000
~~\$10,000~~
~~\$240,000~~
 807,060
 +10% \$684600
 \$68460
 75306
 \$828,366
 820000

Roof main building

FRED

Phase I

3	Wrecking	240 hrs	5.45
2	Driving	160	\$2.50

Phase II

Hauling 1920 Hours

Wrecking 3000 Hours

Average ~~Average~~ \$12/Hour

\$63840 labor
w/c Deduct \$3500.00

Jen get Drawings for Dairy Building KBS - Rick Lancer

- get Drawings for SRC Job High size \$5000

- get Check from SRC

- Steve Key for my office

- call Turner Ben Lancer

- Proposal for Davis

Call

Glanville Dr.
Suite 100

Forest
Rt on Bayberry
Rt @ End
Suite 100

43

TEMPORARY MEASURES

- ANGLE BRACES (PROVIDE AND INSTALL) as per Note 2 on Dwg SS-7.01 \$28640
W12 x 30 steel beam 34 feet long w/ flanges
\$460 A Piece x 22 qty = \$10120

Concrete 2 yd³ / block x 22 x \$70/yd = \$3080

LABOR To Dig hole, fasten, Install, etc
3 mo @ \$140 = 420 x 22 = 9240

Equipment " " \$2200

Miscellaneous 2000

\$26640

contingency

2000
\$28640

- COVERED SIDEWALK ~~on~~
5th St 640 feet as per Note 2 on Sheet A1-2.5

4th St 500 feet

\$79800

As per Note 3 on sheet A1-1.00

~~\$41800~~
~~\$4800~~
~~\$11350~~
35000

- Temp partition as per Note 4 on A1-2.50 ~~on~~ \$1100
- Temp Floor over escalator pit as per Note 3 on A1-2.50 \$2600
- Bridge connector ~~As per Enclosure wall~~ As per Note 6 on A1-1.00 ~~\$8900~~ 9100
- ~~Provide~~ Escalator pit as per Note 7 on A1-1.00 \$900

Phase I \$21700 + 3700 = 25400 - \$2281
 Building Tunnel all Concrete \$673100
~~\$605790~~
 All sidewalk except City's 694000 \$624,600
 Add In Roof strip \$30000
 Concrete sidewalks other \$11595
 Area Walk AND Tower \$10500
 Full Time P.M. 30,000
 LESS 10%

Note 4 Check + see if Rubber (call Don)
 Note 3 what about temp point per A1-2.50 women/men bath
 Temp covered floor over elevator pit "1"
 A1-1.00 Note 6 Phase 2 Bridge Connection ^{escalator} enclosure wall
 " 7 Escalator Pit Provide
 Note 3 Temp Express sidewalk canopy 4th ST.

for your files

Turner
RUSSEL
Davis Brothers

Fax

*641 2240 Jeff Baker
643 4028 SITE-TRAINER*

To: AARON WHITMORE

From: Kelly DeVito

Fax: 788-4506

Pages: 1

Phone:

Date: 11/26/99

Re: Richmond Convention Expansion Center CC:

Bid

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

The following checked items are still missing from your bid proposal for the Richmond Convention Center Expansion Project:

- ☐ Completed Turner/Russell/Davis Bid Proposal Form
- ☐ Bond Information
- ☐ OCIP Forms, including Deducts
- ☒ Tax Credits, where applicable
- ☒ Initialed Requisition

*- any materials needed to buy
Materials \$681*

The above information must be forwarded to my attention by Close of Business Wednesday December 1, 1999. If you need additional copies of any forms call me at 804/287-1125 and I will have them faxed to you. Fax all information to 804/288-3406 and follow-up with an original copy in the mail to the following Address:

Turner Construction Company
7204 Glen Forest Drive, Suite 300
Richmond, Virginia 23228

Your cooperation will be greatly appreciated.

WARNING: Unauthorized interception of this Telecopier communication could be in violation of Federal Law. The documentation accompanying this facsimile transmission contains confidential and possibly proprietary information to the sender which is legally privileged. This information is intended for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution and/or taking of any action in reliance to the contents of this information is strictly prohibited. If you have received this facsimile in error, please notify us immediately to arrange for prompt return of the original document.

**GREATER RICHMOND CONVENTION CENTER EXPANSION
TURNER/RUSSELL/DAVIS
PROJECT # MJ 98194**

**AMENDMENT "A"
OCTOBER 6, 1999**

**DEMOLITION
PURCHASE REQUISITION**

A. Specification Sections to be Included:

1. Provide all work in this bid package complete, per the Specification Sections listed below and the related sections thereof.

General Conditions
Division 1 - General Provisions
Section 02060- Building Demolition
Section 02070- Selective Demolition

B. Demolition Scope

Demolition Scope includes, But is Not Limited To:

Provide all necessary equipment, labor, and materials necessary to perform the Demolition and related work complete.

1. The limits of this bid package are defined by the perimeter curb lines for the existing Richmond Convention Center, unless noted otherwise.
2. Provide demolition, phasing and temporary measures, as outlined in the A1 series drawings and structural drawings S5-7.01 thru 7.09.
3. Phased demolition will be required. Extensive coordination will be required with the structural steel and concrete contractors.
4. Include all environmental control measures, including and not limited to constructing and maintaining weather-tight, dust and noise proof partitions, dust control, covers for trucks, washing of truck wheels, sweeping and washing of streets, etc.
5. Demolition contractor is responsible to verify that all equipment/systems are disconnected, prior to the start of the demolition for these items.
6. Demolition, haul-off and disposal of existing mechanical equipment and systems.
7. Submit a plan outlining protective measures and demolition schedule.
8. Provide plywood protection for all roofs to remain, during the demolition of items in the adjacent area.
9. Stockpiling and selling of salvageable materials will not be allowed on-site. Items must be removed from the Premises on a daily basis.
10. A complete fire protection plan will be required and approved prior to the start of the work.

Initials *AW*
Sub _____
PA _____

**GREATER RICHMOND CONVENTION CENTER EXPANSION
TURNER/RUSSELL DAVIS
PROJECT # MJ 98184**

**AMENDMENT "A"
OCTOBER 6, 1999**

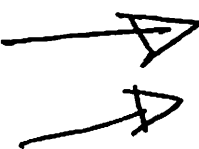
**DEMOLITION
PURCHASE REQUISITION**

Demolition Scope (con't)

11. ✱ This contractor shall secure all shutoffs and disconnection of City services and other items necessary, prior to the starting of the demolition.
12. ✱ Remove the Interior Entrance Doors & Frames at the northeast Lobby.
13. ✱ Provide demolition of the existing underground tunnel and the temporary wall built at the new tunnel for Phase I/II tunnel separation.

SPECIFICALLY EXCLUDED FROM THE SCOPE OF THIS BID PACKAGE:

A. Specific Exclusions

- 
1. ✱ Removal and reinstallation of the exterior door/glazing frames and hardware at the northeast and northwest entrance. (By Glazing Contractor)
 2. ✱ Building of masonry partitions as defined in details A, 8 & J, 8/A1-1.51. (By Masonry Contractor)
 3. ✱ Disconnection of mechanical and electrical systems. (By Mechanical & Electrical Contractor)

SCHEDULE AND LOGISTICS

Refer to the following Preliminary Master Schedules:

1. Preliminary Master Schedule- Sheet 1 of 1 dated 9/23/99
2. Preliminary Schedule-Major Activities- Sheets 1, 2, 3, 4 dated 9/23/99

- End of Amendment "A" -

Page 2 of 2

\\StreetTalk\GRCC@DISK@AA7R\ENG\Complete Reqs\Demolition.doc

Initials
Sub _____
PA _____



CASES AGAINST NATIONS ENVIRONMENTAL SERVICES, INC.

Plaintiff	Type of case/ court	Ad Damnum	Date
Southern Petroleum Marketing, Inc.	Contract/ Richmond General District	\$7,057.50 plus costs 18% interest	August 22, 2002
Vision Hauling, Inc.	Contract/ Richmond General District	\$9,052.50 plus costs 9% interest	August 8, 2002 11:00am
W. O. Grubb Steele Erection (II)	Contract/ Richmond Circuit	\$53,047.25 plus costs 18% interest	March 20, 2003
W. O. Grubb Steele Erection (II) (bonding company added as defendant)	Contract/ Richmond Circuit	\$53,047.25 plus costs 18% interest	March 20, 2003 2003

3. All documents containing communication between Mitchell and you regarding the Project and the facts at issue in this case.

RESPONSE: See attached.

4. All documents containing communication between you and any person other than Mitchell relating to the allegations contained in the Motion for Judgment or you answer thereto.

RESPONSE: See attached.

5. All documents evidencing payments by you to Mitchell for work, services, materials or equipment related to the Project.

RESPONSE: See attached.

6. All documents evidencing payments to you by any person for work, services, material or equipment related to the Project.

RESPONSE: See attached.

7. All documents relating to your job cost and accounting records for the Project.

RESPONSE: See attached.

8. All payroll records, and all other logs, diaries, labor reports, daily time sheets, and all other documents relating to the Project.

RESPONSE: See attached.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,

Plaintiff,

v.

NATIONS ENVIORNMENTAL SERVICES, INC.
and

AMERICAN SAFETY CASULTY INSURANCE
COMPANY,

Defendant.

Case No.: CL02P-937

**DEFENDANT'S NATIONS ENVIRONMENTAL SERVICES, INC. RESPONSE
TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW defendant Nations Environmental Services, Inc. and as its
responses to Plaintiff's First Response for Request for Production, states as follows:

1. All documents that you used or to which you referred in preparing your
Grounds of Defense herein:

RESPONSE: See attached.

2. All documents that support or relate to your answers to Plaintiff's First Set
of Interrogatories to Defendant Nations Environmental Services, Inc., including all
documents upon which you relied in compiling such answers. This request also includes
all documents that are identified in your answers.

RESPONSE: See attached.



9. All photographs, videotapes, schematics, drawings or other visual depictions of the Project.

RESPONSE: To the best of my knowledge there are no such items.

10. All payment, performance, bid or other bonds related to the Project to which you are a party.

RESPONSE: See attached.

11. Any indemnification agreements between you and any other person related to the Project or any bond associated therewith.

RESPONSE: There are no indemnity agreements between Nations Environmental Services, Inc. See attached indemnity agreements involving Janet Williams and Chijioke Udi.

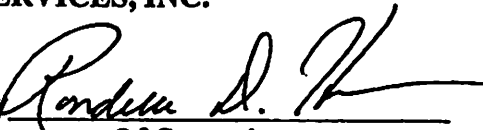
12. Any documents that you submitted to any person as a bid for any work, services, equipment or supplies related to the Project.

RESPONSE: See attached.

13. Any documents that you generated, used or referred to in the preparation of any bid that you submitted for work, services, equipment or supplied related to the Project.

RESPONSE: To the best of my knowledge, there are no such items readily identifiable as Aaron Whitmore, former President prepared the bids. Mr. Whitmore is no longer with the Company.

**NATIONS ENVIRONMENTAL
SERVICES, INC.**

By 
Of Counsel

Rondelle D. Herman, Esquire
Harrell and Chambliss LLP
Eighth and Main Building
707 East Main Street, Suite 1000
Richmond, Virginia 23219

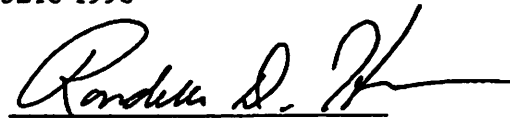
CERTIFICATE OF SERVICE

I hereby certify that on his 25th day of July, the foregoing original of Defendant's
Nations Environmental Services Responses to Plaintiff's Request for Production of
Documents was mailed, postage pre-paid to:

E. Livingston B. Haskell, Esquire
Williams and Mullen
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, Virginia 233218-1320

and a copy of the foregoing was mailed to the following:

Joshua N. Lief, Esquire
Sands, Anderson, Marks & Miller, P.C.
801 E. Main Street
P.O. Box 1998
Richmond, Virginia 23218-1998


Rondelle D. Herman

Nations Environmental Services, Inc.
10 S. 14th Street, Suite 103
Richmond, VA. 23219
(804) 788-4220 /Fax (804) 788-4506

SERVICE AGREEMENT

Client: *Midwest Coast*
Address:

Phone: (804)
Fax: (804)

Contact Person: *Charles Mitchell*

Type of Service Requested: *Demo. Debris*
Location of Service:

Scope of work: *Demo.*

NATIONS ENVIRONMENTAL SERVICES IS PLEASED TO OFFER YOU, THE SERVICE AGREEMENT AS SUBCONTRACTOR, PLEASE NOTE THAT NATIONS ENVIRONMENTAL SERVICES, WILL RENDER PAYMENT FOR JOBS COMPLETED FIVE DAYS AFTER NATIONS ENVIRONMENTAL SERVICES HAVE RECEIVED PAYMENT.

I have read and understand all the above

Client: *Charles Mitchell*

Date: *7-8-01*

For: *Nations Environmental Services, Inc.*
Frank C. Williams

Date: *7-24-01*

NATIONS ENVIRONMENTAL SERVICE

Mitchel Construction

Date	Type	Reference	Original Amt.	Balance Due	11/20/2001	2933
09/30/2001	Bill		98,027.16	98,027.16	Discount	Payment
					Check Amount	35,100.00
						35,100.00

12/20

balance Of \$16,496.00 # 22 & \$9,026.00 towards # 25

Metro County Bank Of Vir

35,100.00

Check Printers, Inc

NS ENVIRONMENTAL SERVICE

Mitchel Construction					10/22/2001	2874
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
10/01/2001	Bill	21	21,895.00	21,895.00		18,610.75
10/01/2001	Bill	22	22,496.00	22,496.00		6,000.00
					Check Amount	24,610.75

Metro County Bank Of Vir

24,610.75

Check Printers, Inc. 01.

SERVICES, INC.

8/3/2001

1297

LAKE, PA
07/17/2001

Type
Bill

Reference

Original Amt.
13,557.30

Balance Due
2,457.30

Discount
Check Amount

Payment
2,000.00
2,000.00

Metro County Bank Of Vir

2,000.00

3 CHECKS UNLIMITED™ • PARCHMENT • TO REORDER: 1-800-667-2439 • www.ChecksUnlimited.com

NATIONS ENVIRONMENTAL SERVICES, INC.

Mitchel Construction

Date
07/17/2001Type
Bill

Reference

Original Amt.
13,557.30Balance Due
13,557.307/17/2001
Discount

Check Amount

147

Payment
8,100.00
8,100.00

Metro County Bank Of Vir

Mitchell

8,100.00

© CHECKS UNLIMITED™ • CLASSIC BLUE • TO REORDER: 1-800-667-2439 • www.ChecksUnlimited.com

NATIONS ENVIRONMENTAL SERVICES, INC.

Mitchel Construction					8/15/2001	
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
05/11/2001	Bill	5	20,735.00	20,735.00		10,385.20
05/11/2001	Bill	3	9,617.50	9,617.50		9,617.50
					Check Amount	20,002.70

Metro County Bank Of Vir

20,002.70

KS UNLIMITED™ • PARCHMENT • TO REORDER: 1-800-667-2439 • www.ChecksUnlimited.com

Mitchel Construction

Date	Type	Reference	Original Amt.	Balance Due	9/20/2001 Discount	2768 Payment
05/11/2001	Bill	5	20,735.00	10,349.80		10,349.80
06/12/2001	Bill	9	5,785.00	5,785.00		5,785.00
05/29/2001	Bill	7	13,129.50	13,129.50		2,502.50
					Check Amount	18,637.30

Metro County Bank Of Vir

18,637.30

Check Printers, Inc. 014251

NATIONS ENVIRONMENTAL SERVICES.

Mitchel Construction				9/20/2001	2769
Date	Type	Reference	Original Amt.	Balance Due	Payment
05/29/2001	Bill	7	13,129.50	10,627.00	10,627.00
06/01/2001	Bill	8	11,159.00	11,159.00	11,159.00
06/12/2001	Bill	10	475.00	475.00	475.00
06/25/2001	Bill	11	9,180.00	9,180.00	8,531.70
				Check Amount	30,792.70

Metro County Bank Of Vir 30,792.70

Check Printers, Inc. 014

NATIONS ENVIRONMENTAL SERVICES, INC.

Mitchel Construction

Date	Type	Reference
10/02/2001	Bill	15

Original Amt.
15,060.82

Balance Due
15,060.82

10/19/2001
Discount
Check Amount

2938
Payment
14,307.78
14,307.78

Metro County Bank Of Vir

14,307.78

Check Printers, Inc. 014251

DL

Mitchel Construction

Date	Type	Reference	Original Amt.	Balance Due	7/27/2001 Discount	Payment
07/17/2001	Bill		13,557.30	5,457.30		3,000.00
					Check Amount	3,000.00

Metro County Bank Of Vir

3,000.00

10/11/2001

Mitchel Construction

**7,209.15

Seven Thousand Two Hundred Nine and 15/100*****

C.G. Mitchell Construction
11023 Washington Hwy, Suite 200
Glen Allen, VA. 23059

Mitchel Construction			10/11/2001			
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
07/06/2001	Bill		10,162.50	10,162.50		7,209.15
				Check Amount		7,209.15

Metro County Bank Of Vir 7,209.15

Mitchel Construction			10/11/2001			
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
07/06/2001	Bill		10,162.50	10,162.50		7,209.15
				Check Amount		7,209.15

Metro County Bank Of Vir 7,209.15

11023 Washington Hwy. # 200
Glen Allen, VA 23059

DATE

1/17/2002

TO:

Nations Environmental
10 South 14TH Street Suite 103
Richmond Va.23219

		AMOUNT DUE	AMOUNT ENC.		
		\$312,500.09			
DATE	TRANSACTION	AMOUNT	BALANCE		
04/01/2001	Balance forward		0.00		
05/02/2001	INV #1	8,902.50	8,902.50		
05/09/2001	INV #2	15,485.00	24,387.50		
05/12/2001	INV #3	9,617.50	34,005.00		
05/21/2001	INV #5	20,735.00	54,740.00		
05/29/2001	INV #7	13,129.50	67,869.50		
06/01/2001	INV #8	11,159.00	79,028.50		
06/12/2001	INV #9	5,785.00	84,813.50		
06/22/2001	INV #10	475.00	85,288.50		
06/29/2001	INV #11	9,180.00	94,468.50		
07/06/2001	INV #12	10,162.50	104,631.00		
07/13/2001	INV #15	15,060.82	119,691.82		
07/17/2001	PMT #7-17-01	-8,100.00	111,591.82		
07/19/2001	PMT #To Simons 7-19-01	-3,000.00	108,591.82		
07/23/2001	INV #21	21,895.00	130,486.82		
07/27/2001	INV #22	22,496.00	152,982.82		
07/27/2001	PMT #To Simons 7-27-01	-3,000.00	149,982.82		
08/03/2001	INV #25	31,530.00	181,512.82		
08/03/2001	PMT #1297 8-3-01	-2,000.00	179,512.82		
08/13/2001	INV #31	422.40	179,935.22		
08/15/2001	PMT #1697	-20,002.70	159,932.52		
08/16/2001	INV #29	21,684.00	181,616.52		
08/18/2001	INV #30	19,875.50	201,492.02		
08/24/2001	INV #33	24,454.50	225,946.52		
08/31/2001	INV #35	18,391.00	244,337.52		
09/10/2001	INV #38	14,057.00	258,394.52		
09/20/2001	PMT #2768	-18,637.30	239,757.22		
09/20/2001	PMT #2769	-30,792.70	208,964.52		
09/26/2001	INV #52	17,318.00	226,282.52		
09/26/2001	INV #53	19,001.50	245,284.02		
09/29/2001	INV #54	17,557.00	262,841.02		
10/09/2001	INV #56	17,945.00	280,786.02		
10/11/2001	PMT #2814 (10-11-01)	-7,209.15	273,576.87		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
2,837.00	38,225.00	82,129.75	71,821.50	117,486.84	\$312,500.09

Page 1

T-470 P.005/007 F-287

1/17/2002

TO:

Nations Environmental
10 South 14TH Street Suite 103
Richmond Va.23219

		AMOUNT DUE	AMOUNT ENC.		
		\$312,500.09			
DATE	TRANSACTION	AMOUNT	BALANCE		
10/19/2001	PMT #2938	-14,307.78	259,269.09		
10/22/2001	INV #57	25,340.00	284,609.09		
10/22/2001	INV #58	27,470.00	312,079.09		
10/23/2001	PMT #10-23-01	-24,610.75	287,468.34		
10/30/2001	INV #59	18,996.00	306,464.34		
11/09/2001	INV #63	10,323.75	316,788.09		
11/19/2001	INV #65	10,140.00	326,928.09		
11/19/2001	INV #66	9,650.00	336,578.09		
11/20/2001	PMT #2933	-35,100.00	301,478.09		
11/30/2001	INV #68	2,875.00	304,353.09		
12/05/2001	INV #71	5,120.00	309,473.09		
12/14/2001	INV #73	6,400.00	315,873.09		
12/17/2001	INV #78	4,040.00	319,913.09		
12/19/2001	INV #79	1,610.00	321,523.09		
01/07/2002	CREDMEM #80	-10,250.00	311,273.09		
01/07/2002	INV #81 Interest	1,227.00	312,500.09		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
2,837.00	38,225.00	82,129.75	71,821.50	117,486.84	\$312,500.09

Page 2

1023 Washington Hwy. Suite 200
 Glen Allen, VA 23059

Date	Credit No.
1/7/2002	80

Customer Nations Environmental 10 South 14TH Street Suite 103 Richmond Va. 23219
--

		P.O. No.	Project
Description	Qty	Rate	Amount
Clean Concrete Dumped, not charged back to C.G. Mitchell	-1	10,250.00	-10,250.00
		Total	\$-10,250.00
		Invoices	\$0.00
		Balance Credit	\$-10,250.00

11023 Washington Hwy. Suite
Glen Allen, VA 23059

+8047836458

T-470 P.007/007 F-287

DATE

1/7/2002

STATION #

81 Interest

BILL TO

Nations Environmental
10 South 14TH Street Suite 103
Richmond Va.23219

P.O. NO.

TERMS

DUE DATE

PROJECT

Net 30

2/6/2002

SERVICED	DESCRIPTION OF WORK	QTY	RATE	AMOUNT
1/7/2002	Finance Charges for December	1	1,227.00	1,227.00
			Total	\$1,227.00

Questions Call 837-7124 or 550-7640
Fax 550-7768

Jan. 16 2002 01:42PM P2

FRX NO.: 18045507768

FROM: COM1

PARTIAL WAIVER OF LIEN

APR 20 2001

Project Description GREATER RICHMOND CONVENTION CENTER EXPANTION

TURNER/RUSSELL/DAVIS

The total payments made by the GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 02/28/01 are \$26,660.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 17th day of April, 2001.

NAME: NATIONS ENVIRONMENTAL SERVICE

BY:

Robert C. Williams
President N.E.S.
(TITLE)

STATE OF Virginia
City
COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

17th DAY OF April, 2001.

BY Sam Dyer (NOTARY PUBLIC)

My Commission Expires: 10/31/01

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

PARTIAL WAIVER OF LIENProject Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 03/31/01 are \$51,215.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 16 day of MAY, 2001.

NAME: NATION'S ENVIRONMENTAL SERVICES, INCBY: Robert C. WilliamsPresident / CEO
(TITLE)STATE OF VIRGINIACITY RICHMOND

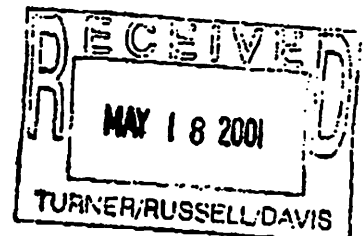
CORPORATE SEAL

NOTARY PUBLIC
SHOWN TO BEFORE ME ON THIS16 DAY OF MAY, 2001.BY Robert N. Williams (NOTARY PUBLIC)My Commission Expires: 6/30/2003

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS
RECEIVED



PARTIAL WAIVER OF LIEN

JUN 14 2001

Project Description GREATER RICHMOND CONVENTION CENTER EXPANTION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 04/30/01 are \$141,784.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 12th day of June, 2001.

NAME: NATIONS ENVIRONMENTAL SERVICES, INC

BY: [Signature]Vice President
(TITLE)

STATE OF Virginia
COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

12th DAY OF June, 2001.

BY [Signature] (NOTARY PUBLIC)My Commission Expires: 10-31-01

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANTION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 05/31/01 are \$214,684.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 10 day of August, 2001.

NAME: NATIONS ENVIRONMENTAL SERVICES, INC

BY:

Janet C Williams
President / CEO
(TITLE)

STATE OF Virginia
CITY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

10 DAY OF August, 2001.

BY Anne W. Bryant (NOTARY PUBLIC)

My Commission Expires: 5/31/05

PLEASE REMIT ORIGINAL TO: TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 06/30/01 are \$298,004.00.

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver

WITNESS the signature and seal of the undersigned as of this 11th day of September 2001.

NAME: NATIONS ENVIRONMENTAL

BY: August C Williams
President NED
(TITLE)

STATE OF VA

CITY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC

SWORN TO BEFORE ME ON THIS

11th DAY OF September 2001.

BY Dan H. Brown (NOTARY PUBLIC)

My Commission Expires.

My Commission Expires May 31 2005

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY

214 E CLAY Street, Suite 400

Richmond, Virginia 23219

Attn: Jeff Maday

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS
WAIVER IS RECEIVED

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 07/31/01 are \$441,447.00.

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 13th day of Nov., 2001.

NAME: NATIONS ENVIRONMENTAL

BY: [Signature]

President / CEO
(TITLE)

STATE OF VA

COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC

SWORN TO BEFORE ME ON THIS

13th DAY OF Nov., 2001.

BY: [Signature]

(NOTARY PUBLIC)

My Commission Expires:

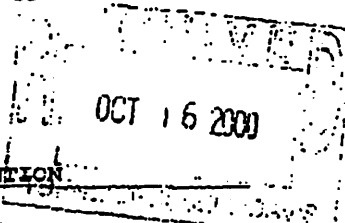
Mar 31, 2003
PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Jeff Maday

NOTE: NO FUTURE PAYMENTS WILL
WAIV

208

ALL THE ORIGINAL COPY OF THIS

PARTIAL WAIVER OF LIENProject Description GREATER RICHMOND CONVENTION CENTER EXPANTION

The total payments received from TURNER CONSTRUCTION COMPANY through the period ending 08/31/00 are \$ 18,560.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description. (3) that the amount of payments received to date on this waiver represents the amount due in accordance with our contract and warrants that it has not and will not assign any claim against such land and improvements or perfect a lien to execute this waiver and release. s the right to

THE UNDERSIGNED further warrants employed by it or its subcontractors on this Project or (2) its subcontractors who have purchased materials have been paid for materials delivered on or prior to the date of this waiver. (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agree that TURNER CONSTRUCTION COMPANY, GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 12th day of October, 2000.

NAME: NATIONS ENVIRONMENTAL SERVICES, INC.BY: Robert C. WilliamsPresident / CEO
(TITLE)

STATE OF Virginia
City of Richmond
COUNTY OF Richmond

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

12th DAY OF October, 2000.By Thomas R. Dury (NOTARY PUBLIC)My Commission Expires: January 31, 2003

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E. CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

TOTAL P.03

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION.

The total payments made by The GREATER RICHMOND CONVENTION CENTER AUTHORITY TO YOUR MATERIAL PROVIDERS and or payments received from TURNER CONSTRUCTION COMPANY through the period ending 09/30/01 are \$653,192.00.

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or here-after have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, The GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this _____ day of _____, 2001.

NAME: NATIONS ENVIRONMENTAL

BY: _____

(TITLE)

STATE OF _____

COUNTY OF _____

CORPORATE SEAL

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

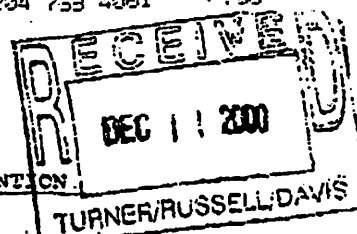
_____ DAY OF _____, 2001.

BY _____ (NOTARY PUBLIC)

My Commission Expires:

PLEASE REMIT ORIGINAL TO: TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Jeff Maday

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS
WAIVER IS RECEIVED

PARTIAL WAIVER OF LIEN

Project Description GREATER RICHMOND CONVENTION CENTER EXPANSION

The total payments received from TURNER CONSTRUCTION COMPANY through the period ending 10/31/00 are \$21,260.00

THE UNDERSIGNED (1) acknowledges receipt of the amount set forth above as payments received to date, (2) the extent of such payment, waives and releases any claim which it may now or hereafter have upon the land and improvements described above in the project description, (3) that the amount of payments received to date on this waiver represents the current amount due in accordance with our contract and work completed, and (4) warrants that it has not and will not assign any claims for payments or right to perfect a lien against such land and improvements and (5) warrants that it has the right to execute this waiver and release.

THE UNDERSIGNED further warrants that (1) all workmen employed by it or its subcontractors on this Project have been fully paid or (2) its subcontractors who have purchased materials used on the Project have been paid for materials delivered on or prior to the date hereof, (3) none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, and (4) stipulates that he is an authorized officer with full power to execute this waiver of lien.

THE UNDERSIGNED agrees that TURNER CONSTRUCTION COMPANY, GREATER RICHMOND CONVENTION CENTER AUTHORITY, and any lender and any title insurer may rely upon this waiver.

WITNESS the signature and seal of the undersigned as of this 5 day of December, 2000.

NAME: NATIONS ENVIRONMENTAL SERVICES

BY: Mark C. Williams

President/CEO

(TITLE)

STATE OF VA

COUNTY OF Richmond

NOTARY PUBLIC
SWORN TO BEFORE ME ON THIS

5th DAY OF December, 2000.

BY Deborah A. Jordan (NOTARY PUBLIC)

My Commission Expires: July 31, 2004

PLEASE REMIT ORIGINAL TO:

TURNER CONSTRUCTION COMPANY
214 E CLAY Street, Suite 400
Richmond, Virginia 23219
Attn: Mark J. Maffei

NOTE: NO FUTURE PAYMENTS WILL BE MADE UNTILL THE ORIGINAL COPY OF THIS WAIVER IS RECEIVED

MINORITY BUSINESS/PARTICIPATION COMMITMENT FORM

The bidder agrees to expend at least 90 % of the contract if awarded for minority enterprises. For purposes of this commitment, the term "minority business enterprise" means a business at least fifty percent (50%) of which is owned and controlled by minority group members or, in case of a publicly-owned business, at least fifty-one percent (51%) of the stock of which is minority owned; and the business is controlled by minority group members. For the purposes of the preceding sentence "minority group members" are citizens of the United States who are Black, Hispanics, Asians, Pacific Islanders and American Indians. Minority Business Enterprises may be employed as construction subcontractors or as vendors or suppliers. The bidder must indicate the minority business enterprises it intends to utilize in this contract as follows:

A.	Names and Addresses Of Minority Firms	Nature of Work for Participation in this Contract	Percent
1.	Nations Environmental Services, Inc. 10 S. 14th St. Ste 103 Richmond, VA 23219	Building Demolition Coordination	60
2.	Pryors Hauling Inc. 4509 Pouncey Tract Rd Glen Allen, VA 23060	Hauling & Disposal	30
3.			
			\$ 90 % (Total)

B. Indicate below percentage of ownership by minority category for each minority contractor (or in joint venture):

C. Bidder and the MBE(s) agree that the MBE shall not subcontract or assign any work described herein to another entity without the prior written approval.

	Firm	Black	Hispanics	Asians	Pacific Islanders	American Indians	Other	Total
1.	NES	51%						51%
2.	Pryors	100%						100%
3.								

D. The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Contractor Nations Environmental Services, Inc.
Name of Authorized Officer Aaron B. Whitmore



Revision Date of October 7, 1999

Bid Proposal Form

By submitting this proposal the undersigned certifies that this bid is made in good faith without fraud, collusion or connection of any kind with any other bidder, and that the Bidder is competing in its best interest and on its own behalf without connection or any obligation to any undisclosed person, and has made its own examination and estimates regarding said bid.

This Proposal is submitted by: Aaron B. Whitmore

Name of Contractor: Nations Environmental Services, Inc.

Address: 10 S. 14th St., Suite 103
Richmond, VA 23219

Virginia Unemployment Ins. No.: 0005395267

Virginia Sales Tax I.D. No.: n/a

Contractors License No.: 2705 035454A

Federal I.D. No.: 54-1814426

By: Aaron Whitmore Title: CEO

Date: October 21, 1999

Contact Person: Aaron Whitmore

The above Bidder hereby acknowledges to be one of the following:

- A. ☒ (x) A Corporation only incorporated under the laws of Virginia
having its principal office of Richmond
- B. ☐ () A Partnership existing under the laws of _____
- C. ☐ () An Individual.
- D. ☐ () Other.

BID BOND

Bond # ASB-400306

KNOW ALL MEN BY THESE PRESENTS, that

(Name of Subcontractor)

Nations Environmental Services

a. Virginia corporation with principal offices located at

10 S 14th Street Richmond, VA 23219

(Address)

as Principal (hereinafter "Principal") and American Safety Casualty Insurance Company as Surety,

(Name of Surety)

a. Delaware corporation with home offices located at

1845 The Exchange, Suite 200 Atlanta, GA 30339

(Address)

(hereinafter "Surety"), are held and firmly bound unto TURNER CONSTRUCTION COMPANY, a New

York corporation, (hereinafter "Obligee"), in the sum of Forty Two Thousand Five Hundred and 00/100ths (\$42,500.00)

(Enter dollar amount required or percent of Bid price) for the payment whereof Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted to Obligee a certain bid, dated 19 .. for the performance of Demolition of curb to curb including sidewalks, curtain wall

(Description of Work)

construction, roofing and flooring of Richmond Centre Exhibition Hall. (hereinafter "Bid").

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Obligee

shall accept the Bid of Principal and the Principal shall in accordance with the terms of such Bid:

- 1) enter into a contract with the Obligee;
- 2) furnish a bond for the faithful performance of such contract and for the payment of all persons performing labor or furnishing materials in connection therewith; and
- 3) shall in all other respects perform the agreement created by the acceptance of such Bid.

Then this obligation shall be null and void; otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the Principal and Surety have hereunto caused this Bond to be duly executed and acknowledged as set forth below this 20th day of October, 1999

(Impress Corporate Seal)

Nations Environmental Services Principal
(Name of Subcontractor/Principal)

ATTEST:

Balera Hoover

By: Aaron B. Whit
(orless) AARON B. WHITMORE

Title CEO

(Impress Corporate Seal)

American Safety Casualty Insurance Company Surety
(Name of Surety)

ATTEST:

Chandra Harmon

By: Judy J. Richardson
(orless) Judy J. Richardson

NOTE. An original Power of Attorney bearing same date as Bond must be attached.



Nations Environmental Services, Inc.

THE FOLLOWING ARE BID ADDITIVES:

1. Angle Braces (Provide and Install) as per detail drawing 2 on drawing S5-7.02, S5-7.04, S5-7.05. Consists of a W12X30 steel I beam with flanges.
\$28,640.00
2. Covered Sidewalk at 5th street: 640 feet as per Note 2 on sheet A1-2.5
Covered Sidewalk at 4th Street: 500 feet as per Note 3 on sheet A1-2.50
\$79,800.00
3. Temp partition as per Note 4 on A1-2.50
\$1,100.00
4. Temp floor over escalator pit as per Note 3 on A1-2.50
\$2,600.00
5. Bridge connector enclosure wall as per Note 6 on A1-1.00
\$9,100.00
6. Provide escalator pit as per Note 7 on A1-1.00
\$900.00



Nations Environmental Services, Inc.

EXCLUSIONS

- 1. Site Demolition on sheets C1-1 and C1-2, Volume 1**

AWT

PHASE I

FRED Pryor PHASE I
 Nations Site Supervision
 Plans for Temp prot/Dust control etc

\$22860

2000

1000

25860

X

~~25860~~ \$29860

Phase II

Fred Pryor \$624 600
 Temp Systems catwalks \$79800
 other Temps \$13700
 ANGLE BRACES per Detail 2 on Sheet \$28960
 \$55-7.02

Roof Main building

\$30000

Project Management
 Site Assistant

~~\$40,000~~ 20,000

~~\$10,000~~

\$684600

~~\$684600~~

+10% \$68460

807,060

75306

\$828,366

820000

Roof main building

FRED

Phase I

3 Wrecking 240 hrs
2 Driving 160

5.45

~~\$2.50~~

Phase II

Hauling 1920 Hours

Wrecking 3000 Hours

Average ~~Average~~ \$12/Hour

\$63840 labor

W/c Deduct

\$3500.00

in get Drawings for Dairy Building

KBS - Rick Lancer

- get Drawings for SRC Job

High size

\$5000

- get Check from SRC

- Steve Key for my office

- call Turner Ben Lancer

- Proposal for Boris

Call

Glenn Sipe Dr.
Suite 100

Forest
Rt on Bayberry
Rt @ End
Suite 100

TEMPORARY MEASURES

- ANGLE BRACES (PROVIDE AND INSTALL) as per Note 2 on Dwg SS-7.02 \$28640
W12 x 30 steel beam 34 feet long w/ flanges
\$460 A Piece x 22 qty = \$10120

Concrete 2 yd³ / block x 22 x \$70/yd = \$3080

LABOR TO Dig hole, fasten, Install, etc
3 md @ \$140 = 420 x 22 = 9240

Equipment " " \$2200

Miscellaneous

2000

\$26640

contingency

2000

\$28640

- COVERED SIDEWALK ~~on~~
5th St 640 feet as per Note 2 on Sheet A1-2.5

4th St 500 feet

\$79800

As per Note 3 on sheet A1-1.00

~~\$41200~~
~~\$4200~~
~~\$14350~~
35000

- Temp partition as per Note 4 on A1-2.50 ~~on~~ \$1100
- Temp Floor over escalator pit as per Note 3 on A1-2.50 \$2600
- Bridge connector ~~As per~~ Enclosure wall As per Note 6 on A1-1.00 ~~\$2000~~ 9100
- ~~Provide~~ Escalator pit as per Note 7 on A1-1.00 \$900

Phase I \$21700 + 3700 = 25400 - \$22860

Building Tunnel all Concrete \$673100

All sidewalk except City's

~~\$605790~~
694000 \$624,600

Add In Roof strip

\$30000

Concrete sidewalks other

\$11595

Area Walk AND Tower

\$10500

Full Time P.M.

30,000

LESS 10%

check + see if Rubber (call Don)

23 Note 4 what about temp panel per A1-2.50 women/men bath
Temp covered office over elevator pit "1"
-1.00 Note 6 Phase 2 Bridge Connection enclosure wall
" 7 Escalator Pit Provide

Note 3 Temp Egress sidewalk canopy 4th ST.

for your
files

Turner
RUSSEL
Davis Brothers

Fax

641 2242 Jeff Barker
6434028 SITE TRAILER

To: AARON WHITMORE

From: Kelly DeVito

Fax: 788-4506

Pages: 1

Phone:

Date: 11/26/99

Re: Richmond Convention Expansion Center CC:
Bid

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

The following checked items are still missing from your bid proposal for the Richmond Convention Center Expansion Project:

- ☐ Completed Turner/Russell/Davis Bid Proposal Form
- ☐ Bond Information
- ☐ OCIP Forms, including Deducts
- ☒ Tax Credits, where applicable
- ☒ Initialed Requisition

any materials needed to buy
Materials \$681

The above information must be forwarded to my attention by Close of Business Wednesday December 1, 1999. If you need additional copies of any forms call me at 804/287-1125 and I will have them faxed to you. Fax all information to 804/288-3406 and follow-up with an original copy in the mail to the following Address:

Turner Construction Company
7204 Glen Forest Drive, Suite 300
Richmond, Virginia 23226

Your cooperation will be greatly appreciated.

WARNING: Unauthorized interception of this Telecopier communication could be in violation of Federal Law. The documentation accompanying this facsimile transmission contains confidential and possibly proprietary information to the sender which is legally privileged. This information is intended for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution and/or taking of any action in reliance to the contents of this information is strictly prohibited. If you have received this facsimile in error, please notify us immediately to arrange for prompt return of the original document.

2

**GREATER RICHMOND CONVENTION CENTER EXPANSION
TURNER/RUSSELL/DAVIS
PROJECT # MJ 98194**

**AMENDMENT "A"
OCTOBER 6, 1999**

**DEMOLITION
PURCHASE REQUISITION**

A. Specification Sections to be Included:

1. Provide all work in this bid package complete, per the Specification Sections listed below and the related sections thereof.

General Conditions
Division 1 - General Provisions
Section 02060- Building Demolition
Section 02070- Selective Demolition

B. Demolition Scope

Demolition Scope includes, But is Not Limited To:

Provide all necessary equipment, labor, and materials necessary to perform the Demolition and related work complete.

1. The limits of this bid package are defined by the perimeter curb lines for the existing Richmond Convention Center, unless noted otherwise.
2. Provide demolition, phasing and temporary measures, as outlined in the A1 series drawings and structural drawings S5-7.01 thru 7.09.
3. Phased demolition will be required. Extensive coordination will be required with the structural steel and concrete contractors.
4. Include all environmental control measures, including and not limited to constructing and maintaining weather-tight, dust and noise proof partitions, dust control, covers for trucks, washing of truck wheels, sweeping and washing of streets, etc.
5. Demolition contractor is responsible to verify that all equipment/systems are disconnected, prior to the start of the demolition for these items.
6. Demolition, haul-off and disposal of existing mechanical equipment and systems.
7. Submit a plan outlining protective measures and demolition schedule.
8. Provide plywood protection for all roofs to remain, during the demolition of items in the adjacent area.
9. Stockpiling and selling of salvageable materials will not be allowed on-site. Items must be removed from the Premises on a daily basis.
10. A complete fire protection plan will be required and approved prior to the start of the work.

Initials
Sub AW
PA AW

**GREATER RICHMOND CONVENTION CENTER EXPANSION
TURNER/RUSSELL/DAVIS
PROJECT # MJ 98194**

**AMENDMENT "A"
OCTOBER 6, 1999**

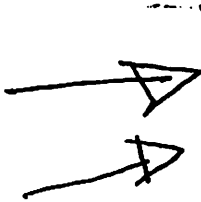
**DEMOLITION
PURCHASE REQUISITION**

Demolition Scope (con't)

11. This contractor shall secure all shutoffs and disconnection of City services and other items necessary, prior to the starting of the demolition.
12. Remove the Interior Entrance Doors & Frames at the northeast Lobby.
13. Provide demolition of the existing underground tunnel and the temporary wall built at the new tunnel for Phase I/II tunnel separation.

SPECIFICALLY EXCLUDED FROM THE SCOPE OF THIS BID PACKAGE:

A. Specific Exclusions

- 
1. Removal and reinstallation of the exterior door/glazing frames and hardware at the northeast and northwest entrance. (By Glazing Contractor)
 2. Building of masonry partitions as defined in details A.8 & J.8/A1-1.51. (By Masonry Contractor)
 3. Disconnection of mechanical and electrical systems. (By Mechanical & Electrical Contractor)

SCHEDULE AND LOGISTICS

Refer to the following Preliminary Master Schedules:

1. Preliminary Master Schedule- Sheet 1 of 1 dated 9/23/99
2. Preliminary Schedule-Major Activities- Sheets 1, 2, 3, 4 dated 9/23/99

- End of Amendment "A" -

C. G. MITCHELL CONSTRUCTION, INC.
11023 WASHINGTON HIGHWAY
SUITE 200
GLEN ALLEN, VIRGINIA 23059
PHONE 804-550-7640
FAX 804-550-7768

October 22, 2001

Nations Environmental Services, Inc.
10 South 14th Street, Suite 103
Richmond, Virginia 23219

Dear Ms. Williams,

C. G. Mitchell Construction has worked with Nations Environmental Services since April of 2001. We understand that the prime contractor has not been paying its bills in a timely manner. However C. G. Mitchell Construction has always remained patient and held steadfast with Nations Environmental Services and the project. I have gone into great debt to see the job is complete.

Now that the job is coming to an end, C. G. Mitchell Construction's office has some concerns about the payments of the remaining invoices. These invoices are considerable and late according to the signed document we have. That we are to be paid within 5 days of Nation Environment Services payments.

In an effort to keep the General Contractor and the Bonding Companies out of our business, I would like to get together with you and come up with a fair and reasonable schedule of payment for the remaining balance.

Even though we have tried this in the past, C. G. Mitchell Construction is willing to try once again to eliminate this problem. We have vendors contacting us everyday for money. Again Ms. Williams I want to work this out between you and I, and I hope you feel the same. We need paid in full for what is due today which is a minimum of \$81,000.00. Please contact me as soon as possible.

Thank you,

Charles Mitchell/Owner

Cc: Turner office

Cc: Billy Jones/Lawyer

Nations Environmental Services, Inc.
10 S. 14th Street, Suite 103
Richmond, VA. 23219
(804) 788-4220 /Fax (804) 788-4506

SERVICE AGREEMENT

Client: Michael Cost.
Address:

Phone: (804)

Fax: (804)

Contact Person: Charles McWhell

Type of Service Requested:

Location of Service:

Demo. Debris

Scope of work: Demo.

NATIONS ENVIRONMENTAL SERVICES IS PLEASED TO OFFER YOU, THE SERVICE AGREEMENT AS SUBCONTRACTOR, PLEASE NOTE THAT NATIONS ENVIRONMENTAL SERVICES, WILL RENDER PAYMENT FOR JOBS COMPLETED FIVE DAYS AFTER NATIONS ENVIRONMENTAL SERVICES HAVE RECEIVED PAYMENT.

I have read and understand al the above

Client:

[Signature]

Date:

7-2-01

For:

Nations Environmental Services, Inc.

[Signature]

Date:

7-24-01

C. G. MITCHELL CONSTRUCTION, INC.
11023 WASHINGTON HIGHWAY, SUITE 200
GLEN ALLEN, VIRGINIA 23059
PHONE 804-550-7640
FAX 804-550-7768

MEMO

To: Nations Environmental
From: Charles Mitchell/President
RE: Richmond Convention Center Expansion

Ms. Williams,

This note is to generally follow up on the issue of the payment practices on this job, and, more to the point, the specific past due balances that still exist. As you know, on August 15th you made a payment in the amount of \$20,002.70 - and we greatly appreciate that payment - but it was actually for payment against May invoices. Further, all such May invoices have still not been paid, and it is very important that we get the payments in-line as we simply cannot afford to continue financing this work!

As you are aware, I have discussed this situation with Turner/Russell/Davis and they have indicated to me that your account is paid current as of this date (ie. that they have paid your June billing). Clearly, unless they are not being truthful, you have been paid a large amount of funds for our work that you have not, in turn, paid over to us - and it is ALWAYS a serious problem when funds paid in trust for a lower tier sub are not paid on to that sub. As to the timeliness of their payments to you, they have indicated that they have made all past payments in a timely manner, and that they fully expect to make the next payment to you no later than 09/10/01, and that payment should cover - at the minimum - all of our invoices thru July. Thus, they assert that their payment history with you is very timely....while you would have to agree that you have not done so well in passing our funds on to us in a timely manner. While I FULLY intend to honor my end of the recent agreement we reached (to forebear from collection activity at this time) so long as you hold up your end, I felt it was very important to clearly convey our position to you so that there will be no misunderstanding as to what will occur should this expectation not be met.

To insure that we all know specifically where we stand, I have enclosed a copy of our statement. This lists all our various invoices up to and including #30, which was sent on 08/18/01.

As you can see - thru that invoice #30 - we have BILLED you a total of \$240,674.72. Your total PAYMENTS - thru that last check referenced above - are \$36,102.70. This results in a TOTAL CURRENT BALANCE DUE for completed work of \$204,572.02. There are no disputes about any bills, charges, etc., and proper daily tickets have always documented the charges to assure that. We realize, of course, that a very large portion of the amount you owe us is for more recent bills (to be sure, some \$136,043.72 represents our invoices from 07/13/01 thru 08/18/01). On the other hand, even if we are willing to treat all such recent invoices as "current", that would STILL leave some \$68,528.30 as being PAST DUE....and the majority of that amount dates back into May - thus the amount to question is rightfully considered SERIOUSLY past due!

I would first stress again that it is definitely not my desire to become a problem for you - the City, or Turner/Russell/Davis. We understand that other situations on this job (or other jobs you are doing) could have put you in a cash shortage of your own, and that there can often be legitimate reasons for delays and differences on billings and payments. We have been very patient in the past, and we always want to help whenever we can. However, you are not providing any information that would lead us to believe that there is any problem that we can help with - and the contractor, likewise, does not suggest that there is. Therefore, we assume that the entire issue is simply a matter of you making the appropriate payments to us from the funds you already have and/or soon will receive. Thus - as we agreed - we expect the following will occur:

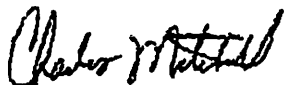
- 1) We expect to receive from you no later than 09/15/01 a payment in an amount of NO LESS THAN \$80,00.00. This is the amount we had previously agreed to - and would bring the job into a satisfactory payment state.
- 2) We expect some confirmation from you that you will thereafter keep all payments current in line with receipt from the owner. Specifically, on 10/15/01 you would make a payment sufficient to cover all remaining open invoices thru 08/31/01 - and that you will continue on that path each month until the job is paid in full.

If you would like to - or need to - discuss any of these points please do not hesitate to call me. We appreciate your business and want to do anything we reasonable can to help you if you have problems of your own. Please understand, however, that if I see or hear nothing to the contrary from you by the close of business Wednesday, August 22nd, I will assume that you WILL abide by the above request, and I will be prepared to take heightened action with the City and Turner/Russell/Davis with no further notice should you fail to do so.

In closing, it is unfortunate that I feel that it is critical for me to write this letter. Also, while we are serious about the collection, we are also serious about our desire to be helpful and cooperative to the greatest extent possible. We do not want to cause you or any other party on the project any unnecessary headaches.....we simply need to assure ourselves that we will receive our funds as they are paid to the contractor - and if there is going to be ANY problem with that we need to insure we address it promptly. Please help us help

you by confirming to us that you can and will abide by our request - or, if there is a problem, by calling me to specifically review same ASAP.

Thank you



Charles Mitchell/President

CC: Stephen McCoy; Esquire

QTY.	MATERIAL	PRICE	AMOUNT
8	Dump Fee (Concrete)		
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac-Hoe (new)	115 hr	920 -
7	Trac-Hoe (small)	95 hr	665 -
6	Big breaker	175 hr	1050 -
9	Roller	65 hr	585 -
10	Roller	65 hr	650 -
9	Roller #2	65 hr	585 -
HRS.	LABOR	RATE	AMOUNT
7	Roller #3	65 hr	585 -
SIGNATURE		DATE COMPLETED	
L. K. Sney		10-15-01	

C.G. Mitchem Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME <u>Nations Envr.</u>		No. 0235
ADDRESS <u>14th St</u>		
CITY <u>Rich</u>		PHONE
JOB LOCATION		
JOB NAME <u>GRCC</u>		
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <u>Roller</u>		
TOTAL MATERIAL		
TOTAL LABOR		
TOTAL EQUIPMENT	5040	-
TAX		
Thank You		PAY THIS AMOUNT 5040

QTY.	MATERIAL	PRICE	AMOUNT
8	Dump Fee (Concrete)	65	520 -
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac-Hoe (new)	115 hr	920 -
7	Big breaker	175 hr	1225 -
7	Trac-Hoe (small)	95 hr	665 -
9	Roller	65 hr	585 -
10	Roller	65 hr	682 50
8	Roller #2	65 hr	520 -
HRS.	LABOR	RATE	AMOUNT
9	Roller #3	65 hr	585 -
8	Roller	65 hr	520 -
SIGNATURE		DATE COMPLETE	

C.G. Mitchell Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME <u>Nations Envr.</u>		No. 0236
ADDRESS <u>14th St</u>		
CITY <u>Rich</u>		PHONE
JOB LOCATION		
JOB NAME <u>GRCC</u>		
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <u>Roller</u>		
TOTAL MATERIAL	520	-
TOTAL LABOR		
TOTAL EQUIPMENT	5702	50
TAX		

QTY.	MATERIAL	PRICE	AMOUNT
12	Dump Fee (Concrete)	1.50	780 -
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac - Hoz (1100)	115hr	920 -
5	Trac - Hoz (1100)	95hr	475 -
7	Loader	165hr	455 -
6	Big Hoz for	175hr	1050 -
5	Philp	165hr	325 -
1	Dubley	165hr	682 50
HRS.	LABOR	RATE	AMOUNT
4	Dubley #2	165hr	585 -
9	Dubley #3	165hr	585 -
SIGNATURE <i>L. Kersy</i>		DATE COMPLETED 10-17-01	

C.G. Mitchell Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME <i>Matthews E. ...</i>		No. 0237
ADDRESS <i>14th St</i>		
CITY <i>Rich</i>	PHONE	
JOB LOCATION <i>C.R.C.C.</i>		
JOB NAME		
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <i>Drill</i>		
TOTAL MATERIAL		780 -
TOTAL LABOR		
TOTAL EQUIPMENT		5077 50
TAX		
Thank You		PAY THIS AMOUNT > 5857.50

QTY.	MATERIAL	PRICE	AMOUNT
14	Dump Fee (Concrete)	1.50	910 -
HRS.	EQUIPMENT	RATE	AMOUNT
10	Dubley #1	165hr	650 -
8	Dubley #2	165hr	520 -
8	Trac - Hoz (1100)	115hr	920 -
7	Loader	165hr	455 -
8	Big Hoz for	175hr	1400 -
9	Philp	165hr	585 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	

C.G. Mitchell Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME <i>Matthews E. ...</i>		No. 0271
ADDRESS <i>14th St</i>		
CITY <i>Rich</i>	PHONE	
JOB LOCATION <i>C.R.C.C.</i>		
JOB NAME		
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <i>Drill</i>		
TOTAL MATERIAL		910 -
TOTAL LABOR		
TOTAL EQUIPMENT		4530 -
TAX		
Thank You		PAY THIS AMOUNT > 5857.50

QTY.	MATERIAL	PRICE	AMOUNT
12	Dump Fee (Concrete)	65 EA	130 -
HRS.	EQUIPMENT	RATE	AMOUNT
6	Box Breaker	175 hr	1050 -
7	Tree - Hoe (New)	115 hr	805 -
7	Tree - Hoe (Small)	95 hr	665 -
7	Excavator	65 hr	585 -
8	PH 11.0	65 hr	520 -
8	PH 11.0 #2	65 hr	520 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE <i>L. K. Kersey</i>		DATE COMPLETED 10-12-01	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>William S. Kersey</i>		No. 0347	
ADDRESS <i>14th St</i>		PHONE	
CITY <i>Rich</i>		PHONE	
JOB LOCATION		STATEMENT DATE	
JOB NAME <i>CRCC</i>		STATEMENT DATE	
JOB PHONE		ORDER TAKEN BY	
DESCRIPTION OF WORK <i>CRCC</i>			
TOTAL MATERIAL		130	-
TOTAL LABOR			
TOTAL EQUIPMENT		4415	-
TAX			
Thank You		PAY THIS AMOUNT > 4275.00	

QTY.	MATERIAL	PRICE	AMOUNT
12	Dump Fee (Concrete)	65 EA	65 -
HRS.	EQUIPMENT	RATE	AMOUNT
5	PH 11.0	65 hr	325 -
6	Excavator	65 hr	390 -
6	PH 11.0 #2	65 hr	390 -
5	Tree - Hoe (New)	115 hr	575 -
HRS.	LABOR	RATE	AMOUNT
DATE COMPLETED			

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>William S. Kersey</i>		No. 0348	
ADDRESS <i>14th St</i>		PHONE	
CITY <i>Rich</i>		PHONE	
JOB LOCATION		STATEMENT DATE	
JOB NAME <i>CRCC</i>		STATEMENT DATE	
JOB PHONE		ORDER TAKEN BY	
DESCRIPTION OF WORK <i>CRCC</i>			
TOTAL MATERIAL		65	-
TOTAL LABOR			
TOTAL EQUIPMENT		1680	-
TAX			

QTY.	MATERIAL	UNIT	AMOUNT
57	Dump Fee (Concrete)	65 EA	455 -
HRS.	EQUIPMENT	RATE	AMOUNT
7	Truck (16c)	115 hr	805 -
1	Backhoe	175 hr	1150 -
7	Truck (16c)	95 hr	665 -
1	Pump	65 hr	520 -
1	Truck	65 hr	585 -
1	Truck	65 hr	585 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
L. H. H. H.		10-8-01	

C.G. Mitchell Construction, Inc.
11023 Washington Hwy, Suite 200
Glen Allen, Virginia 23059
Tel: (804) 550-1265
Fax: (804) 550-1535

NAME	H. H. H. H.		No. 0345
ADDRESS	14th St		
CITY	Rich		PHONE
JOB LOCATION			
JOB NAME			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK			
TOTAL MATERIAL		455	-
TOTAL LABOR			
TOTAL EQUIPMENT		4710	-
TAX			
Thank You		PAY THIS AMOUNT \$4665.00	

QTY.	MATERIAL	PRICE	AMOUNT
1	Dump Fee (Concrete)	65 EA	585 -
S.	EQUIPMENT	RATE	AMOUNT
2	Truck (16c)	115 hr	920 -
1	Truck (16c)	95 hr	665 -
1	Backhoe	175 hr	1235 -
1	Pump	65 hr	520 -
1	Truck	65 hr	585 -
1	Truck	65 hr	585 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	

C.G. Mitchell Construction, Inc.
11023 Washington Hwy, Suite 200
Glen Allen, Virginia 23059
Tel: (804) 550-1265
Fax: (804) 550-1535

NAME	H. H. H. H.		No. 0349
ADDRESS	14th St		
CITY	Rich		PHONE
JOB LOCATION			
JOB NAME			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK			
TOTAL MATERIAL		585	-
TOTAL LABOR			
TOTAL EQUIPMENT		4500	-
TAX			

QTY.	MATERIAL	PRICE	AMOUNT
6	Dump Fee (Concrete)	65EA 300	-
HRS.	EQUIPMENT	RATE	AMOUNT
4	PH. 11.0	65hr 210	-
5	PH. 11.0	65hr 325	-
5	PH. 11.0 #2	65hr 325	-
5	PH. 11.0	115hr 575	-
3	PH. 11.0 (small)	95hr 285	-
HRS.	LABOR	RATE	AMOUNT
SIGNATURE: <i>[Signature]</i>		DATE COMPLETED: 10-6-01	

***C.G. Mitchell Construction, Inc.**
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <i>Walter L. L. L.</i>		No. 0242
ADDRESS: 14th St		
CITY: Rich		PHONE:
JOB LOCATION: GRCC		
JOB NAME: GRCC		
JOB PHONE:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: <i>PH. 11.0</i>		
		TOTAL MATERIAL: 390 -
		TOTAL LABOR: -
		TOTAL EQUIPMENT: 1770 -
		TAX: -
Thank You		PAY THIS AMOUNT: 2160.00

QTY.	MATERIAL	PRICE	AMOUNT
2	Dump Fee (Concrete)	65EA 130	-
HRS.	EQUIPMENT	RATE	AMOUNT
7	PH. 11.0	115hr 805	-
1	PH. 11.0 Breaker	175hr 1050	-
5	PH. 11.0 (small)	95hr 475	-
4	PH. 11.0	65hr 520	-
4	PH. 11.0	65hr 520	-
4	PH. 11.0 #2	65hr 520	-
HRS.	LABOR	RATE	AMOUNT
SIGNATURE: <i>[Signature]</i>		DATE COMPLETED:	

***C.G. Mitchell Construction, Inc.**
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <i>Walter L. L. L.</i>		No. 0244
ADDRESS: 14th St		
CITY: Rich		PHONE:
JOB LOCATION: GRCC		
JOB NAME: GRCC		
JOB PHONE:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: <i>PH. 11.0</i>		
		TOTAL MATERIAL: 130 -
		TOTAL LABOR: -
		TOTAL EQUIPMENT: 3210 -

QTY.	MATERIAL	PRICE	AMOUNT
2	Dump Fee (Concrete)	65 EA	130 -
HRS.	EQUIPMENT	RATE	AMOUNT
6	Trac-Hoe	115 hr	690 -
6	Trac-Hoe (small)	95 hr	570 -
6	Big breaker	175 hr	1225 -
7	Phillip	65 hr	455 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
K. K. K.		10-14-01	

C.G. McNeill Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <u>McNeill's Service</u>		No. 0243
ADDRESS: <u>14th St</u>		PHONE: <u>Rich</u>
CITY: <u>Rich</u>		
JOB LOCATION: <u>GRCC</u>		
JOB NAME: <u>GRCC</u>		
JOB PHONE: <u> </u>	ORDER TAKEN BY: <u> </u>	STATEMENT DATE: <u> </u>
DESCRIPTION OF WORK: <u>DEMO</u>		
TOTAL MATERIAL		130 -
TOTAL LABOR		
TOTAL EQUIPMENT		2765 -
TAX		
Thank You		PAY THIS AMOUNT > 2895.00

QTY.	MATERIAL	PRICE	AMOUNT
HRS.	EQUIPMENT	RATE	AMOUNT
7	Trac-Hoe	115 hr	805 -
7	Trac-Hoe (small)	95 hr	665 -
7	Big breaker	175 hr	1225 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
L. L.			

C.G. Mitchell Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <u>McNeill's Service</u>		No. 0241
ADDRESS: <u>14th St</u>		PHONE: <u>Rich</u>
CITY: <u>Rich</u>		
JOB LOCATION: <u>GRCC</u>		
JOB NAME: <u>GRCC</u>		
JOB PHONE: <u> </u>	ORDER TAKEN BY: <u> </u>	STATEMENT DATE: <u> </u>
DESCRIPTION OF WORK: <u>DEMO</u>		
TOTAL MATERIAL		
TOTAL LABOR		
TOTAL EQUIPMENT		2695 -
TAX		

QTY.	MATERIAL	PRICE	AMOUNT
1	Dump Fee (Concrete)	65 EA	65 -
HRS.	EQUIPMENT	RATE	AMOUNT
8	Phillips	65 hr	520 -
7	Tree (concrete)	95 hr	665 -
7	Big (concrete)	175 hr	1225 -
7	Tree (concrete)	115 hr	805 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
L. H. H. H.		9-26-01	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <i>W. H. H. H.</i>		No. 0297	
ADDRESS: <i>14th St</i>		PHONE:	
CITY: <i>Kick</i>		PHONE:	
JOB LOCATION: <i>C.R.C.</i>			
JOB NAME: <i>C.R.C.</i>		STATEMENT DATE:	
JOB PHONE:		ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: <i>1) -</i>			
		TOTAL MATERIAL	65 -
		TOTAL LABOR	
		TOTAL EQUIPMENT	3215 -
		TAX	
Thank You		PAY THIS AMOUNT >	3,380.00

QTY.	MATERIAL	PRICE	AMOUNT
5	Dump Fee (concrete)	65 EA	325 -
HRS.	EQUIPMENT	RATE	AMOUNT
8	Phillips	65 hr	520 -
3	Tree (concrete)	95 hr	760 -
7	Big (concrete)	175 hr	1225 -
7	Tree (concrete)	115 hr	805 -
HRS.	LABOR	RATE	AMOUNT

C.G. Mitchell Construction, Inc.

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 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <i>W. H. H. H.</i>		No. 0251	
ADDRESS: <i>14th St</i>		PHONE:	
CITY: <i>Kick</i>		PHONE:	
JOB LOCATION: <i>C.R.C.</i>			
JOB NAME: <i>C.R.C.</i>		STATEMENT DATE:	
JOB PHONE:		ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: <i>1) -</i>			
		TOTAL MATERIAL	325 -
		TOTAL LABOR	1 -
		TOTAL EQUIPMENT	3310 -

QTY.	MATERIAL	PRICE	AMOUNT
2	Dump Fee (Concrete)	65 ea	130 -
HRS.	EQUIPMENT	RATE	AMOUNT
6	Philips	65 hr	390 -
5	Truck (H.C. (4000))	115 hr	575 -
4	Truck (H.C. (4000))	95 hr	380 -
4	Truck (H.C. (4000))	165 hr	260 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
L. J. P. S. S. Y.		9-28-01	

C.G. Mitnell Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME		No. 0298	
ADDRESS		PHONE	
CITY		PHONE	
JOB LOCATION			
JOB NAME			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK			
TOTAL MATERIAL			
TOTAL LABOR			
TOTAL EQUIPMENT			
TAX			
Thank You		PAY THIS AMOUNT	
		1735.00	

QTY.	MATERIAL	PRICE	AMOUNT
8	Dump Fee (Concrete)	65 ea	520 -
HRS.	EQUIPMENT	RATE	AMOUNT
18	Philips	165 hr	520 -
8	Truck (H.C. (4000))	42 hr	336 -
7	Truck (H.C. (4000))	115 hr	805 -
6	Truck (H.C. (4000))	175 hr	1050 -
6	Truck (H.C. (4000))	95 hr	570 -
HRS.	LABOR	RATE	AMOUNT

C.G. Mitchell Construction, Inc.
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 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME		No. 0252	
ADDRESS		PHONE	
CITY		PHONE	
JOB LOCATION			
JOB NAME			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK			
TOTAL MATERIAL			
TOTAL LABOR			
TOTAL EQUIPMENT			
		3281	

QTY.	MATERIAL	PRICE	AMOUNT
4	Dump Fee (Concrete)	65 EA	260 -
HRS.	EQUIPMENT	RATE	AMOUNT
7	Excavator (small)	95 hr	665 -
8	Backhoe	175 hr	1400 -
6	Truck	65 hr	390 -
9	Dump	65 hr	585 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE: <i>L. K. ...</i>		DATE COMPLETED: 9-14-01	

C.G. Mitchell Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <i>Northside Engrs.</i>		No. 0247
ADDRESS: <i>14th St</i>		
CITY: <i>Rich</i>		PHONE: <i> </i>
JOB LOCATION: <i>GRCC</i>		
JOB PHONE: <i> </i>	ORDER TAKEN BY: <i> </i>	STATEMENT DATE: <i> </i>
DESCRIPTION OF WORK: <i> </i>		
TOTAL MATERIAL		260 -
TOTAL LABOR		
TOTAL EQUIPMENT		3110 -
TAX		
Thank You		PAY THIS AMOUNT: 3,300.00

QTY.	MATERIAL	PRICE	AMOUNT
4	Dump Fee (Concrete)	65 EA	260 -
HRS.	EQUIPMENT	RATE	AMOUNT
6	Truck	65 hr	390 -
8	Ditcher #2	42 hr	336 -
2	Excavator	65 hr	260 -
4	Ditcher #2	65 hr	260 -
8	Tree-Hoe (small)	95 hr	760 -
6	Backhoe	175 hr	1050 -
SIGNATURE: <i> </i>		DATE COMPLETED: <i> </i>	

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 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <i>Northside Engrs.</i>		No. 0257
ADDRESS: <i>14th St</i>		
CITY: <i>Rich</i>		PHONE: <i> </i>
JOB LOCATION: <i>GRCC</i>		
JOB PHONE: <i> </i>	ORDER TAKEN BY: <i> </i>	STATEMENT DATE: <i> </i>
DESCRIPTION OF WORK: <i> </i>		
TOTAL MATERIAL		260 -
TOTAL LABOR		
TOTAL EQUIPMENT		3088 50

QTY.	MATERIAL	PRICE	AMOUNT
1	Dump Fee (Concrete)	65 EA	65 -
HRS.	EQUIPMENT	RATE	AMOUNT
8	SAC	42 hr	336 -
9	D. Dig	65 hr	585 -
4	Excavator	175 hr	700 -
4	Bobcat (small)	95 hr	380 -
4	Trac-Hoe (green)	95 hr	380 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
L. K...		9-17-01	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Matthews Erection</i>		No. 0249
ADDRESS <i>14th St</i>		
CITY <i>Rich</i>		PHONE
JOB LOCATION <i>GRUC</i>		
JOB NAME		
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <i>Removal</i>		
		TOTAL MATERIAL <i>65 -</i>
		TOTAL LABOR
		TOTAL EQUIPMENT <i>2381 -</i>
		TAX
Thank You		PAY THIS AMOUNT <i>2446.00</i>

QTY.	MATERIAL	PRICE	AMOUNT
4	Dump Fee (Concrete)	65 EA	260 -
HRS.	EQUIPMENT	RATE	AMOUNT
8	SAC	42 hr	336 -
9	D. Dig	65 hr	585 -
7	Excavator	175 hr	1225 -
3	Bobcat Sm	95 hr	285 -
6	Trac-Hoe	65 hr	390 -
HRS.	LABOR	RATE	AMOUNT

C.G. Mitchell Construction, Inc.

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Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Matthews Erection</i>		No. 0248
ADDRESS <i>14th St</i>		
CITY <i>Rich</i>		PHONE
JOB LOCATION <i>Ch...</i>		
JOB NAME		
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <i>Removal</i>		
		TOTAL MATERIAL <i>260 -</i>
		TOTAL LABOR
		TOTAL EQUIPMENT <i>2391 -</i>

QTY.	MATERIAL	PRICE	AMOUNT
4	Dump Fee (Concrete)	65 Ea	260 -
HRS.	EQUIPMENT	RATE	AMOUNT
7	Tractor (Green)	95 hr	665 -
6	Tractor (Small)	95 hr	570 -
4	Backhoe	175 hr	700 -
1	Tractor	65 hr	390 -
4	Tractor	65 hr	585 -
8	Tractor #2	42 hr	336 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
[Signature]		7-14-01	

[illegible]

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Tel: (804) 550-1265
Fax: (804) 550-1535

QTY.	MATERIAL	PRICE	AMOUNT
HRS.	EQUIPMENT	RATE	AMOUNT
8	Tractor (Green)	95hr	760 00
7	Tractor (small)	95hr	665 00
6	Backhoe	175hr	1050 00
2	Wheelbarrow	42hr	84 00
6	Shovel	65hr	390 00
7	Shovel	65hr	455 00
HRS.	LABOR	RATE	AMOUNT
SIGNATURE: <i>[Signature]</i>		DATE COMPLETED: 9-12-01	

C.G. Mitchell Construction, Inc.

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Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Hall's Engraving</i>		No. 0295	
ADDRESS <i>14th St</i>			
CITY <i>Pitt</i>		PHONE	
JOB LOCATION <i>GRCC</i>			
JOB NAME			
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE	
DESCRIPTION OF WORK <i>Dead</i>			
	TOTAL MATERIAL		
	TOTAL LABOR		
	TOTAL EQUIPMENT	<i>3404</i>	<i>-</i>
	TAX		
Thank You		PAY THIS AMOUNT <i>> 3404.00</i>	

QTY.	MATERIAL	PRICE	AMOUNT
4	Dump Fee	65.00	260.00
HRS.	EQUIPMENT	RATE	AMOUNT
8	Truck (1000 lb)	95	760
7	Pen breaking (Truck)	175	1225
3	Truck (gravel)	95	285
6	Truck	65	390
6	Truck	65	390
8	Motor 1 1/2 (Truck)	42	336
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
Kersey		9-7-01	

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Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME: Nations Fwy		No. 0300
ADDRESS: 14th St		
CITY: Rich		PHONE:
JOB LOCATION: CRCC		
JOB NAME: CRCC		
JOB PHONE:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: 14th St		
		TOTAL MATERIAL: 260
		TOTAL LABOR:
		TOTAL EQUIPMENT: 3386
		TAX:
Thank You		PAY THIS AMOUNT: 3616.00

QTY.	MATERIAL	PRICE	AMOUNT
4	Dump Fee	65.00	260.00
HRS.	EQUIPMENT	RATE	AMOUNT
8	Truck (1000 lb)	95	760
7	Pen breaking (Truck)	175	1225
6	Truck	65	390
8	Motor 1 1/2	42	336
8	Truck	65	520
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
Kersey		9-1-01	

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Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME: Nations Fwy		No. 0281
ADDRESS: 14th St		
CITY: Rich		PHONE:
JOB LOCATION: CRCC		
JOB NAME: CRCC		
JOB PHONE:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: 14th St		
		TOTAL MATERIAL: 260
		TOTAL LABOR:
		TOTAL EQUIPMENT: 3231
		TAX:
Thank You		PAY THIS AMOUNT: 3491.00

QTY.	MATERIAL	PRICE	AMOUNT
4	Dumpruck (concrete)	65 EA	260 -
	Dump Fee		
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac-Hoe (small)	95	760 -
8	Trac-Hoe (big breaker)	175	1400 -
8	Drilling	65	520 -
8	Mitchell #2	42	336 -
8	Dredge #1	65	520 -
8	Trac-Hoe (Samsung)	115	920 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
Kersey		8-31-01	

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NAME Nations Envo.		No. 0336	
ADDRESS 14th st		PHONE	
QTY Rich			
JOB LOCATION GRRC			
JOB NAME		STATEMENT DATE	
JOB PHONE		ORDER TAKEN BY	
DESCRIPTION OF WORK (C.M.D)			
		TOTAL MATERIAL	260 00
		TOTAL LABOR	
		TOTAL EQUIPMENT	4456 00
		TAX	
Thank You		PAY THIS AMOUNT >	4716 00

QTY.	MATERIAL	PRICE	AMOUNT
3	Dumpruck (concrete)	65 EA	195 -
	Dump Fee		
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac-Hoe	115	920 -
7	Trac-Hoe (small)	95	665 -
7	Big breaker (Trac-Hoe)	175	1225 -
8	Drilling	65	520 -
8	Mitchell (small Dumpruck)	42	336 -
HRS.	LABOR	RATE	AMOUNT
		TOTAL MATERIAL	195 00
		TOTAL LABOR	
		TOTAL EQUIPMENT	3166 00

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NAME Nations Envo.		No. 0339	
ADDRESS 14th st		PHONE	
CITY Rich			
JOB LOCATION GRRC			
JOB NAME		STATEMENT DATE	
JOB PHONE		ORDER TAKEN BY	
DESCRIPTION OF WORK (C.M.D)			
		TOTAL MATERIAL	195 00
		TOTAL LABOR	
		TOTAL EQUIPMENT	3166 00

QTY.	MATERIAL	PRICE	AMOUNT
HRS.	EQUIPMENT	RATE	AMOUNT
3	Trac-Hoe	115	345 00
7	Breaker Trac-Hoe	175	1225 --
4	Phillips	125	500 --
8	I.A.C.	42	336 --
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
A. K. F. 2-4		8-27-01	

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Tel: (804) 550-1265

NAME Nations Envero		No. 0278	
ADDRESS 14th St.			
CITY Rich		PHONE	
JOB LOCATION RCC			
JOB NAME			
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE	
DESCRIPTION OF WORK			
Demo			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL EQUIPMENT	
		TAX	
Thank You		PAY THIS AMOUNT, \$	2116.00

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Tel: (804) 550-1265

QTY.	MATERIAL	PRICE	AMOUNT
4	S.A.C. / X	—	
4	D. Lin / X	220	880 00
3	Pipe / X	220	440 00
HRS.	EQUIPMENT	RATE	AMOUNT
5	Tow - Haul	115	920 00
6	Tow Haul 50 ft	160	960 00
6	Loader	95	570 00
2	S.A.C.	42	340 00
2	Loader	65	552 50
2	Dump	65	520 00
HRS.	L. LABOR	RATE	AMOUNT
			\$3,885 50

NAME <i>WILLIAMS BROTHERS</i>		No. 0392	
ADDRESS <i>141st</i>			
CITY <i>R.I.C.H.</i>		PHONE	
JOB LOCATION			
JOB NAME <i>CRCC</i>			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <i>1-2-40</i>			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL EQUIPMENT	<i>2100 -</i>
		TAX	
Thank You		PAY THIS AMOUNT	<i>2,100.00</i>

NAME <i>William E. Frye</i>		No. 0396	
ADDRESS <i>141st</i>			
CITY <i>Rich</i>		PHONE	
JOB LOCATION			
JOB NAME <i>CRCC</i>			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <i>1000</i>			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL EQUIPMENT	<i>1275 -</i>
		TAX	
Thank You		PAY THIS AMOUNT	<i>1275.00</i>

QTY.	MATERIAL	JCE	AMOUNT
4	trash debris	185	740.00
1	Steel	-	

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HRS.	EQUIPMENT	RATE	AMOUNT
8	Loader	65h	520.00
6	Trac-hoe	15h	690.00
4	Breaker	95h	380.00
9	Dump trailer	65h	585.00

NAME Nations Environmental	No. 0301
ADDRESS 14th St.	PHONE
CITY Rich	
JOB LOCATION Rich Center	
JOB NAME	
JOB PHONE	ORDER TAKEN BY
	STATEMENT DATE

HRS.	LABOR	RATE	AMOUNT
------	-------	------	--------

DESCRIPTION OF WORK Demo

HRS.	LABOR	RATE	AMOUNT
------	-------	------	--------

TOTAL MATERIAL	740	00
TOTAL LABOR		
TOTAL EQUIPMENT	2175	00
TAX		

SIGNATURE L. Kersey	DATE COMPLETED 7-16-01
------------------------	---------------------------

Thank You	PAY THIS AMOUNT \$2915.00
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MATERIAL	PRICE	AMOUNT
concrete	65	130.00
trash debris	185	555.00
Steel	-	

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Fax: (804) 550-1535

EQUIPMENT	RATE	AMOUNT
Trac-hoe	115h	920.00
Loader	65h	520.00
Breaker	95h	570.00
Dump trailer	65h	520.00

NAME Nations Env't	No. 0305
ADDRESS 14th St	PHONE
CITY Rich	
JOB LOCATION Rich Center	
JOB NAME	
JOB PHONE	ORDER TAKEN BY
	STATEMENT DATE

EQUIPMENT	RATE	AMOUNT
Trac-hoe	115h	920.00
Loader	65h	520.00
Breaker	95h	570.00
Dump trailer	65h	520.00

DESCRIPTION OF WORK Demo

LABOR	RATE	AMOUNT
-------	------	--------

TOTAL MATERIAL	1685	00
TOTAL LABOR		
TOTAL EQUIPMENT	2530	00
TAX		

SIGNATURE	DATE COMPLETED 7-17-01
-----------	---------------------------

Thank You	PAY THIS AMOUNT
-----------	-----------------

QTY.	MATERIAL	PRICE	AMOUNT
4	Phillips debris #1	185 EA	740
4	Gray debris #3	185 EA	740
4	Jimmy debris #2	185 EA	740
			2220.00
HRS.	EQUIPMENT	RATE	AMOUNT
8	trackhoe	115 hr	920
8	Breaker	95 hr	760
8	Loader	65 hr	520
9	Dump trailer #1	65 hr	585
8	Dump trailer #2	65 hr	520
9	Dump trailer #3	65 hr	585
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
K. K. ONSPA		7-20-01	

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Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Natrons Environmental</i>		No. 0329	
ADDRESS			
CITY		PHONE	
JOB LOCATION <i>Rec. Center</i>			
JOB NAME	ORDER TAKEN BY		STATEMENT DATE
JOB PHONE			
DESCRIPTION OF WORK			
<i>Demo</i>			
		TOTAL MATERIAL	<i>2230.00</i>
		TOTAL LABOR	
		TOTAL EQUIPMENT	<i>3390</i>
		TAX	
Thank You		PAY THIS AMOUNT > <i>16110.00</i>	

QTY.	MATERIAL	PRICE	AMOUNT
4	Phillips / 1 hr. 1 s	\$20 EA	\$80 00
14	Mitchell #7 Dumptruck	65 Hr	910 00
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac-Hoe	115 hr	920 00
8	Loader	65 hr	520 00
7	breaker	95 hr	855 00
2	Philip - Dumpster trailer	65 hr	520 00
2	Mitchell #7 Dumptruck	42 hr	336 00
			\$2991 00
HRS.	LABOR	RATE	AMOUNT
SIGNATURE			DATE COMPLET
Kerran			5-1-81

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Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Nations Enviro</i>		No. 0324	
ADDRESS <i>4th St</i>			
CITY <i>Rich</i>		PHONE	
JOB LOCATION			
JOB NAME <i>Rich Center</i>			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK <i>Demol</i>			
		TOTAL MATERIAL	<i>1,140</i> 00
		TOTAL LABOR	
		TOTAL EQUIPMENT	<i>2916</i> 00
		TAX	

QTY.	MATERIAL	PRICE	AMOUNT
5	1/2" x 1/4" x 10' W. L. P. L.	185	925
5	5/8" x 1/4" x 10' W. L. P. L.	185	925
HRS.	EQUIPMENT	RATE	AMOUNT
8	Backhoe	115	920
8	Backhoe	115	920
8	Tractor	115	920
8	D. Grader	115	920
8	Backhoe	115	920
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
J. J. [Signature]		7-23-61	

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Tel: (804) 550-1265

NAME		No. 0330	
ADDRESS			
CITY		PHONE	
JOB LOCATION			
JOB NAME			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL EQUIPMENT	
		TAX	
Thank You		PAY THIS AMOUNT >	

11023 Washington Hwy, Suite 200

[illegible]

QTY	MATERIAL	PRICE	AMOUNT
1	Retained Earth		
HRS.	EQUIPMENT	RATE	AMOUNT
3	Dump Truck (11.11)	65	195
8	Loader	65	520
8	Trac-Hoe	115	920
342	Trac-Hoe 2' 2" (11.11)	160	5472
8	Breaker (Base)	95	760
8	O.A.C. Dump Truck		
HRS.	LABOR	RATE	AMOUNT
SIGNATURE: <i>K. K. K. K.</i>		DATE COMPLETED: 7-26-01	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME: <i>Rich Center</i>		No. 0308
ADDRESS: <i>14th St</i>		
CITY: <i>Rich</i>	PHONE:	
JOB LOCATION: <i>Rich Center</i>		
JOB NAME: <i>Rich Center</i>		
JOB PHONE:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: <i>Demolition</i>		
<div> <div> TOTAL MATERIAL</div> <div> TOTAL LABOR</div> <div> TOTAL EQUIPMENT</div> <div> TAX </div> </div>		

QTY	MATERIAL	PRICE	AMOUNT
3	Sac 3' dunnies		
	Dump Truck		
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac-Hoe	115	920
8	Breaker	95	760
8	Trac-Hoe 50'GR	160	1280
8	Sac Dump Truck	42	336
8	Loader	65	520
HRS.	LABOR	RATE	AMOUNT
NATURE: <i>Demolition</i>		DATE COMPLETED: <i>7-26-01</i>	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME: <i>Rich Center</i>		No. 0306
ADDRESS: <i>14th St</i>		
CITY: <i>Rich</i>	PHONE:	
JOB LOCATION: <i>Rich Center</i>		
JOB NAME: <i>Rich Center</i>		
JOB PHONE:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK:		
<div> <div> TOTAL MATERIAL</div> <div> TOTAL LABOR</div> <div> TOTAL EQUIPMENT</div> <div> TAX </div> </div>		

QTY.	MATERIAL	PRICE	AMOUNT
5	1/2" x 1/4" x 1/4" S	185	925
7	1/2" x 1/4" x 1/4" S	---	---
HRS.	EQUIPMENT	RATE	AMOUNT
2	TRAILER - HOC	115 h.	230
3	TRAILER - HOC - 500 L	160 h.	1580
8	TRAILER - HOC	65 h.	520
7	TRAILER - HOC	95 h.	760
4	TRAILER - HOC	65 h.	535
3	TRAILER - HOC	112 h.	336
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	

NAME		No. 0314	
ADDRESS			
CITY		PHONE	
JOB LOCATION			
JOB NAME			
JOB PHONE		ORDER TAKEN BY	STATEMENT DATE
DESCRIPTION OF WORK			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL EQUIPMENT	
		TAX	
Thank You		PAY THIS AMOUNT >	

[illegible]

NAME		No. 0315	
ADDRESS			
CITY		PHONE	
JOB LOCATION JOB NAME			
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE	
DESCRIPTION OF WORK			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL EQUIPMENT	
		TAX	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

QTY.	MATERIAL	PRICE	AMOUNT
4	1/2" x 1/2" x 1/2" x 1/2"	220	880
4	1/2" x 1/2" x 1/2" x 1/2"	220	880
4	1/2" x 1/2" x 1/2" x 1/2"	220	880
4	1/2" x 1/2" x 1/2" x 1/2"	220	880

HRS.	EQUIPMENT	RATE	AMOUNT
8	Tractor-Hoe	115hr	920
7	Tractor-Hoe	160hr	640
3	Loader	65hr	520
7	Backhoe	95hr	665
8	Tractor-Hoe	65hr	520
3	Backhoe	42hr	336

HRS.	LABOR	RATE	AMOUNT
8	Laborer #1	65hr	520
8	Laborer #2	65hr	520

SIGNATURE: *L. K. ...* DATE COMPLETED: 8-3-01

NAME: Nations Environmental		No. 0317
ADDRESS: 11023 Washington Hwy, Suite 200		
CITY: Glen Allen	PHONE:	
JOB LOCATION: Ric Ctr.		
JOB NAME:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK:		
		TOTAL MATERIAL
		TOTAL LABOR
		TOTAL EQUIPMENT
		TAX
Thank You		PAY THIS AMOUNT >

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

QTY.	MATERIAL	PRICE	AMOUNT

HRS.	EQUIPMENT	RATE	AMOUNT
	Fuel Lifts gals. 38		
	Fuel Lifts gals. 40		

HRS.	LABOR	RATE	AMOUNT

SIGNATURE: S. Godwin DATE COMPLETED: 7-9-01

NAME: Nations Environmental		No. 0218
ADDRESS:		
CITY:	PHONE:	
JOB LOCATION: Ric Ctr.		
JOB NAME:	ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK:		
Fuel ed Lifts Twice		
Rate 1.38		TOTAL MATERIAL 59.00
		TOTAL LABOR
		TOTAL EQUIPMENT
		TAX

NAME <i>Nations Envoiro</i>		No. 0288	
ADDRESS <i>14th Str.</i>			
CITY <i>Rich</i>		PHONE	
JOB LOCATION <i>Rich Center</i>			
JOB NAME			
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE	
DESCRIPTION OF WORK <i>Demo</i>			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL EQUIPMENT	
		TAX	
Thank You		PAY THIS AMOUNT >	<i>1,823.00</i>

QTY.	MATERIAL	PRICE	AMOUNT
HRS.	EQUIPMENT	RATE	AMOUNT
8	Trac-Hoe	115	920 00
7	Trac-Hoe 50 ft	160	1120 00
4	backhoe breaker	95	380 00
6	Phillip	65	390 00
8	J.A.C.	42	336 00
8	Dudley # 1	65	520 00
HRS.	LABOR	RATE	AMOUNT
9.5	Dudley # 2	65	617 50
9	Dudley # 3	65	585 00

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Nations Eav. Co</i>		No. 0287	
ADDRESS <i>14th Str.</i>			
CITY <i>Rich</i>		PHONE	
JOB LOCATION <i>Rich Center</i>			
JOB NAME			
JOB PHONE	ORDER TAKEN BY	STATEMENT DATE	
DESCRIPTION OF WORK			
<i>Demo</i>			
		TOTAL MATERIAL	
		TOTAL LABOR	
		TOTAL	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Nations Enviro.</i>		No. 0388	
ADDRESS <i>14th ST</i>		PHONE	
CITY <i>Rich</i>		STATEMENT DATE	
JOB LOCATION <i>CRCC</i>		ORDER TAKEN BY	
JOB NAME		STATEMENT DATE	
JOB PHONE		ORDER TAKEN BY	
DESCRIPTION OF WORK <i>Lead</i>			
TOTAL MATERIAL			
TOTAL LABOR			
TOTAL EQUIPMENT 1645 -			
TAX			
Thank You		PAY THIS AMOUNT 1,645.00	

C.G. Mitchell Construction, Inc.

11023 Washington Hwy, Suite 200

Glen Allen, Virginia 23059

Tel: (804) 550-1265

Fax: (804) 550-1535

NAME <i>Nations Enviro.</i>		No. 0389	
ADDRESS <i>14th ST</i>		PHONE	
CITY <i>Rich</i>		STATEMENT DATE	
JOB LOCATION <i>CRCC</i>		ORDER TAKEN BY	
JOB NAME		STATEMENT DATE	
JOB PHONE		ORDER TAKEN BY	
DESCRIPTION OF WORK <i>Lead</i>			
TOTAL MATERIAL			
TOTAL LABOR			
TOTAL EQUIPMENT 1760 -			
TAX			

QTY.	MATERIAL	PRICE	AMOUNT
2	Dump Fee (Concrete)	65 EA	130 -
HRS.	EQUIPMENT	RATE	AMOUNT
6	Tractor-Hoe	115 hr	690 -
8	Drill	65 hr	520 -
3	Dig Breakers	175 hr	525 -
3	Loader	65 hr	195 -
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
L. H. Rosey		11-9-01	

C.G. Mitchell Construction, Inc.
 11023 Washington Hwy, Suite 200
 Glen Allen, Virginia 23059
 Tel: (804) 550-1265
 Fax: (804) 550-1535

NAME: <i>Motions Etc.</i>		No. 0387	
ADDRESS: <i>17th St</i>		PHONE:	
CITY: <i>Rich</i>		STATEMENT DATE:	
JOB LOCATION: <i>CRP</i>			
JOB NAME:		ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: <i>New</i>			
TOTAL MATERIAL		130	00
TOTAL LABOR			
TOTAL EQUIPMENT		2280	-
TAX			
Thank You		PAY THIS AMOUNT: 2410.00	

QTY.	MATERIAL	PRICE	AMOUNT
3	Building debris	185 EA	555
HRS.	EQUIPMENT	RATE	AMOUNT
8	Truckhoe w/operator	115 hr	150
8	Backhoe w/operator	95 hr	760
4	TRACK LOADER	65 hr	260
9	TRACTOR w/ Dump Trailer	165 hr	585
HRS.	LABOR	RATE	AMOUNT
SIGNATURE		DATE COMPLETED	
S. G. [Signature]		7-09-01	

C.G. Mitchell Construction, Inc.

MATERIAL		PRICE	AMOUNT
1	Steel	-	
3	Building Debris	185	555
			555
EQUIPMENT		RATE	AMOUNT
1	TRACKhoe w/OPERATOR	115 hr	1150
1	BACKhoe w/DRIVER	95 hr	237 50
	TRUCK LOADER	65 hr	390
	TRACTOR w/DUMP TRAILER	65 hr	650
			2427 50
LABOR		RATE	AMOUNT
RE <u>S. G. [Signature]</u>		DATE COMPLETED 7-10-01	

C.G. Mitchell Construction, Inc.

NAME <i>Anthony's Kayaks</i>		No. 0319	
ADDRESS <i>14th St</i>			
CITY <i>Rich</i>		PHONE	
JOB LOCATION			
JOB NAME <i>Rich Center</i>			
JOB PHONE		ORDER TAKEN BY	
		STATEMENT DATE	
DESCRIPTION OF WORK <i>Demo</i>			
		TOTAL MATERIAL	<i>1200</i> 00
		TOTAL LABOR	
		TOTAL EQUIPMENT	<i>3695</i> 00
		TAX	
Thank You		PAY THIS AMOUNT <i>3915.00</i>	

NAME: <i>Notion Invire</i>		No. 0312	
ADDRESS: <i>1st St</i>		PHONE:	
CITY: <i>Rich</i>			
JOB LOCATION: <i>Rich</i>			
JOB NAME: <i>Rich Porter</i>			
JOB PHONE:		ORDER TAKEN BY:	STATEMENT DATE:
DESCRIPTION OF WORK: <i>Demo</i>			
		TOTAL MATERIAL	<i>\$545</i>
		TOTAL LABOR	<i>00</i>

October 23, 2001

Mr. Mark Hansell
Turner/Russell/Davis
214 East Cary Street, Suite 400
Richmond, VA 23219

RE: RICHMOND CONFERENCE CENTER EXPANSION

Dear Mr. Hansell:

Please find enclosed copies of correspondence from our firm to Nations Environmental (your subcontractor - and the firm for whom we have been working on the project), and the Greater Richmond Center Authority (whom we understand to be the owner/developer with which you have contracted). These letters address payment concerns we have had, and I trust you will find them self-explanatory.

At this time, we respectfully request that you do the following:

- 1) Review these letters and discuss the matter Nations Environmental. We are hopeful that your input in this issue will assist all parties to correct any errors that have occurred and bring all accounts into line at this time - and, from this point forward, encourage the payment process to occur in a more accurate and efficient manner.
- 2) Provide us copies of ALL bonds that Nations Environmental may have been posted for your benefit - as well as any bonds that your firm might have posted for the owner's benefit. In particular, we are asking for a copy of any Performance and Labor and Materials Payment bonds that might have been posted by either of your firms (or any other entity that might exist in the hierarchy chain thru which funds due to this firm as a lower tier subcontractor might have passed).

As you are aware, there has been a confusing history of changes in the payment agreements which Nations Environmental has arbitrarily made in the past. This has not only caused us significant cash flow problems (and required us to finance an extraordinary amount of the cost of the work on this job), but has also now resulted in our feeling that a SIGNIFICANT amount of funds due to our firm may well have been paid by the owner but not yet reached us. While this situation simply cannot be tolerated, I would like to point out that we have steadfastly stood by our own commitment to get the work accomplished in a timely manner - and we fully

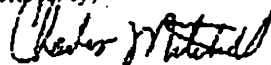
intend to continue behind that commitment. We ask for no more than what we are entitled to, and we only expect terms which are appropriate.

With the above in mind, please likewise be mindful that we believe all funds paid out by the owner for work performed by us are paid to you under an implied - if not real - trust arrangement, and we think and hope that you have a real obligation to take appropriate steps to see to it that such funds are funneled on to us as appropriate. We are thus asking that you take all appropriate measures to correct any payment deficiencies to date, AND to help us insure that not further problems occur moving forward. This may well require alternative forms of payment (such as joint checks, or direct disbursement to us and backcharges to your account with Nations), and please know that we will always strive to be agreeable to any reasonable form of payment receipt that is necessary to insure all parties are paid at a minimum of inconvenience.

Hopefully, you can help all of us cure the problems that have been occurring in these areas and the project will continue forward in the manner most beneficial to all involved. Given the nature and magnitude of the problem, I would respectfully request that you take the appropriate steps requested above within the next 72 hours, and please confirm your actions in writing to me thereafter so we will know where the matter stands.

If you have any questions about the enclosed please do not hesitate to contact me, here at the office, via mobile, or fax.

Sincerely,



Charles G. Mitchell
President

C.G. Mitchell Construction

October 23, 2001

Nations Environmental
10 South 14th Street, Suite 103
Richmond, VA 23219

RE: RICHMOND CONFERENCE CENTER EXPANSION

Dear Ms. Williams;

This letter is to address our concerns about payments that have been made on this job – and, in particular, the amount of funds that we **SHOULD** have received but have not. Further, we have had ongoing issues with respect to what you deem our role to be, the way you calculate the payments due, and the dates on which you choose to make payment. This is a very serious matter, and our actions at this time are quite clearly designed to bring an end to what we feel are unjust problems that you have created for us with respect to payment. At the same time, I would like to stress that we always have, we are now, and we shall strive to continue to properly, promptly, and efficiently execute the work for which we were hired. Hopefully, you can resolve whatever problems have existed on your end that have lead to this situation and the project can be completed in an expeditious and profitable manner.

With the above in mind, let me first state that we need to bring clarity to our role. You have vacillated between calling us your subcontractor, and a simple time and material service provider. We have tried to accommodate “whatever” role you selected to assign us. However, since it still seems to be changing, we need to now solidify a position. In short, you offered us a service agreement wherein you defined us a subcontractor. Further, you have steadfastly withheld 10% retainage against all funds due to us. Given these two facts, we hereby wish to clarify that we **ARE** a subcontractor.....and shall be deemed as such. If you wish **NOT** to abide by that, please send written notification to all parties and **IMMEDIATELY** release the retained funds.

Secondly, you have vacillated between suggesting that our payment period runs thru the date of billing, to the last day of the month, and finally to the 12th day of the month. Now, it seems that you wish not to include our bills even as early as the 12th of August in payments you are making to us the end of October. This has been irresponsible, and must stop. Since we are a subcontractor, we expect you to abide by payment terms appropriate to subcontract agreements within the state of Virginia – **AND** in accordance with the service agreement you provided. Thus, based on our understanding that your invoices to Turner/Russell/Davis are submitted for month for the period covered thru the end of the month (ie. The bill for August covers all work thru the end

of August), we henceforth expect our billing to be handled in the same fashion. All bills for work performed during a given month are due with the draw for that month. Further, the service agreement calls for you to make payment to us within five days of your receipt of payment. Thus, we expect you to adhere to a schedule whereby you will make payment to us of all funds due to us for work in a given period within 5 days of your receiving payment for work in that period (ie. When the September draw is paid by Turner on or about the end of October, we expect our payment in full within five days thereafter for all work performed thru the end of September).

It is important to note that while we are a subcontractor, we are working on the basis of T/M payment terms, not a lump sum amount. Thus, using any type of "percentage" to calculate how much you wish to remit on to us is absolutely unacceptable.

While it is important that these items are properly handled going forward it is equally important to bring everything in line as of this date. There has yet to be a single month where payments have been made in a timely manner, or in an appropriate sum. Rather than rehash all these issues (which are adequately documented should such rehashing be required for third parties), I would summarize the current position as follows:

We are currently due the total sum \$287,468.34 for all work completed but not yet paid for. This figure includes all invoices issued and payments received as of this date. You have copies of all tickets and invoices for your reference, but I enclose herewith a summary statement for your current review.

A portion of the aforementioned figure is retainage being withheld on previously paid invoices. You have withheld that retainage, so it is relatively easy for you to verify the amount of that item. There is also a certain amount of retainage that would be withheld against newer, as yet unpaid invoices. Again, you can easily calculate same from each invoice.

The balance of that figure represents the total, current amount due. Of this sum, a total of \$119,508.66 is due for the period THRU 08/31/01. The remainder, obviously, would be made up of amounts due for the period THRU 09/30/01, and the amount due thus far for October billings.

We expect, without question, to be paid the sum total of \$119,508.66 to cover all current bills for the period THRU 08/31/01 within 72 hours from the date of this letter. We then expect that all future payments due will be made in a timely manner, in accordance with the implied contract terms as discussed above.

By copy of this letter to Turner/Russell/Davis and the Owner, we are striving to insure that all notification acts and responsibilities that are incumbent upon us are fulfilled. We are NOT trying to cause problems for any party - and we are NOT trying to create any situation that slows down payment or otherwise hinders the job. We are simply trying to put forth the information required so that everyone can do their part to bring an end to a payment process which has strayed from the range of acceptability. In short, we have been - and still are - providing a valuable

service on an agreed upon hourly basis.....and we simply need to get our payments in line with the progress of the work we have completed.

If you have any questions please let me know. Otherwise, please let me know when we can pick up the check to clear the account to date.

Sincerely,


Charles G. Mitchell
President

C.C. Turner / Russel / Davis

C.C. Greater Richmond Center Authority

C.C. Billy Jones / Lawyer



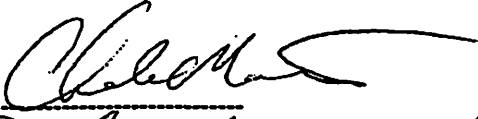
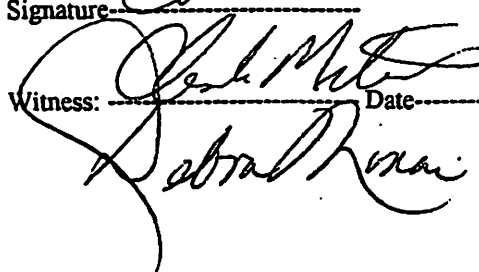
Nations Environmental Services, Inc.

Oct 11, 2001

Re: #12

I Charlie G. Mitchell, agree to a discount on invoice # 12 in the amount of \$10,162.50 less \$740.00

For debris, totaling \$9,422.50 – minus the discount, the check amount totaling \$7,209.15..

Signature:  Date: 10/11/01
Witness:  Date: 10/11/01

CASES AGAINST NATIONS ENVIRONMENTAL SERVICES, INC.

Plaintiff	Type of case/ court	Ad Damnum	Date
Southside Petroleum Marketing, Inc.	Contract/ Richmond General District	\$1,000.88 plus costs 18% interest	August 22, 2002
Vision Hauling, Inc.	Contract/ Richmond General District	\$9,052.50 plus costs 9% interest	August 8, 2002 11:00am
W. O. Grubb Steele Erection (I)	Contract/ Richmond Circuit	\$53,047.25 plus costs 18% interest	March 20, 2003
W. O. Grubb Steele Erection (II) (bonding company added as defendant)	Contract/ Richmond Circuit	\$53,047.25 plus costs 18% interest	March 20, 2003 2003

FORM 647 REV. 3/98

LABOR and MATERIAL PAYMENT BOND

Bond # ASB-45-03-0007KNOW ALL MEN BY THESE PRESENTS; that.....
(Name of Subcontractor)Nations Environmental Services, Inc.
.......... corporation with principal offices located at
10 S. 14th Street, Richmond, VA 23219
.....as Principal (hereinafter "Principal"), and
(Address) American Safety Casualty Insurance Company
(Name of Surety)as Surety, a corporation with home offices located at
1845 The Exchange, Suite 200, Atlanta, GA 30339
.....(hereinafter "Surety") are held and firmly bound unto TURNER
CONSTRUCTION COMPANY, a New York corporation (hereinafter "Obligee"), in the sum
of
~~Eight Hundred Twenty Four Thousand Eight Hundred Seventy~~ Dollars (\$ 824,870.00),
for the payment whereof the Principal and Surety bind themselves, and their respective heirs,
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.WHEREAS, Principal has by written agreement dated 4/7/00 entered into subcontract
with Obligee for the performance of demolition of curb to curb including sidewalks, curbs,
wall, construction, mooting & flooring of Richmond Centre (Subcontract Work) Exhibition Hall.
hereinafter ("the Subcontract Work"), for and at the The Greater Richmond Convention Center Extension
(Name of Project)
(hereinafter the "Project") located at Richmond, Virginia
(Address)in accordance with Drawings and Specifications prepared by
Thompson, Ventulett, Stainback & Associates, Inc. (Architect/Engineer)

which subcontract is by reference made a part hereof, and is hereinafter referred to as the "Subcontract".

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal
shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or
reasonably required for use in the performance of the Subcontract, then this obligation shall be void;
otherwise it shall remain in full force and effect, subject, however, to the following conditions:1) A Claimant is defined as one having a direct contract with the Principal or with a
subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the
performance of the Subcontract, labor and material being construed to include that part of water, gas,
power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the
Subcontract.

6477YBD.DOC

EXHIBIT

B

FORM 647 REV. 3/98

2) The above named Principal and Surety hereby jointly and severally agree with the Obligor that every Claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The Obligor shall not be liable for the payment of any costs or expenses of any such suit.

3) No suit or action shall be commenced hereunder by any Claimant:

a) Unless Claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Obligor, or the Surety above named, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligor or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which the Principal ceased performing Subcontract Work, it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanic's liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

647PVEDDOC

THIS General Agreement of Indemnity (hereinafter called Agreement), made and entered into this 28RD day of May 2000 by the undersigned CONTRACTOR and INDEMNITORS, and American Safety Casualty Insurance Company, as SURETY, WHEREAS, the CONTRACTOR, in the performance of contracts and the fulfillment of obligations generally, whether solely in its own name or as co-venturer with other firms, or as required, to give or procure certain BONDS; and, WHEREAS, at the request of the CONTRACTOR and the INDEMNITORS and upon the express understanding that this Agreement should be given, the SURETY has executed and may from time to time hereafter execute or procure to be executed, said BONDS on behalf of the CONTRACTOR; and, WHEREAS, the INDEMNITORS have a substantial, material or beneficial interest in the obtaining, renewing, continuing or substituting of the BONDS; and, WHEREAS, SURETY has relied upon and will continue to rely upon the representations of CONTRACTOR and INDEMNITORS as to their character, identity, control, ownership, financial condition and existence in executing or procuring BONDS; NOW THEREFORE, in consideration of the above stated premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the CONTRACTOR and each of the INDEMNITORS, the CONTRACTOR and INDEMNITORS for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, hereby covenant and agree with the SURETY, its successors and assigns, as follows:

I. DEFINITIONS. Wherever they appear in this Agreement, the following terms are defined as set forth in this section: A. BOND means an undertaking, a contract, suretyship, guaranty or indemnity, an agreement, consent or letter to provide such an undertaking or contract, before or after the date of this Agreement, and the contract, extension, alteration, renewal or substitution of such an undertaking, contract, agreement, consent or letter, whether with the same or different penalties and conditions, executed, provided, or procured by the SURETY. B. CONTRACT means an agreement between CONTRACTOR and a third party, together with all associated documents (including but not limited to general and special conditions, specifications and drawings) for which SURETY executes or procures the execution of a BOND. C. CONTRACTOR means any one, combination of, or all of the named individuals, firms or corporations set forth below as CONTRACTOR including any of their present or future subsidiaries, corporations and any corporations or other persons or entities with which they may now or hereafter be controlled or affiliated, or their successors in interest, whether also in joint venture with others not named herein, including any such entity for which SURETY executes BONDS. D. INDEMNITOR means any one, combination of, or all named individuals, firms or corporations set forth below as INDEMNITOR(S) including any of their present or future subsidiary corporations and any corporations or other persons or entities with which they may now or hereafter be controlled or affiliated, or their successors in interest, whether alone or in joint venture with others not named herein including any such person or entity who hereafter agrees to become an INDEMNITOR under this Agreement. E. SURETY means AMERICAN SAFETY CASUALTY INSURANCE COMPANY, its reinsurers, and any other persons or entities which the SURETY may procure to act as a SURETY or as a co-surety of any BOND, or any other person or entity who executes a BOND at the request of the SURETY, and the successors, assigns, affiliates, associates and subsidiary companies of any of the foregoing. F. EVEN* DEFAULT means any one or more of the following: (i) Any declaration of default by an obligee on any BOND, or any actual or alleged abandonment, forfeiture, or breach of contract, refusal or inability to perform, any CONTRACT or obligation contained in a BOND, or the filing of any suit or commencement of any action or proceeding by a creditor or obligee of an obligation against CONTRACTOR or any INDEMNITOR, or any suspension, revocation or other material adverse change in the status of any license, permit or right or permission to bid or perform work of CONTRACTOR with any applicable licensing board or agency; (ii) Any actual or alleged failure, delay, refusal or inability of CONTRACTOR to pay claims, bills or other indebtedness incurred in, or in connection with, the performance of any CONTRACT; (iii) The actual or alleged failure to perform comply with, any of the terms, covenants, conditions or obligations in this Agreement, or of any BOND or obligation issued by SURETY pursuant to this Agreement, including the failure to pay or discharge, when due, any indebtedness or other obligation of the CONTRACTOR to the SURETY, and the failure of CONTRACTOR or any INDEMNITOR to promptly furnish accurate, complete and up-to-date financial statements or other information upon request of SURETY, or the furnishing of a financial statement or other information by CONTRACTOR or any INDEMNITOR which contains any material misstatement or misrepresentation, or which fails to contain information necessary for accurate presentation of CONTRACTOR'S or any INDEMNITOR'S financial condition; (iv) an assignment by the CONTRACTOR or any INDEMNITOR for the benefit of creditors or the appointment, or an application by the CONTRACTOR or any INDEMNITOR for the appointment, of a receiver or trustee for the CONTRACTOR or any INDEMNITOR or their property, whether insolvent or not, or an application by the CONTRACTOR or any INDEMNITOR for reorganization or arrangement under any bankruptcy laws of the United States or of any State, possession or territory of the United States, or if proceedings for the appointment of a receiver or trustee, for liquidation of, for the reorganization or arrangement of the CONTRACTOR or any INDEMNITOR shall be initiated by other persons; (v) if the CONTRACTOR or any INDEMNITOR is an individual, the CONTRACTOR or INDEMNITOR'S dying, absconding, disappearing, incompetency, being convicted of a felony or imprisoned, becoming a fugitive from justice, or marrying (without the consent of the INDEMNITOR); or, if the CONTRACTOR or INDEMNITOR is any other type of entity, any change or threat of change in the character, identity, control, arrangement, management, beneficial ownership or existence of the CONTRACTOR or INDEMNITOR, any discontinuation or cessation of operations, being convicted of a felony being debarred from bidding on any federal, state or local governmental projects, any material adverse change in the financial condition of the CONTRACTOR or an INDEMNITOR or any transfer of assets, by CONTRACTOR or INDEMNITOR, not in the ordinary course of business to a person or entity not an INDEMNITOR; (vi) A proceeding or the exercise of any rights by any individual or entity, including CONTRACTOR or any INDEMNITOR, which deprives or impairs CONTRACTOR'S use of its plant, machinery, equipment, plans, drawings, tools, supplies or materials; (vii) The happening of any event other than those specified in (i) through (vi) which, in the SURETY'S opinion, may expose SURETY to loss, cost or expense.

II. INDEMNITY AND HOLD HARMLESS. A. The CONTRACTOR and INDEMNITORS, jointly and severally, shall exonerate, hold harmless, indemnify and keep indemnified the SURETY from and against any and all claims, demands, liability, losses, costs, and expenses of whatsoever kind or nature, including court costs, attorneys' fees, adjusting costs and investigative costs, and from and against any and all other such losses and expenses which the SURETY may sustain, suffer or incur: (i) By reason of having executed or procured the execution of BONDS; (ii) By reason of the failure of the CONTRACTOR or INDEMNITORS to perform or comply with any of the covenants or conditions of this Agreement, including but not limited to the payment of all premiums due for BONDS; (iii) In enforcing any of the covenants, obligations or conditions of this Agreement; (iv) making any investigation, obtaining or attempting to obtain a release under or exoneration of a BOND or of CONTRACTOR or SURETY, or recovering or attempting to recover loss or expense paid or unpaid bond premium in connection with this Agreement or any BOND; (v) in prosecuting or defending any action or claim in connection with any BOND whether SURETY at its sole option elects to employ its own counsel, or permits or requires CONTRACTOR and INDEMNITORS to make arrangements for the SURETY'S legal representation; (vi) By reason of the occurrence of any Event of Default by CONTRACTOR or any INDEMNITOR; (vii) As a result of liability incurred or amounts paid satisfaction or settlement of any or all claims, demands, damages, costs, losses, suits, proceedings or judgments relating to the CONTRACTOR'S non-performance of a obligation, CONTRACT, or any other matter under or covered by a BOND; (viii) As a result of liability incurred or expenses paid in connection with claims, suits or judgments relating to an obligation, CONTRACT, or a BOND, including, without limitation, attorney's fees and all legal expenses, including in-house attorney's fees, adjusting fees, investigative fees, and all fees and costs for investigation, accounting, adjusting, engineering or other professional services related to the adjustment of claims and losses deemed necessary or appropriate in the sole discretion of SURETY. B. Payment shall be made to the SURETY by the CONTRACTOR and INDEMNITORS as soon as liability exists or is asserted against the SURETY, or upon the demand of SURETY, whether or not the SURETY shall have made any payment therefor. Such payment shall be with the equal to the amount of any reserve set by the SURETY, or equal to such amount as the SURETY, in its sole judgment, shall deem sufficient to protect it from loss. The SURETY shall have the right to use the payment, or any part thereof, in payment or settlement of any liability, loss, cost or expense for which CONTRACTOR or the INDEMNITORS would be obligated to indemnify the SURETY under the terms of this Agreement. C. In the event of any payment by the SURETY, the CONTRACTOR and INDEMNITORS further agree that in any accounting between the SURETY and the CONTRACTOR, or between the SURETY and the INDEMNITORS, or either or both of them the SURETY shall be entitled to reimbursement for any and all disbursements made by it in good faith in and about the matters contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity, or expediency existed; and, that the vouchers or other evidence of any such payments made by the SURETY shall be prima facie evidence of the fact and amount of the liability of CONTRACTOR and INDEMNITORS to the SURETY. In addition to the payments to be made to SURETY as set forth above, CONTRACTOR and INDEMNITORS agree to pay to SURETY interest on all disbursements made by SURETY at the maximum rate permitted by law calculated from the date of each disbursement.

III. ASSIGNMENT. A. The CONTRACTOR, and the INDEMNITORS as their interests may appear in the following subsections of this paragraph, hereby assign, transfer, pledge and set over to SURETY effective as of the effective date of each BOND executed by SURETY, the rights and property described hereafter, as collateral, to secure any and all obligations in this Agreement and any other indebtedness or liabilities of the CONTRACTOR or INDEMNITORS to the SURETY, whether heretofore or hereafter incurred: (i) All the rights of the CONTRACTOR or INDEMNITORS in, and arising in any manner out of any CONTRACT; (ii) All the right, title and interest of the CONTRACTOR or INDEMNITORS in and to all machinery, equipment, plant, tools, inventory and materials which are now, or may hereafter be utilized in connection with any CONTRACT, regardless of whether they are located at a construction site, in storage elsewhere, or in transit anywhere; (iii) All the right, title and interest of the CONTRACTOR or INDEMNITOR in and to all subcontracts and purchase orders let or to be let in connection with any CONTRACT and in and to all surety bonds supporting such subcontracts or purchase orders; (iv) All the right, title and interest of the CONTRACTOR or INDEMNITORS in and to any actions, causes of action, claims or demands whatsoever which the CONTRACTOR or INDEMNITORS may have or acquire against any party to any CONTRACT, or actions, causes of action, claims or demands arising out of or in connection with any CONTRACT including but not limited to those against obligees on bonds, design professionals, general contractors, subcontractors, laborers or materialmen or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools, inventory or other equipment in connection with or on account of any CONTRACT and against any surety or sureties of any obligee, general contractor, subcontractor, laborer, or materialman; (v) All monies retained and any and all monies that may be due or which hereafter become due on account of any CONTRACT, bonded or unbonded, or on any promissory note or account receivable; (vi) Any and all right, title, interest in, or use of any patent, copyright or trade secret which is or may be necessary for the completion of any bonded work; (vii) All monies due or to become due to CONTRACTOR or INDEMNITORS on any policy of insurance relating to any claims arising out of the performance of any CONTRACT, including, but not limited to, claims under builders risk, liability, fire, employee dishonesty or workers compensation insurance policies, including premium refunds; and (viii) Any and all undistributed loan funds, deposits or interest reserve accounts to which CONTRACTOR or INDEMNITORS may be entitled, and any and all collateral for and undertakings given by the CONTRACTOR or INDEMNITORS in connection with any CONTRACT or obligation. B. SURETY shall have the full and exclusive right (but not the obligation), in its name or in the name of the CONTRACTOR or INDEMNITORS, to prosecute, compromise, release or otherwise resolve any of the claims, causes of action or other rights assigned to SURETY, upon such terms as SURETY, in its sole discretion shall deem appropriate. C. The CONTRACTOR and INDEMNITORS hereby irrevocably nominate, constitute, appoint and designate the SURETY, or its designee(s), through its or their authorized representative(s), as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the CONTRACTOR and INDEMNITORS assigned, transferred and set over to SURETY in this Agreement, and in the name of the CONTRACTOR and INDEMNITORS to make, execute, and deliver any and all additional or other assignments, documents, papers, checks, drafts, warrants or other instruments made or issued in payment of any obligation to which SURETY has the right to receipt of payment pursuant to this Agreement deemed necessary and proper by the SURETY in order to give full effect not only to the intent and meaning of the assignments made in this Agreement, but also to the full protection intended to be herein given to the SURETY under all other provisions of this Agreement. The CONTRACTOR and INDEMNITORS hereby ratify and confirm all acts and actions taken and done by SURETY or its designee(s) as such attorney-in-fact.

IV. RESERVE DEPOSIT. A. If for any reason, SURETY shall deem it necessary to establish or to increase a reserve to cover any possible liability or loss for which CONTRACTOR or INDEMNITORS will be obligated to indemnify SURETY under the terms of this Agreement, or to establish a collateral deposit in connection with the procurement of any BOND for CONTRACTOR, the CONTRACTOR or INDEMNITORS will deposit with SURETY, immediately upon demand, a sum of money equal to or in excess thereof as collateral security to SURETY for such liability or loss. SURETY shall have the right to use the deposit, or any part thereof, in payment of any liability, loss, expense or other matter for which the CONTRACTOR or INDEMNITORS would be obligated to indemnify SURETY under the terms of this Agreement. SURETY shall have no obligation to invest, or to provide a return or interest on the deposit. SURETY'S demand shall be sufficient if sent by registered or certified mail to the CONTRACTOR or INDEMNITORS at the addresses stated herein or at the addresses of the CONTRACTOR or INDEMNITORS last known to SURETY, regardless of whether such demand is actually received by the CONTRACTOR or INDEMNITORS. B. SURETY may seek a mandatory injunction to compel the deposit of such sum together with any other remedy at law or in equity that SURETY may have. SURETY shall have the right to retain such collateral until SURETY has received satisfactory evidence of SURETY'S complete discharge and exoneration from any claim or potential claim under all BONDS and until SURETY has been fully reimbursed for any liability incurred from claims, demands, damages, costs, loss, expense, attorney's fees, or other items for which CONTRACTOR and INDEMNITORS are liable hereunder.

V. REMEDIES UPON DEFAULT. A. In the event of any EVENT OF DEFAULT as described in this Agreement, SURETY shall have the right, at its option, and in its sole absolute discretion, and is hereby so authorized by CONTRACTOR and INDEMNITORS to take any one or more of the following actions: (i) To consent to any change in the terms of any CONTRACT or in any and all plans and specifications relating thereto; (ii) To take over any CONTRACT and arrange for its completion; (iii) To take possession of CONTRACTOR'S equipment, materials and supplies at the site of the work or elsewhere, and CONTRACTOR'S office equipment, books and records as are necessary to utilize the same for completion of any CONTRACT; (iv) To advance or loan such funds or guarantee a loan for funds either prior to or after default, as SURETY shall deem necessary for the completion of any CONTRACT and for the discharge of SURETY in connection with any CONTRACT. The repayment of such advance or loan shall be the responsibility of the CONTRACTOR and INDEMNITORS; (v) To file an immediate suit to enforce the provisions of this Agreement; (vi) To take possession of the work performed and to be performed pursuant to all or any part of any CONTRACT, and at the expense of CONTRACTOR and INDEMNITORS, to complete the performance required by the CONTRACT or CONTRACTOR or to cause the same to be completed by others or to consent to the completion thereof, and to take any other action which SURETY may deem appropriate in connection therewith; (vii) In its name or in the name of the CONTRACTOR or INDEMNITORS to adjust, settle or compromise any claim, counterclaim, demand or judgment involving any BOND or to take whatever other action it may deem necessary, expedient or appropriate with respect to such matter. SURETY'S determination whether any such claim, counterclaim, demand, suit or judgment should be settled or defended shall be binding and conclusive upon the CONTRACTOR and INDEMNITORS. Any such action may be taken by SURETY with or without SURETY exercising any other right or option conferred upon SURETY by law, equity or the terms of this Agreement and without waiving any other right or option so conferred upon SURETY. C. At its sole option, SURETY may reduce the amount of CONTRACTOR'S and INDEMNITORS' liability to SURETY hereunder by applying to such liability any money payable to CONTRACTOR and/or INDEMNITORS by SURETY. The money payable to CONTRACTOR and INDEMNITORS may be, but is not limited to, any money payable by SURETY, in the event SURETY, by separate contract is an insurer of CONTRACTOR or INDEMNITORS as an insurer of any other individual or legal entity, or any money payable to CONTRACTOR or INDEMNITORS as a return of unearned or other premiums, or money payable to settle a claim of CONTRACTOR or INDEMNITORS against SURETY or any individual or other legal entity insured or bonded by SURETY. Nothing contained herein shall operate to enlarge any obligations of SURETY to CONTRACTOR or INDEMNITORS beyond those contained in this Agreement or in any such other contract of insurance. CONTRACTOR and INDEMNITORS agree that all amounts due SURETY hereunder, and all liabilities of CONTRACTOR and INDEMNITORS to SURETY are separate and independent from any actual or alleged liability of SURETY to CONTRACTOR and INDEMNITORS, and that no set-off of any such amounts or claims shall be permitted to be exercised by CONTRACTOR and INDEMNITORS against SURETY nor used as a defense against any claim of SURETY. The CONTRACTOR and INDEMNITORS waive subordinate all rights of indemnity, subrogation and contribution each against the other until all obligations to the SURETY under this Agreement, at law or in equity, have been satisfied in full.

VI. PREMIUMS. The CONTRACTOR and INDEMNITORS will pay to the SURETY all premiums and charges of the SURETY for the BONDS (including but not limited to renewal, additional, and contract overrun premiums according to the SURETY'S current rate manual) immediately upon issuance of each BOND, or as such premiums may be billed. Any billing practice, delay in payment or other payment variance procedure shall not constitute a waiver of SURETY'S rights to obtain full payment upon the issuance of a BOND, or as such premiums may arise. The initial premium is fully earned upon execution of the BOND.

VII. TRUST FUND. A. The CONTRACTOR and INDEMNITORS covenant and agree that all payments received for or on account of any CONTRACT shall be held in trust as a trust fund for the payment of obligations incurred or to be incurred in the performance of any CONTRACT and used for labor, materials, and services furnished in the prosecution of the work in any CONTRACT or any extension or modification thereof. It is expressly understood and declared that all monies due and to become due under a CONTRACT are also trust funds, whether in the possession of the CONTRACTOR or INDEMNITORS or otherwise. The trust funds shall be for the benefit and payment of obligations for which the SURETY may be liable under any BONDS. The trust(s) shall inure to the benefit of the SURETY for any liability or loss it may have or sustain under a BOND, and for any and all obligations of CONTRACTOR and INDEMNITORS under this Agreement, and this Agreement and declaration constitute notice of such trust. B. SURETY discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds, and CONTRACTOR and INDEMNITORS shall, upon demand by SURETY and in implementation of the trust or trusts hereby created, open an account or accounts with a bank selected by SURETY which shall be designated as a trust account or accounts for the deposit of such trust funds, and shall thereupon deposit therein all monies received pursuant to said CONTRACT or CONTRACTS. Withdrawals from such accounts shall be by check or similar instrument signed by the CONTRACTOR and countersigned by a representative of SURETY. Said trust(s) shall terminate on the payment by CONTRACTOR of all the obligations for the payment of which the trust(s) are hereby created or upon the expiration of twenty years from the date hereof, whichever shall first occur.

VIII. PERFECTION OF SECURITY INTEREST. This Agreement shall constitute a Security Agreement for the benefit of the SURETY and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code or any similar statute, ordinance or regulation of any jurisdiction or agency, and may be so used by the SURETY without in any way abrogating, restricting or limiting the rights of the SURETY under this Agreement or under law or in equity. SURETY may add such schedules to this Agreement describing specific items of security covered hereunder as shall be necessary or appropriate. The SURETY may, at its option, file or record this Agreement or any other document executed by any or all of the CONTRACTOR or INDEMNITORS in connection with the application, issuance or execution of any BOND(s), or renewal thereof coming within the scope of this instrument as a security agreement or as part of a financing statement or, as notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency. The failure to so file shall not release or discharge any of the obligations of the CONTRACTOR or INDEMNITORS under this Agreement.

IX. CHANGES. The SURETY, at its sole option, is authorized and empowered, without notice to or knowledge of CONTRACTOR or the INDEMNITORS, to agree or refuse to agree to any change whatsoever in any BOND, or any CONTRACT, including, but not limited to, any change in the time for the completion of any CONTRACT and to payments or advances thereunder before the same may be due, and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions, renewals, enlargements, modifications, changes or alterations of any BOND and to execute any substitute or substitutes therefor, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties. It is expressly understood and agreed that the CONTRACTOR and INDEMNITORS shall remain bound under the terms of this Agreement even though any such assent by the SURETY does or might substantially increase the liability of said CONTRACTOR or INDEMNITORS.

X. ADVANCES TO CONTRACTOR. The SURETY, at its sole option, is authorized and empowered to guarantee loans, to advance or lend to, or for the account of, the CONTRACTOR any money, which the SURETY in its sole discretion may see fit to do, reserving to itself, however, the absolute right to cancel any such guarantee and to cease advancing or lending money to the CONTRACTOR or for the account of the CONTRACTOR with or without cause and with or without notice to CONTRACTOR or INDEMNITORS. SURETY shall not be held responsible for application of the proceeds of such loan or advance. All money expended by the SURETY, or lent or advanced from time-to-time to, or for the account of, the CONTRACTOR or guaranteed by the SURETY, and all related cost and expense incurred by the SURETY, shall be less to the SURETY for which the CONTRACTOR and the INDEMNITORS shall be responsible, notwithstanding that said money or any part thereof should not be so used by the CONTRACTOR.

XI. BOOKS AND RECORDS. At any time, and until such time as the liability of the SURETY under all BONDS is terminated or SURETY is fully reimbursed all amounts due to it under this Agreement, the SURETY shall have the right of access to the books, records, accounts and documents of the CONTRACTOR and INDEMNITORS, wherever located, for the purpose of inspection, copying or reproduction. Any financial institution, depository, materialman, supply house, obligee, general contractor, subcontractor, or other person, firm, or corporation, when requested by the SURETY, is hereby authorized by CONTRACTOR and INDEMNITORS to furnish the SURETY any information requested by SURETY, including, but not limited to, the status of the work under any CONTRACT being performed by the CONTRACTOR, the status, extent or condition of the performance of any CONTRACT being performed by the CONTRACTOR, the status, extent or condition of the performance of any other CONTRACT and payment of accounts. Upon the occurrence of any Event of Default, CONTRACTOR and INDEMNITORS, upon SURETY'S request, shall immediately turn over to SURETY, or its designee, at a place and in a manner designated by SURETY, such books, records, accounts, documents and CONTRACTS in whatever form, as requested by SURETY. The expense of any inspection permitted hereunder, and of providing the records so specified, shall be borne by CONTRACTOR and INDEMNITORS. SURETY may furnish any information, which it now has or may hereafter acquire concerning the CONTRACTOR and INDEMNITORS, to other persons, firms or entities for the purpose of procuring co-suretyship or reinsurance or of advising such persons, firms, or entities as it may deem appropriate.

XII. DECLINE OF EXECUTION. CONTRACTOR and INDEMNITORS are not obligated to request the SURETY to execute, provide or procure any BOND required of them in the performance and fulfillment of obligations; however, CONTRACTOR shall not, during the term of this Agreement and while any Bond is outstanding or remains in effect, without the express written consent of SURETY, engage any other person or entity to provide bonds for CONTRACTOR. Furthermore, the SURETY has the right in its sole and absolute discretion, to decline to execute, provide or procure any BOND requested by CONTRACTOR. If SURETY does execute, provide or procure the execution of a bid bond or proposal bond, or agrees or consents to provide such contract of suretyship, SURETY retains the right in its sole and absolute discretion to decline to execute the final bond (including, but not limited to, performance, payment or maintenance bond(s) that may be required in connection with any award that may be made under the bid proposal or tender to which the bid proposal bond or agreement or consent to provide such contract of suretyship is given, without relieving CONTRACTOR or INDEMNITORS from their liability under this Agreement in connection with the provision of the bid bond or proposal bond. SURETY shall not be liable to CONTRACTOR or INDEMNITORS for any such action, and is released from any and all liability, cost or expense arising out of, relating to or resulting from any such action.

XIII. WAIVERS BY CONTRACTOR AND INDEMNITORS. The CONTRACTOR and INDEMNITORS hereby waive and agree not to assert any of the following, to the end and effect that CONTRACTOR and INDEMNITORS shall be and continue to be liable hereunder: (i) Any defense that this Agreement was executed subsequent to the date of any BOND, it being expressly understood and agreed that the CONTRACTOR and INDEMNITORS hereby admit and covenant that the BOND was executed by SURETY pursuant to the request of the CONTRACTOR and INDEMNITORS and in reliance on the promise by the CONTRACTOR and INDEMNITORS to execute and perform this Agreement; (ii) Any right to claim that any of their property, including homesteads, is exempt from levy, execution, sale or other legal process under the laws of any state, territory or possession in any action brought by SURETY under this Agreement; (iii) Any right to require SURETY to proceed against CONTRACTOR or INDEMNITORS or any other person, firm or entity or to proceed against or exhaust any security or remedy held by SURETY, at any time or to pursue any other remedy in SURETY'S power; (iv) The defense of the statute of limitations in any action hereunder for the collection of any claim or amount due under this Agreement, or the performance of any obligation indemnified hereby; (v) Any defense based upon an election of remedies by SURETY, which election may destroy or otherwise impair subrogation rights of CONTRACTOR or any INDEMNITOR or the right of INDEMNITOR to proceed against the CONTRACTOR or to realize upon any security; (vi) Any right to notice of the execution of any BOND and of the acceptance of this Agreement; (vii) Any right to notice of any default, payment or any other act or acts giving rise to any claim under any BOND or under this Agreement; and any and all liability on the part of CONTRACTOR and INDEMNITORS.

CORPORATE RESOLUTION AND CERTIFICATION

WHEREAS, the President and Vice-President of Nations Environmental Services, Inc. have executed a certain Indemnity Agreement in favor of American Safety Casualty Insurance Company, dated May 23, 192000, protecting it in connection with its assuming suretyship as more fully described therein, said Indemnity Agreement having been read at this meeting and fully considered and approved by the directors present; and

WHEREAS, the said Indemnity Agreement has been accepted by American Safety Casualty Insurance Company, upon the warranty of said officers that this Corporation has such an interest in said suretyship as to empower it to make said Indemnity Agreement;

NOW THEREFORE, BE IT RESOLVED, that the acts of the said officers in executing the said Indemnity Agreement on behalf of this Corporation be, and they are hereby, unanimously ratified and confirmed as the acts of this Corporation;

BE IT FURTHER RESOLVED, by the aforesaid warranty, that this Corporation has such an interest in said suretyship as to empower it to make said Indemnity Agreement, and it is hereby ratified and confirmed as a warranty of this Corporation;

BE IT FURTHER RESOLVED, that said officers are empowered on behalf of the Corporation to do such acts and execute such other documents as may be necessary to protect American Safety Casualty Insurance Company, and induce it to assume said suretyship, including but not limited to the execution of a Collateral Agreement and the assignment of such collateral to American Safety Casualty Insurance Company as American Safety Casualty Insurance Company may require, and such acts are hereby unanimously ratified and confirmed as the acts of this Corporation.

I hereby certify that I am the Corporate Secretary, of Nations Environmental Services, Inc., and that the above resolution is a true and accurate copy of a resolution unanimously adopted by the Board of Directors at a meeting duly called held on the 23 day of May, 192000, in the office of said Corporation, at which meeting a quorum of the Directors were present.

IN WITNESS WHEREOF, I have hereunto set my hand and the corporate seal of the Corporation, this 23 day of May, 192000.

[AFFIX CORPORATE SEAL]

Robert C. Williams
Corporate Secretary

INDIVIDUAL INDEMNITOR			
Signature <u>Janet C. Williams</u>	ISEAL	Signature <u>Chijioke Ude</u>	ISE
Name <u>Janet C. Williams</u>		Name <u>Chijioke Ude</u>	
Residence Address <u>20100 College Park Rd</u>		Residence Address <u>4108-N Townhouse Rd</u>	
City <u>Ettrick</u> State <u>VA</u> Zip <u>23803</u>		City <u>Richmond</u> State <u>VA</u> Zip <u>23228</u>	
Res. Phone # <u>804-520-5878</u> SS # <u>229-76-8712</u>		Res. Phone # <u>804-266-1935</u> SS # <u>231-23-9732</u>	
Signature	ISEAL	Signature	ISE
Name		Name	
Residence Address		Residence Address	
City	State	City	State
Res. Phone #	SS #	Res. Phone #	SS #

INDIVIDUAL ACKNOWLEDGEMENTS	
STATE OF <u>Virginia</u>	}
COUNTY OF <u>Richmond</u>	
On this <u>23rd</u> day of <u>May</u> , 19 <u>2000</u> , before me personally appeared <u>Janet C. Williams</u> , personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.	
Sworn to and subscribed before me this <u>23rd</u> day of <u>May</u> , 19 <u>2000</u>	
Notary Public: <u>Barbara L. Hlava</u>	
My Commission Expires: <u>11-30-00</u>	

STATE OF <u>Virginia</u>	}
COUNTY OF <u>Richmond</u>	
On this <u>24th</u> day of <u>May</u> , 19 <u>2000</u> , before me personally appeared <u>Chijioke Ude</u> , personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.	
Sworn to and subscribed before me this <u>24th</u> day of <u>May</u> , 19 <u>2000</u>	
Notary Public: <u>Barbara L. Hlava</u>	
My Commission Expires: <u>11-30-00</u>	

STATE OF	}
COUNTY OF	
On this day of, 19....., before me personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.	
Sworn to and subscribed before me this day of, 19.....	
Notary Public.....	
My Commission Expires:	

STATE OF	}
COUNTY OF	
On this day of, 19....., before me personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged to me that (s)he executed the same.	
Sworn to and subscribed before me this day of, 19.....	
Notary Public.....	
My Commission Expires:	

PARTNERSHIP ACKNOWLEDGEMENTS	
STATE OF	}
COUNTY OF	
On this day of, 19....., before me personally appeared a member of the co-partnership of, personally known to me or proved to me on the basis of satisfactory evidence to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that (s)he executed the same as and for the act and deed of the said co-partnership.	
Sworn to and subscribed before me this day of, 19.....	
Notary Public.....	
My Commission Expires:	

CORPORATE ACKNOWLEDGEMENTS	
STATE OF <u>Virginia</u>	}
COUNTY OF <u>Richmond</u>	
On this <u>23</u> day of <u>May</u> , 19 <u>2000</u> , before me, personally appeared <u>Janet C. Williams</u> , personally known to me, or proved to me on the basis of satisfactory evidence to be the person who is subscribed to in this instrument, who, being duly sworn, did depose and say that (s)he resides in the city of <u>Richmond</u> , and (s)he is the <u>President</u> of <u>Nations Environmental Services</u> , the corporation described in, and which executed, the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order; and the deponent further said that (s)he is acquainted with <u>Janet C. Williams</u> , and knows that (s)he is the <u>Corporate</u> Secretary of said corporation and that (s)he subscribed his/her name to the within instrument by a like order of the said Board of Directors.	
Sworn to and subscribed before me this <u>23</u> day of <u>May</u> , 19 <u>2000</u>	
Notary Public: <u>Barbara L. Hlava</u>	
My Commission Expires: <u>11-30-00</u>	

STATE OF	}
COUNTY OF	
On this day of, 19....., before me, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the person who is subscribed to in this instrument, who, being duly sworn, did depose and say that (s)he resides in the city of, and (s)he is the of the corporation described in, and which executed, the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order; and the deponent further said that (s)he is acquainted with and knows that (s)he is the Secretary of said corporation and that (s)he subscribed his/her name to the within instrument by a like order of the said Board of Directors.	
Sworn to and subscribed before me this day of, 19.....	
Notary Public.....	
My Commission Expires:	

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.)

Plaintiff,)

v.)

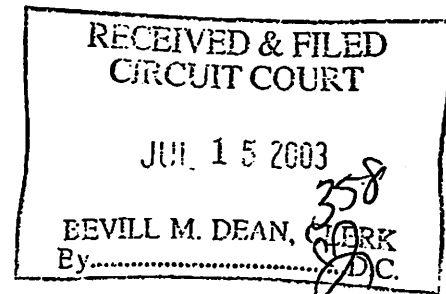
Civil Case No. LP-937-1

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*)

Defendants.)

NOTICE AND MOTIONS

TO: C. G. Mitchell Construction, Inc. and all parties,
c/o counsel of record as listed in the Certificate below.



PLEASE TAKE NOTICE that on Wednesday, July 16, 2003, beginning at 3:15 p.m., or as soon thereafter as counsel can be heard, the defendant American Safety Casualty Insurance Company ("American Safety"), by counsel, shall appear before the Court and move for entry of an order granting a motion to compel against the plaintiff C. G. Mitchell Construction, Inc. ("Mitchell"), and a motion to continue the trial of this case, and in support thereof, states the following.

1. The trial of this case is scheduled for July 21st and 22nd, 2003.
2. On March 7, 2003, American Safety propounded interrogatories and requests for production of documents (the "Written Discovery") to Mitchell. A copy of the written discovery is attached as Exhibit A.
3. On or about March 28, 2003, Mitchell served its responses to the Written Discovery (the "Discovery Responses"). A copy of the Discovery Responses is attached as Exhibit B.

4. By e-mail on April 11, 2003, and in telephone conversations, American Safety requested that more information be provided and/or inquired whether additional project documents exist to identify and locate the persons named in the Discovery Responses. Counsel for Mitchell responded by stating that all documents in the possession of their client had been produced. *See* the e-mail attached as Exhibit C.

5. On or about April 24, 2003, Mitchell served its supplemental responses to the Written Discovery (the "Supplemental Discovery Responses"). A copy of the Supplemental Discovery Responses is attached as Exhibit D.

6. Mitchell has failed to provide information and documents requested in the Written Discovery and, as a result, has impaired American Safety's ability to prepare for trial.

7. In the Written Discovery, American Safety requested Mitchell to identify each and every person known to Mitchell or its counsel to have knowledge of the facts and circumstances of the Agreement, the work performed by Mitchell at the Project, and/or the allegations made by Mitchell in the Motion for Judgment, by providing the identified person's full name, present home address, present business address and their present or last known place of employment or business affiliation. *See* the Written Discovery at interrogatory numbered 2 and "Definitions" for the word "Identify."

8. Also in the Written Discovery, American Safety requested Mitchell to identify each and every person whom Mitchell expected to call as a witness at trial, stating their occupation, the subject matter of their expected testimony, the substance of the facts to which the person was expected to testify, and by providing the identified person's full name, present home address, present business address and for a person, their present or last known place of

employment or business affiliation. *See* the Written Discovery at interrogatory numbered 5 and "Definitions" for the word "Identify."

9. In the Discovery Responses and the Supplemental Discovery Responses, Mitchell simply lists the name, employer or title of each person with knowledge and a brief summary of the person's knowledge, but fails to provide any addresses or telephone numbers so such persons could be subpoenaed. *See* Discovery Responses at response to interrogatories numbered 2, 3 and 5 and Supplemental Discovery Responses at response to interrogatories numbered 2 and 3. Mitchell's answers are non-responsive.

10. In the Written Discovery, American Safety requested Mitchell to describe in detail the knowledge, experience, training or education of each person or entity that Mitchell employed or contracted with on the Project. *See* Written Discovery at interrogatory numbered 10.

11. In the Discovery Responses, as and for its response to interrogatory numbered 10, Mitchell simply refers to its payroll records, which is non-responsive. *See* Discovery Responses at response to interrogatory numbered 10.

12. In the Written Discovery, American Safety requested all documents related to Mitchell's payroll on the Project. *See* Written Discovery at request for production of documents numbered 8.

13. The few documents Mitchell produced in response to request for production of documents numbered 8, are not fully responsive to the request.

14. In the Written Discovery, American Safety requested all documents related to Mitchell's contractors license. *See* Written Discovery at request for production of documents numbered 13.

15. In the Discovery Responses, as and for Mitchell's response to request for production of documents numbered 13, Mitchell objected on the grounds that the request was overly broad, unduly burdensome and oppressive, not reasonably calculated to lead to the discovery of admissible evidence and irrelevant, and produced no documents, however, Mitchell's objections are without merit, the requested documents are highly relevant, and the requested documents should be produced. *See* Discovery Response at response to request for production numbered 13.

16. Counsel for Mitchell issued witness subpoenas for Herman Glover and Kim Smith; however these witnesses were never identified in Mitchell's Discovery Responses. *See* Glover and Smith subpoenas dated July 8, 2003 and July 10, 2003, respectively, attached as Exhibit E.

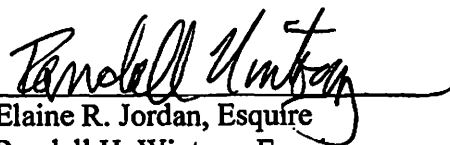
17. On July 15, 2003, Mitchell finally provided some additional information regarding names and addresses of persons with knowledge that was requested in the Written Discovery. However, Mitchell has failed to produce the missing documents previously requested in the Written Discovery. It is imperative that these documents be produced.

18. American Safety will be greatly prejudiced by Mitchell's failure to comply with the discovery process. The information and documents requested are solely within the possession of Mitchell, and American Safety should not be ambushed by late information or denied the right to defend its case by missing information.

19. Mitchell had previously requested, and was granted, one continuance of the trial of this matter, and the same courtesy should be extended to American Safety.

WHEREFORE, American Safety respectfully moves this Court to enter an Order (1) compelling Mitchell to provide complete Discovery responses, and (2) continuing the trial date to avoid prejudice to American Safety; and further, the Court is asked to compel Mitchell to reimburse American Safety for reasonable expenses incurred in obtaining this Order, including attorneys' fees, as well as such other relief as justice may require.

AMERICAN SAFETY CASUALTY INSURANCE
COMPANY
By Counsel


Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands, Anderson, Marks & Miller, P.C.
801 East Main Street
P. O. Box 1998
Richmond, Virginia 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice and Motion were hand-delivered
this 15th day of July, 2003 to:

James C. Skilling, Esquire
Butler Williams Pantele & Skilling, P.C.
1309 E. Cary Street, 2nd Floor
Richmond, Va 23219
Tel. (804) 648-4848
Fax (804) 648-6177
Counsel for C. Ude

William R. Mauck, Jr., Esquire
E. Livingston B. Haskell, Esquire
Williams Mullen
1021 E. Cary St
Two James Center
Richmond, VA 23219
Tel. (804)783-6927
Fax. (804)783-6507
Counsel for C. G. Mitchell Construction

A handwritten signature in cursive script, reading "Randall Hinton", is written over a horizontal line.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

RECEIVED & FILED
CIRCUIT COURT

JUL 15 2003

BEVILL M. DEAN, CLERK
ByD.C.

C.G. MITCHELL CONSTRUCTION, INC.)

Plaintiff,)

v.)

Civil Case No. LP-937-1

NATIONS ENVIRONMENTAL SERVICES, INC., et al.)

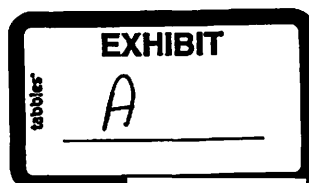
Defendants.)

FIRST INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO C. G.
MITCHELL CONSTRUCTION, INC.

The defendant American Safety Casualty Insurance Company ("ASCIC"), by counsel, pursuant to Rules 4:1, 4:8, and 4:9 of the *Rules of the Supreme Court of Virginia* (the "*Rules of Court*"), requests that the plaintiff C. G. Mitchell Construction, Inc. ("Mitchell"), in accordance with the provisions of the *Rules of Court* and the Definitions and the Instructions, answer the following interrogatories, produce the following documents and/or things and admit the following statements.

A.
DEFINITIONS

1. "Document" means any handwritten, typewritten, printed, recorded, graphic, computerized print-out or other tangible matter from whatever source, however produced, reproduced, or stored in the possession, custody or control of Mitchell (whether or not claimed to be privileged against discovery on any ground), including, but not limited to, an original, a copy (if the original is not available) and all non-identical copies (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings,



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correspondence, letters, faxes, contracts, proposals, agreements, minutes, acknowledgments, notes, memoranda, analyses, reports, projections, schedules, work papers, books, diaries, calendars, computer programs or data, business records, emails, telegrams, photographs, recordings, videos whether digital or analogue, specifications, plans, charts, drawings and/or written statements of witnesses or other persons having knowledge of the pertinent facts.

2. "Identify" or "identification" when used in reference to an individual person or entity means to state their or its full name, present home address, present business address and for a person, their present or last known place of employment or business affiliation.

3. "Identify" or "identification" when used in reference to a document means to state the following as to each document: the date, nature and substance of each document with sufficient particularity to enable it to be described in a request for production of documents and/or subpoena duces tecum, the physical location of each such document and the name of its custodian or custodians, whether the document has been destroyed and, if so, with regard to such destruction, (i) the date thereof; (ii) the reason therefor; and (iii) the identity of the person or persons who destroyed the document.

4. The word "communication" shall mean any exchange of words, ideas, messages or information, whether by speech, e-mail, signal, writing, and includes both telephonic and in-person conversations.

5. To "identify" with respect to a communication means to state:

- a. the name of each person who participated in or was present during such communication;
- b. the nature and substance of such communication;
- c. the date on which, and the place at which, such communication was made;

d. the date, nature and substance of each document, if any, recording, memorializing and/or pertaining to such communication with sufficient particularity to enable it to be described in a request for production of documents and/or subpoena duces tecum, the physical location of each such document and the name of its custodian or custodians.

6. "State in detail" shall mean to identify all facts—including, but not limited to, the dates relevant to each event or occurrence—that relate directly or indirectly to the subject matter of the Interrogatory, all persons involved directly or indirectly in the subject matter of the Interrogatory, all communications that directly or indirectly affected the subject matter of the Interrogatory.

7. The terms "relating to" and "relates to" mean containing, recording, discussing, mentioning, noting, summarizing, referring to, commenting upon, describing, digesting, reporting, listing, analyzing, or studying the subject matter identified in an Interrogatory, Document Request or Request for Admission.

8. The words "C. G. Mitchell Construction" or "Mitchell" "you" or "your" or "its" are defined to include the party to whom this discovery is addressed, and any of its officers, employees, agents, representatives, consultants and attorneys.

9. The word "Nations" refers to the defendant Nations Environmental Services, Inc. and any of its officers, employees, agents, representatives, consultants and attorneys.

10. The word "Ude" refers to defendant Chijioke Ude and any of his agents, representatives, consultants and attorneys.

11. The word "Williams" refers to defendant Janet C. Williams and any of her agents, representatives, consultants and attorneys.

12. The word "Godwin" refers to Steve B. Godwin, the "designated employee" for Mitchell's contractor's license.

13. The word "Project" refers to the demolition of the Richmond Convention Center Exhibition Hall in the City of Richmond, Virginia.

14. The word "Agreement" means the alleged agreement Mitchell entered into with Nations to provide labor, equipment and debris removal services at the Project.

**B.
GENERAL INSTRUCTIONS**

1. Where asked to provide information, documents and/or Mitchell's knowledge, such request includes information, documents and/or knowledge in the possession of its agents, employees, officers, directors, representatives and, unless privileged, attorneys.

2. If Mitchell considers any document called for hereunder to be privileged from production, then it must include in its response a list of the documents withheld from production, identifying each document by date, addressee(s), author, title and subject matter. In addition, Mitchell should identify those persons who have seen the document or who were sent copies. Finally, Mitchell should state the ground(s) upon which each such document is considered privileged.

3. Where the name of a person is requested or where Mitchell asked to name and/or identify a person, indicate the full name, home address and/or business address and telephone numbers (including area codes) of such person.

4. When an Interrogatory does not specifically request a particular fact or facts, but such fact or facts are necessary in order to make the response to the Interrogatory either comprehensible, complete or not misleading, the Interrogatory shall be deemed specifically to request such fact and Mitchell is to include such fact as part of its response.

5. The interrogatories and the requests for production of documents contained herein are continuing so as to require Mitchell to file supplemental answers and/or responses if it obtains further or different information before the trial of this action as required by Rule 4:1(e) of the *Rules of Court*, and this General Instruction is a request for such supplementation.

C.

INTERROGATORIES

1. Identify each and every person who assisted in any way in answering these Interrogatories.

ANSWER:

2. Identify each and every person known to Mitchell or its counsel to have knowledge of the facts and circumstances of the Agreement, the work performed by Mitchell at the Project, and/or the allegations made by Mitchell in the Motion for Judgment.

ANSWER:

3. **INQUIRY:** For each and every person identified in the Interrogatory numbered 2, describe the facts known to or observed by that person.

ANSWER:

4. **INQUIRY:** Identify each and every person whom Mitchell expects to call as an expert witness at the trial, and, as to each such person, state their occupation and/or profession, area of expertise, background and experience in the area in which they are expected to provide expert testimony, the subject matter on which he or she is expected to testify, the

substance of the facts and opinions to which he or she is expected to testify and a summary of the grounds for each such opinion.

ANSWER:

5. **INQUIRY:** Identify each and every person whom Mitchell expects to call as a witness at the trial, and, as to each such person, state their occupation and/or profession, the subject matter on which he or she is expected to testify, and the substance of the facts to which he or she is expected to testify.

ANSWER:

6. **INQUIRY:** Identify each and every communication between Mitchell and Nations relating to the Project.

ANSWER:

7. **INQUIRY:** Describe in detail all work or services Godwin performed on, for or about the Project for Mitchell, including, without limitation, the dates, times and hours Godwin worked for Mitchell, the services performed and the amounts paid to Godwin.

ANSWER:

8. **INQUIRY:** Describe in detail all work or services Godwin has performed for Mitchell at any time since May 1, 2001, including, without limitation, the dates, times and hours Godwin worked for Mitchell, the services performed and the amounts paid to Godwin..

ANSWER:

9. **INQUIRY:** If Mitchell believes that any officer, employee, representative or agent of Nations or ASCIC made an admission or declaration against its interest, describe in detail each and every admission or declaration.

ANSWER:

10. **INQUIRY:** For each person or entity that Mitchell employed or contracted with to work on the Project, describe in detail their knowledge, experience, training and/or education.

ANSWER:

11. **INQUIRY:** List all of Mitchell's memberships in any professional, business or trade organizations, associations, or similar groups.

ANSWER:

12. **INQUIRY:** Identify all construction projects on which Mitchell has performed services since May 1, 2001, including the name of the project, for whom Mitchell performed services, the amount paid and a description of the work performed.

ANSWER:

13. **INQUIRY:** State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 12 of the Motion for Judgment, that Nations has breached the Agreement.

ANSWER:

14. **INQUIRY:** State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 13 of the Motion for Judgment, that as a direct result of Nations' breach of the Agreement, Mitchell has been damaged in the amount of \$312,500.09, plus interest.

ANSWER:

15. **INQUIRY:** State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 15 of the Motion for Judgment, that Mitchell is a proper claimant under the Bond.

ANSWER:

16. **INQUIRY:** State in detail every fact in support of Mitchell's allegation, in paragraph numbered 16 of the Motion for Judgment, that Mitchell is owed the sum of \$312,500.09 as the balance due for labor, equipment and materials that it supplied to Nations on the Project, and American Safety is legally obligated to pay this sum in accordance with the terms of the Bond.

ANSWER:

17. **INQUIRY:** State in detail every fact in support of Mitchell's allegation, in paragraph numbered 17 of the Motion for Judgment, that Nations and American Safety have refused to compensate Mitchell in full for the labor, equipment and materials that Mitchell has supplied to the Project.

ANSWER:

18. **INQUIRY:** State in detail how Mitchell kept track of its employees' time for worked performed or services performed on behalf of Mitchell on the Project.

ANSWER:

19. **INQUIRY:** State in detail how Mitchell kept track of the equipment or other materials salvaged and sold on the Project.

ANSWER:

20. **INQUIRY:** State in detail how Mitchell kept track of the time equipment was operated or used on the Project for which it charged Nations.

ANSWER:

21. **INQUIRY:** Describe the terms and conditions of the Agreement.

- **ANSWER:**

D.

REQUEST FOR PRODUCTION OF DOCUMENTS

In accordance with the provisions of Rule 4:9 of the *Rules of Court*, please produce the following documents at the offices of Sands, Anderson, Marks & Miller, Suite 1800, 801 East Main Street, Richmond, Virginia 23219 within the time prescribed by the above mentioned Rule:

1. any and all documents used or reviewed in answering the foregoing interrogatories;

2. any and all documents identified, referred to, or described in any answer to any of the Interrogatories;

3. any and all documents which relate to Mitchell's work on the Project (or work performed by its employees, subcontractors, associates or consultants), including, but not limited to contracts, agreements, addenda, terms and conditions, plans, specifications, memoranda and other documents that are a part of any contract, or any draft or proposed contract, proposals, invoices, daily tickets, payment applications, reports, notes or correspondence;

4. any and all documents such as ledgers, accounting records, cost reports, balance sheets, or check agreements showing costs of, or the amounts billed by Mitchell to Nations;

5. any and all plans, drawings, sketches, photographs, video recordings or other visual depictions or recordings of the Project or any part thereof;

6. any and all documents that relate to any communication between Mitchell and any other person or entity relating to Mitchell's damages, including but not limited to: reports, inspections, recommendations, correspondence, letters, e-mail, notes of conversations, memoranda, minutes of meetings, telephone logs, diaries, day planners, daily tickets, calendars and other documents evidencing the communication;

7. any and all documents not otherwise requested that pertain or relate to Mitchell's work at the Project;

8. any and all documents that relate to Mitchell's payroll on the Project, including but not limited to time sheets, clock in/out records, or any time keeping records on the Project;

9. any and all documents that relate to Mitchell's payment to Godwin since May 1, 2001, for any services performed by Godwin for Mitchell, including contracts, payroll records and timesheets;

10. any and all documents that relate to the salvage and sale of the equipment or other materials on the Project.

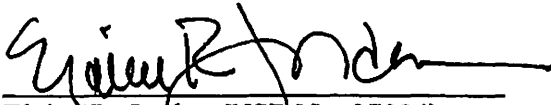
11. Any and all documents that identify the projects (other than the Project) on which Mitchell performed work since May 1, 2001;

12. all corporate records of Mitchell, including organizational documents;

13. all documents relating to Mitchell's contractor's license in Virginia (license #2705062837).

AMERICAN SAFETY CASUALTY INSURANCE COMPANY

By Counsel



Elaine R. Jordan (VSB No. 27284)
Randall H. Wintory (VSB No. 43312)
SANDS, ANDERSON, MARKS & MILLER
801 East Main Street, Suite 1800 (23219)
P. O. Box 1998
Richmond, VA 23218-1998
(804) 783-7255
Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered, by hand (as noted) and/or mailed, postage prepaid, this 7th day of March, 2003, to:

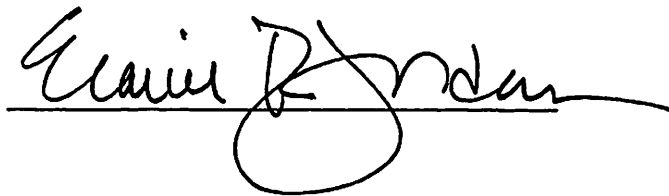
E. Livingston B. Haskell, Esquire
Williams and Mullen
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, Virginia 23218
Counsel for C. G. Mitchell Construction, Inc. **(BY HAND)**

James C. Skilling, Esquire
Butler, Williams, Pantele & Skilling, P.C.

1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

Janet C. Williams
2100 College Park Avenue
Ettrick, VA 23803

Nations Environmental Services, Inc.
217 Maury Street
Richmond, VA 23224

A handwritten signature in black ink, reading "Gavin R. Jordan", is written over a horizontal line. The signature is fluid and cursive, with a large loop under the "J".

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

Case No. CL02P-937

NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

Defendants.)

**PLAINTIFF'S OBJECTIONS AND RESPONSES TO FIRST
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), for its objections and responses to defendant American Safety Casualty Insurance Company's First Interrogatories and Request for Production of Documents ("Defendant's First Discovery Requests"), states as follows:

GENERAL OBJECTIONS

1. Mitchell objects to the instructions and definitions which precede Defendant's First Discovery Requests to the extent that they seek to impose obligations which differ from or exceed the obligations imposed by the Rules of Supreme Court of Virginia and the Local Rules of this Court.

2. Mitchell objects to Defendant's First Discovery Requests to the extent that they seek information which is irrelevant, immaterial, outside the scope of permissible discovery, and not reasonably calculated to lead to the discovery of admissible evidence.



3. Mitchell objects to Defendant's First Discovery Requests to the extent that they are overly broad and unduly burdensome.

4. Mitchell objects to Defendant's First Discovery Requests to the extent that they seek information which is not within the custody, control or possession of Mitchell.

5. Mitchell objects to Defendant's First Discovery Requests to the extent that they seek information which is protected from discovery under the attorney-client privilege, work product doctrine, or any other applicable privilege.

Without waiving the foregoing general objections, Mitchell submits the following specific objections, answers and responses to Defendant's First Discovery Requests.

ANSWERS TO INTERROGATORIES

1. Identify each and every person who assisted in any way in answering these Interrogatories.

ANSWER: Charles Mitchell and Jim Anderson of C.G. Mitchell Construction, Inc.

2. Identify each and every person known to Mitchell or its counsel to have knowledge of the facts and circumstances of the Agreement, the work performed by Mitchell at the Project, and/or the allegations made by Mitchell in the Motion for Judgment.

ANSWER:

**Charles Mitchell – Owner, C. G. Mitchell Construction, Inc.
Jim Anderson – former Employee/Consultant, C.G. Mitchell Construction, Inc.
Steve Godwin – former Employee, C.G. Mitchell Construction, Inc.
Ray Dudley – Owner, Dudley Hauling
Clyde Wilson – Driver for Dudley Hauling
Sarah Burch – former Office Manager, C.G. Mitchell Construction, Inc.
Kim Ripley – former Office Assistant, C.G. Mitchell Construction, Inc.
Welford Jackson, Jr. – former Employee/Operator, C.G. Mitchell Construction, Inc.
Robert Miles – former Employee/Operator, C.G. Mitchell Construction, Inc.
Henry Jones – Supervisor MFI**

Steve Hesser – Estimator/J.R. Anderson Construction
Mark Hansell – Turner Construction
--Dan Braud – Turner Construction
Larry Kersey – Nations Environmental
Janet Williams – Nations Environmental

3. For each and every person identified in the Interrogatory numbered 2, describe the facts known to or observed by that person.

OBJECTION: Mitchell cannot reasonably describe every fact known to or observed by the persons previously identified and objects to this interrogatory to the extent it is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant.

ANSWER: Subject to these objections and without waiving them, Charles Mitchell has knowledge of the contract with Nations, overall operations of Mitchell on the project, billings to Nations, payments received from Nations, amounts due from Nations, subcontractors of Mitchell, conversations with Janet Williams.

Jim Anderson has knowledge of project operations performed by J.R. Anderson Construction for Nations, project operations performed by Mitchell, conversations and business dealings with Nations and Janet Williams.

Ray Dudley is knowledgeable of hauling operations performed by his company under contract with Mitchell, truck tickets, dumping operations, knowledge of Mitchell's performance during the project, and character of Charles Mitchell.

Clyde Wilson is knowledgeable of hauling/dumping operations of Dudley Hauling and Mitchell's performance during the project.

Sarah Burch and Kim Ripley are knowledgeable of Mitchell's business records, employee files, accounts payable/receivable, labor records, numerous conversations with Janet Williams, and character of Charles Mitchell.

Wellford Jackson and Robert Miles are knowledgeable of Mitchell's work on the project and character of Charles Mitchell.

Steve Godwin is knowledgeable of overall project operations of Mitchell, conversations and business dealings between Mitchell, Nations and Janet Williams.

Larry Kersey is knowledgeable of daily work tickets of Mitchell and work represented by the tickets, equipment used by Mitchell, financial problems with Nations, and has knowledge of Janet Williams.

Janet Williams is knowledgeable of Nations' work on the project, payments made to Mitchell, invoicing from Mitchell and her repeated promises to pay Mitchell and her repeated promises to pay Mitchell if it would continue working on the Project.

Mark Hansell and Dan Braud are knowledgeable of the operations of Turner and Nations.

4. Identify each and every person whom Mitchell expects to call as an expert witness at the trial, and, as to each such person, state their occupation and/or profession, area of expertise, background and experience in the area in which they are expected to provide expert testimony, the subject matter on which he or she is expected to testify, the substance of the facts and opinions to which he or she is expected to testify and a summary of the grounds for each such opinion.

ANSWER: Mitchell has not made any determination regarding testifying expert witnesses at this time.

5. Identify each and every person whom Mitchell expects to call as a witness at the trial, and, as to each such person, state their occupation and/or profession, the subject matter of which he or she is expected to testify, and the substance of the facts to which he or she is expected to testify.

OBJECTION: Mitchell objects to this interrogatory to the extent it seeks attorney work product. Mitchell will identify its trial witnesses in advance of trial if required by pretrial order or if otherwise agreed between the parties.

6. Identify each and every communication between Mitchell and Nations relating to the Project.

OBJECTION: This interrogatory is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant to any material issue.

7. Describe in detail all work or services Godwin performed on, for or about the Project for Mitchell, including, without limitation, the dates, times and hours Godwin worked for Mitchell, the services performed and the amounts paid to Godwin.

ANSWER: None.

8. Describe in detail all work or services Godwin has performed for Mitchell at any time since May 1, 2001, including, without limitation, the dates, times and hours Godwin worked for Mitchell, the services performed and the amounts paid to Godwin.

OBJECTION: This interrogatory is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant to any material issue.

ANSWER: Subject to these objections and without waiving them, Mitchell states that when Steve Godwin started with Mitchell, his efforts were focused on developing new work for Mitchell. He followed several leads on site work construction in the Varina area. Over the next several months he followed other leads and made calls in an effort to find other work for Mitchell.

In October 2001 he supervised a concrete project for Mitchell in Ashland for about a month. Since that time he worked as a consultant for Mitchell until the end of 2002.

9. If Mitchell believes that any officer, employee, representative or agent of Nations or ASCIC made an admission or declaration against its interest, describe in detail each and every admission or declaration.

ANSWER: On several occasions, Janet Williams, in the presence of Charles Mitchell, Sarah Burch and perhaps others, acknowledged that Nations was falling behind in payments to Mitchell, had not paid for work that had been billed, yet requested that Mitchell continue working, promising that Mitchell would be paid in full. On one or more of these occasions, Ms. Williams threatened to terminate Mitchell's contract if Mitchell did not continue performing.

10. For each person or entity that Mitchell employed or contracted with to work on the Project, describe in detail their knowledge, experience, training and/or education.

OBJECTION: This interrogatory is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant to any material issue.

ANSWER: Subject to and without waiving these objections, see payroll records previously produced.

11. List all of Mitchell's memberships in any professional, business or trade organizations, associations, or similar groups.

OBJECTION: This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant to any material issue.

12. Identify all construction projects on which Mitchell has performed services since May 1, 2001, including the name of the project, for whom Mitchell performed services, the amount paid and a description of the work performed.

ANSWER:

Virginia Luck Job – Approx. \$7,000 – 6/22/01
— Driveway clearing and site work.

Betty Thompson Job – Approx. \$3,000 – 6/20/01
— Clearing

Susan King Job – approx. \$4,500 – 6/26/01
— Clearing

North Star Excavating – approx. \$45,000 – 7/10/01 through 9/17/01

— Pipe work installation

John Crockett Assoc. – approx. \$900 – 7/30/01

— Grading

EMJ Corp. – approx. \$83,391 – 8/14/01 through 11/27/01

— Site work

Wilson Job – approx. \$75,900 – 10/15/01 through 12/14/01

— Grading and concrete paving

Venture Construction – approx. \$4,314 – 11/20/01

— Demolition of parking lot

T.L. Long Excavating – approx. \$8,041 – 11/28/01

— Trucking

M.L. Leanord Construction – approx. \$3,040 – 12/07/01

— Paving and patching asphalt

Mike Carter Construction – approx. \$7,500 – 2/20/02

— Re-grading pond for silt

S.L. Nusbaum Realty – approx. \$2,900 – 2/21/02

— Asphalt patching

Jennifer Holloway Job – approx. \$18,100 – 4/02/02

— Grading pond and clearing

CBC – approx. \$96,000 – 6/28/02

— Site work and utilities

Atlantic States – approx. \$12,000 – 8/1/02

— Site work and utilities

Viking Enterprises – approx. \$13,000 – 9/5/02

— Site utilities

T&L Holdings – approx. \$16,962.25 – 10/24/02

— Site work and utilities

Sloan Construction – approx. \$11,000 – 8/22/02

— Site utilities

WAMCO Construction – approx. \$2,317.00 – 9/24/01

— Trucking demolition

Nation Environmental – approx. \$470,000 – 5/01/01 through 12/19/01

— Trucking demolition

Old Dominion Demolition – approx. \$13,000 – 11/30/02

— Site grading

These jobs are to the best of my knowledge.

13. State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 12 of the Motion for Judgment, that Nations has breached the Agreement.

ANSWER: Mitchell had a contract with Nations to perform demolition and disposal services on a time and material basis. Nations authorized and requested Mitchell to perform these services and Mitchell performed them. Invoices submitted by the 25th of each month were to be paid at the end of the following month within five days of Nations receiving payment. Shortly after Mitchell began work on the Project, Nations fell behind in making full payment on the invoices submitted by Mitchell. Nations requested Mitchell to continue working and repeatedly promised Mitchell that full payment would be made. The unpaid balance due Mitchell is \$312,500.09, plus interest. Mitchell was a subcontractor of Nations and therefore a claimant under the Bond as provided by the express wording of the Bond which speaks for itself. Both Nations and American Safety have refused to make payment despite repeated demands.

14. State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 13 of the Motion for Judgment, that as a direct of Nations'

breach of the Agreement, Mitchell has been damaged in the amount of \$312,500.09, plus interest.

ANSWER: See answer to Interrogatory No. 13.

15. State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 15 of the Motion for Judgment, that Mitchell is a proper claimant under the Bond.

ANSWER: See answer to Interrogatory No. 13.

16. State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 16 of the Motion for Judgment, that Mitchell is owed the sum of \$312,500.09 as the balance due for labor, equipment and materials that it supplied to Nations on the Project, and American Safety is legally obligated to pay this sum in accordance with the terms of the Bond.

ANSWER: See answer to Interrogatory No. 13. See, also, accounting records, work tickets, etc. provided to American Safety at its request.

17. State in detail every fact and/or application of law to fact in support of Mitchell's allegation, in paragraph numbered 17 of the Motion for Judgment, that Nations and American Safety have refused to compensate Mitchell in full for the labor, equipment and materials that Mitchell has supplied to the Project.

ANSWER: See answer to Interrogatory No. 13.

18. State in detail how Mitchell kept track of its employees' time for work performed or services performed on behalf of Mitchell on the Project.

ANSWER: Weekly time sheets. In addition, Charles Mitchell came by the project almost daily and checked to make sure each person was accounted for.

19. State in detail how Mitchell kept track of the equipment or other materials salvaged and sold on the Project.

ANSWER: Mitchell does not understand this interrogatory and cannot answer it as written.

20. State in detail how Mitchell kept track of the time equipment was operated or used on the Project for which it charged Nations.

ANSWER: See signed daily tickets previously produced to Nations/American Safety.

– 21. Describe the terms and conditions of the Agreement.

ANSWER: Mitchell had an oral agreement with Nations to perform work on the Project on a time and material basis. The rates were set forth in letter agreements previously produced as M0411-M0413 and daily tickets for the project previously produced as M0001-M0391. Nations paid Mitchell a total of \$160,760.38 based on agreed equipment and labor rates.

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

1. any and all documents used or reviewed in answering the foregoing interrogatories.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

2. any and all documents identified, referred to, or described in any answer to any of the Interrogatories.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

3. any and all documents which relate to Mitchell's work on the Project (or work performed by its employees, subcontractors, associates or consultants), including, but not limited to contracts, agreements, addenda, terms and conditions, plans, specifications, memoranda and other documents that are a part of any contract, or any draft or proposed contract, proposals, invoices, daily tickets, payment applications, reports, notes or correspondence.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

4. any and all documents such as ledgers, accounting records, cost reports, balance sheets, or check agreements showing costs of, or the amounts billed by Mitchell to Nations.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

5. any and all plans, drawings, sketches, photographs, video recordings or other visual depictions or recordings of the Project or any part thereof.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

6. any and all documents that relate to any communication between Mitchell and any other person or entity relating to Mitchell's damages, including but not limited to: reports, inspections, recommendations, correspondence, letters, e-mail, notes of conversations, memoranda, minutes of meetings, telephone logs, diaries, day planners, daily tickets, calendars and other documents evidencing the communication.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

7. any and all documents not otherwise requested that pertain or relate to Mitchell's work at the Project.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

8. any and all documents that relate to Mitchell's payroll on the Project, including but not limited to time sheets, clock in/out records, or any time keeping records on the Project.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

9. any and all documents that relate to Mitchell's payment to Godwin since May 1, 2001, for any services performed by Godwin for Mitchell, including contracts, payroll records and timesheets.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

10. any and all documents that relate to the salvage and sale of the equipment or other materials on the Project.

RESPONSE: None.

11. any and all documents that identify the projects (other than the Project) on which Mitchell performed work since May 1, 2001.

RESPONSE: Objection. Request is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant to any material issue.

12. all corporate records of Mitchell, including organizational documents.

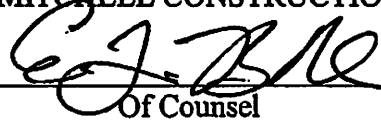
RESPONSE: Objection. Request is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant to any material issue.

13. all documents relating to Mitchell's contractor's license in Virginia (license #2705062837).

RESPONSE: Objection. Request is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant to any material issue.

C.G. MITCHELL CONSTRUCTION, INC.

By


Of Counsel

William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 2003, a copy of the foregoing was forwarded by first class, postage prepaid mail, to:

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

William R. Baldwin, Esq.
CHERRY, SEYMOUR & HUNDLEY, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet C. Williams



VERIFICATION


I, Charles Mitchell, swear that the foregoing Answers to First Interrogatories and Responses to Request for Production of Documents are true to the best of my current information, knowledge and belief.

C.G. MITCHELL CONSTRUCTION, INC.

By: 
Charles Mitchell, President

COMMONWEALTH OF VIRGINIA,
CITY OF RICHMOND, to-wit:

The foregoing Answers to First Interrogatories and Responses to Request for Production of Documents were subscribed and sworn before me by Charles Mitchell as President of C.G. Mitchell Construction, Inc., on this 9th day of April, 2003.


Notary Public

My commission expires: 9-30-06

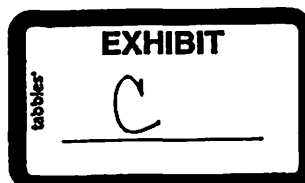
From: lhaskell@williamsmullen.com
Sent: Tuesday, April 15, 2003 4:55 PM
To: ejordan@sandsanderson.com
Cc: nheuser@sandsanderson.com; rwintory@sandsanderson.com;
bmauck@williamsmullen.com
Subject: RE: CGMitchell/Nations Environmental

Elaine,

I believe that Billy attempted to contact you last week with regard to this matter, as well as others. I have met with Mr. Mitchell and he informed me that all responsive documents in the company's possession have been produced. As for the weekly time sheets, the company's office manager would take the information from the sheets each week and input it into the company's computer system. Mr. Mitchell has been unable to locate the time sheets and believes that they may have been discarded by a subsequent office manager during a consolidation of the company's files. Copies of printouts from the company's computer system showing the amounts paid to the individual employees have been produced.

Livingston

> -----Original Message-----
> From: Jordan, Elaine R. [SMTP:ejordan@sandsanderson.com]
> Sent: Friday, April 11, 2003 6:31 PM
> To: 'lhaskell@williamsmullen.com'
> Cc: Heuser, Nancy G.; Wintory, Randall H.
> Subject: CGMitchell/Nations Environmental
>
> Livingston:
> Thank you for the additional documents. As we discussed, there
> appears to be other documents that have not been produced but have been
> requested. For example, in the discovery responses, it is mentioned that
> weekly time sheets were submitted by employees and formed the basis for
> payroll. Where are those time sheets? Please consult with your client
> and
> determine if there are any other project records that exist. I feel
> confident that you are providing me everything that your client has
> delivered to you, but it is your obligation to determine if everything has
> been obtained from your client.
> I will be out of the office next week, but trust that I will have
> the additional documents upon my return. If you have any questions, you
> may
> contact Randy Wintory of our office. Thanks for your cooperation.
>
>
> Elaine R. Jordan
> Sands Anderson Marks & Miller, P.C.
> EJordan@SandsAnderson.com
> Direct Dial: (804) 783-7245
> Facsimile: (804) 783-7291
> http://www.SandsAnderson.com



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

v.)

Case No. CL02P-937

NATIONS ENVIRONMENTAL)
SERVICES, INC., et al.)

Defendants.)

**PLAINTIFF'S SUPPLEMENTAL RESPONSES
TO FIRST INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

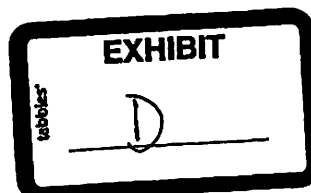
Plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), for its supplemental responses to defendant American Safety Casualty Insurance Company's First Interrogatories and Request for Production of Documents ("Defendant's First Discovery Requests"), states as follows:

OBJECTIONS

1. Mitchell submits the following supplemental responses to Defendant's First Discovery Requests subject to the General Objections set forth in Plaintiff's Objections and Responses to First Interrogatories and Request for Production of Documents previously submitted herein.

ANSWERS TO INTERROGATORIES

2. Identify each and every person known to Mitchell or its counsel to have knowledge of the facts and circumstances of the Agreement, the work performed by Mitchell at the Project, and/or the allegations made by Mitchell in the Motion for Judgment.



ANSWER:

**Roscoe Butts – former employee of C.G. Mitchell Construction, Inc.
Albert Richardson – former employee of C.G. Mitchell Construction, Inc.
Charles Turner – former employee of C.G. Mitchell Construction, Inc.
Ricardo Gonzales – former employee of C.G. Mitchell Construction, Inc.
Timothy Ragland – former employee of C.G. Mitchell Construction, Inc.
Phillip Crowder – former employee of C.G. Mitchell Construction, Inc.
Joseph Henderson – former employee of C.G. Mitchell Construction, Inc.
James Shifflett – former employee of C.G. Mitchell Construction, Inc.
Edward Perry – former employee of C.G. Mitchell Construction, Inc.
William Bishop – former employee of C.G. Mitchell Construction, Inc.
Andrew Bernstein – former employee of C.G. Mitchell Construction, Inc.**

3. For each and every person identified in the Interrogatory numbered 2, describe the facts known to or observed by that person.

OBJECTION: Mitchell cannot reasonably describe every fact known to or observed by the persons previously identified and objects to this interrogatory to the extent it is overly broad, unduly burdensome and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant.

ANSWER: Subject to these objections and without waiving them, Roscoe Butts, Albert Richardson, Charles Turner, Ricardo Gonzales, Timothy Ragland, Phillip Crowder, Joseph Henderson, James Shifflett, Edward Perry, William Bishop, and Andrew Bernstein are former employees of Mitchell who performed work on the Project as equipment operators, laborers and/or drivers.

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

3. any and all documents which relate to Mitchell's work on the Project (or work performed by its employees, subcontractors, associates or consultants), including, but not limited to contracts, agreements, addenda, terms and conditions, plans, specifications, memoranda and other documents that are a part of any contract, or any draft or proposed contract, proposals, invoices, daily tickets, payment applications, reports, notes or correspondence.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

4. any and all documents such as ledgers, accounting records, cost reports, balance sheets, or check agreements showing costs of, or the amounts billed by Mitchell to Nations.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

6. any and all documents that relate to any communication between Mitchell and any other person or entity relating to Mitchell's damages, including but not limited to: reports, inspections, recommendations, correspondence, letters, e-mail, notes of conversations, memoranda, minutes of meetings, telephone logs, diaries, day planners, daily tickets, calendars and other documents evidencing the communication.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

7. any and all documents not otherwise requested that pertain or relate to Mitchell's work at the Project.

RESPONSE: Responsive documents in the possession, custody or control of Mitchell have previously been and/or are currently being made available for inspection and copying.

C.G. MITCHELL CONSTRUCTION, INC.

By 
Of Counsel

William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
Counsel for C.G. Mitchell Construction, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April 2003, a copy of the foregoing was served on the following in the manner indicated:

BY HAND

Elaine R. Jordan, Esq.
Joshua N. Lief, Esq.
SANDS ANDERSON MARKS & MILLER, P.C.
801 East Main Street
Post Office Box 1998
Richmond, Virginia 23218-1998
Counsel for American Safety Casualty Insurance Company

BY U.S. MAIL

Nations Environmental Services, Inc.
217 Maury Street
Richmond, Virginia 23219

BY U.S. MAIL

James C. Skilling, Esq.
BUTLER, WILLIAMS & SKILLING, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Counsel for Chijioke Ude

BY U.S. MAIL

William R. Baldwin, Esq.
CHERRY, SEYMOUR & HUNDLEY, P.C.
707 East Main Street, Suite 475
Richmond, Virginia 23219
Counsel for Janet C. Williams



SUBPOENA FOR WITNESS (CIVIL) --
ATTORNEY ISSUED VA. CODE §§ 8.01-407, 16.1-265;
Commonwealth of Virginia Supreme Court Rules 1:4, 4:5

Case No.: CL 02P-937

July 21, 2003 at 10:00 a.m.
RETURN DATE AND TIME

Richmond Circuit Court, Civil Division, John Marshall Courts Building

400 N. 9th Street, Richmond, VA 23219
ADDRESS OF COURT

C.G. MITCHELL CONSTRUCTION, INC. v. NATIONS ENVIRONMENTAL SERVICES,
INC., et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

Herman Glover III
NAME

4400 Sharonridge Drive
STREET ADDRESS

Richmond
CITY

VA
STATE

23236-1058
ZIP

TO the person summoned: You are commanded to appear in the Court at:


400 N. 9th St., John Marshall Courts Building, 3rd Floor
ADDRESS (DEPOSITION IN USE IN CIRCUIT COURT ONLY)

on July 21, 2003 at 10:00 a.m. to testify in the above-named case.

This subpoena is issued by the attorney for and on behalf of the defendant,

C. G. Mitchell Construction, Inc.
PARTY NAME

E. Livingston B. Haskell
NAME OF ATTORNEY
Williams Mullen, A Professional Corporation
OFFICE ADDRESS
Two James Center, 1021 E. Cary Street, Suite 1700
OFFICE ADDRESS
Richmond, VA 23219
OFFICE ADDRESS
July 8, 2003
DATE ISSUED

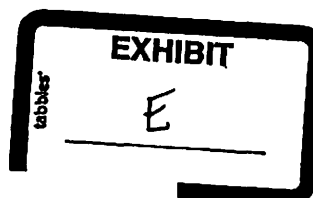
42844
VIRGINIA STATE BAR NUMBER
(804) 783-6937
TELEPHONE NUMBER OF ATTORNEY
(804) 783-6507
FACSIMILE NUMBER OF ATTORNEY

SIGNATURE OF ATTORNEY

Notice to Recipient: See next page for further information.

RETURN OF SERVICE (see next page of this form)

944113.07

FORM DC-497 7/00



338

SUBPOENA FOR WITNESS (CIVIL) –
ATTORNEY ISSUED VA. CODE §§ 8.01-407, 16.1-265;
Commonwealth of Virginia Supreme Court Rules 1:4, 4:5

Case No.: CL 02P-937

July 21, 2003 at 10:00 a.m.
RETURN DATE AND TIME

Richmond Circuit Court, Civil Division, John Marshall Courts Building

400 N. 9th Street, Richmond, VA 23219
ADDRESS OF COURT

C.G. MITCHELL CONSTRUCTION, INC. v. NATIONS ENVIRONMENTAL SERVICES, INC.
et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

Kim Smith
NAME

16400 Beaverdam Road
STREET ADDRESS

Montpelier
CITY

VA
STATE

23192
ZIP

TO the person summoned: You are commanded to appear in the Court at:

400 N. 9th St., John Marshall Courts Building, 3rd Floor
ADDRESS (DEPOSITION IN USE IN CIRCUIT COURT ONLY)

on July 21, 2003 at 10:00 a.m. to testify in the above-named case.

This subpoena is issued by the attorney for and on behalf of the defendant,

C. G. Mitchell Construction, Inc.
PARTY NAME

E. Livingston B. Haskell
NAME OF ATTORNEY
Williams Mullen, A Professional Corporation
OFFICE ADDRESS
Two James Center, 1021 E. Cary Street, Suite 1700
OFFICE ADDRESS
Richmond, VA 23219
OFFICE ADDRESS
July 10, 2003
DATE ISSUED

42844
VIRGINIA STATE BAR NUMBER
(804) 783-6937
TELEPHONE NUMBER OF ATTORNEY
(804) 783-6507
FACSIMILE NUMBER OF ATTORNEY


SIGNATURE OF ATTORNEY

Notice to Recipient: See next page for further information.

RETURN OF SERVICE (see next page of this form)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. LP-937-1
)	
NATIONS ENVIRONMENTAL SERVICES, INC., <i>et al.</i>)	
)	
Defendants.)	
)	
-----)	
)	
AMERICAN SAFETY CASUALTY INSURANCE CO.,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
CHIJOKE UDE,)	
)	
Third-Party Defendant.)	

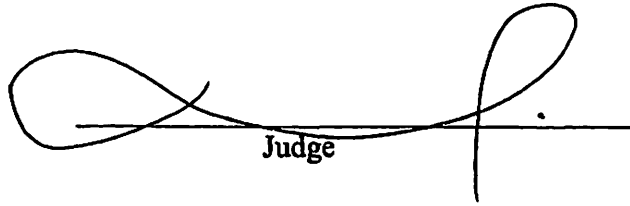
ORDER TO WITHDRAW AS COUNSEL

THIS DAY CAME Butler Williams & Skilling, P.C., counsel for third-party defendant Chijioke Ude, and moves the Court for leave to withdraw as counsel pursuant to the Virginia Rules of Professional Conduct 1.16. It appearing that such motion should be granted it is hereby

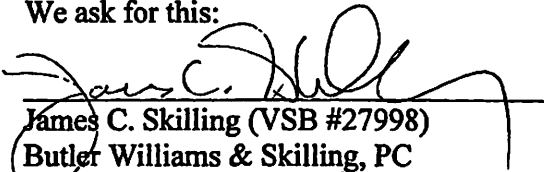
ORDERED that Butler Williams & Skilling, P.C. is hereby granted leave to withdraw as counsel for third-party defendant, Chijoke Ude.

The Clerk is directed to send certified copies of this Order to all counsel of record.

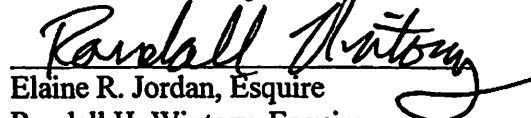
ENTER: 7,14, 03


Judge

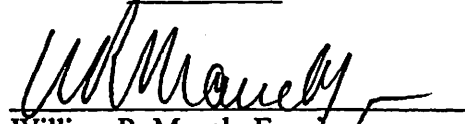
We ask for this:


James C. Skilling (VSB #27998)
Butler Williams & Skilling, PC
1309 East Cary Street, 2nd Floor
Richmond, VA 23219
Telephone: (804) 648-4848
Facsimile: (804) 648-6814
Counsel for Chijoke Ude

Seen and objected to for the reasons stated at
the hearing


Elaine R. Jordan, Esquire
Randall H. Wintory, Esquire
Sands, Anderson, Marks & Miller, P.C.
801 East Main Street
Richmond, Virginia 23219
Telephone: (804) 648-1636
Facsimile: (804) 783-7291
Counsel for American Safety Casualty Insurance Company

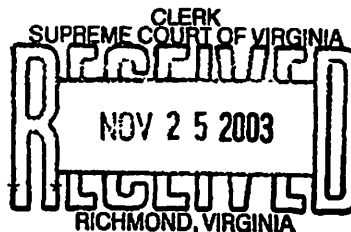
Seen and _____:


William R. Mauck, Esquire
E. Livingston B. Haskell, Esquire
Williams Mullen
Two James Center, 11th Floor
Richmond, Virginia 23219
Telephone: (804) 643-1991
Facsimile: (804) 783-6507
Counsel for C.G. Mitchell Construction, Inc.

032709

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND



* * * * *

C. G. MITCHELL CONSTRUCTION, INC. *

-vs- *

NATIONS ENVIRONMENTAL *

* * * * *

* * * * *

MOTION FOR SUMMARY JUDGMENT
 MOTION IN LIMINE
 MOTION FOR FILING DISCOVERY

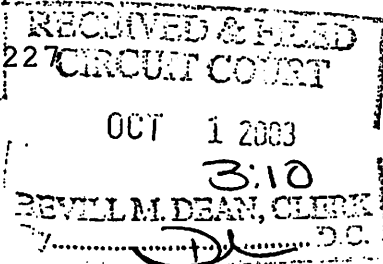
* * * * *

Richmond, Virginia

July 28, 2003

CHANDLER and HALASZ, INC.
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1 Reported by: Theresa S. Griffith

2 Motion for Summary Judgment, Motion in
3 Limine, and Motion for Filing Discovery, when heard
4 on July 28, 2003, before the Hon. Melvin R. Hughes,
5 Jr., in the Circuit Court of the City of Richmond.

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13 APPEARANCES:

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25

1 THE COURT: Good morning.

2 MR. MAUCK: Good morning, Judge. There are
3 several things on today's calendar. It looks like
4 there is no one else on the docket but us today.

5 THE COURT: Well, no. I have some other
6 matters not on the docket.

7 MR. MAUCK: We don't intend to take up all
8 your morning.

9 THE COURT: I hope so.

10 MR. MAUCK: For the record, Your Honor,
11 William Mauck, counsel for the plaintiff, C. G.
12 Mitchell Construction, Inc. Some time ago we filed a
13 motion for summary judgment that we're here about
14 today, Your Honor, to seek summary judgment against
15 the defendant bonding company, the Court having
16 entered default judgment against the bonding
17 company's principal, Nations Environmental, the
18 co-defendant. That default judgment was entered
19 against the principal probably -- actually, it was
20 back in May -- as a result of Nations Environmental's
21 failure, despite a Court order, to appear for a
22 corporate deposition. When that occurred we then had
23 the default judgment against Nations where we then
24 moved for summary judgment against the principal.
25 And, I have filed with the Court a memorandum in

1 support of our motion which sets out what we believe
2 to be the pertinent authorities.

3 Your Honor, it seems to be the trend among
4 courts today that a default judgment is conclusive
5 upon a surety when the surety, one -- that is, a
6 default judgment against the principal is conclusive
7 upon the surety when the surety, one, has notice of
8 the action against the principal, and, two, the
9 opportunity to defend. And, I have cited in our
10 brief and what I'm going to discuss in a minute is
11 the case of Drill South v. International Fidelity,
12 which seems to be, as far as I can tell, the best,
13 the most modern compendium of cases that have
14 addressed this issue. But, in my brief I cited cases
15 which stand for this proposition from the Fifth
16 Circuit as far back as 1935, from Kentucky, from
17 Mississippi, from Colorado, and a number of other
18 states. So, it is our position, Your Honor, that,
19 (a), that proposition ought to apply in Virginia.
20 And, there is no statement from our Supreme Court on
21 this particular issue dealing with a situation where
22 a principal and a surety are sued together in the
23 same case and a default judgment is entered against
24 the principal in the same case.

25 The case of Drill South, Your Honor, I

1 guess I should say it's a case of first impression.
2 Judge Alper out of Fairfax believed it was a case of
3 first impression in Virginia when she considered the
4 motion in the Airlines case, which I attached to my
5 brief and I may discuss briefly, Your Honor, in a
6 minute. But, I want to focus, Your Honor, on Drill
7 South. May I approach the Court?

8 THE COURT: Yes. You say that's predicated
9 on the notice to the surety bonding company for the
10 opportunity to defend. Was there an opportunity to
11 defend here?

12 MR. MAUCK: I think there was, Your Honor.
13 And, I think -- and the Drill South case is really
14 pertinent. Clearly, there's notice. I mean, they're
15 both co-defendants. And, in fact, when we filed this
16 case in federal court it was the bonding company who
17 demanded that we join, that we file suit against
18 their principal, which is why we ended up being in
19 the Circuit Court of Richmond. So, the bonding
20 company has wanted the involvement of their principal
21 all along in the case. And, I attached that notice
22 to the brief.

23 In Drill South the case out of the 11th
24 Circuit that I handed up to Your Honor, is a 2000
25 case. And, it says, it notes I think correctly that

1 substantial dispute exist in the law as to whether
2 default judgment rendered against a principal is
3 binding upon the principal surety. I'm reading over
4 on page four. Nevertheless, the general rule that
5 has emerged is that a surety is bound by any judgment
6 against its' principal, default or otherwise, when
7 the surety had full knowledge of the action against
8 the principal and an opportunity to defend. And,
9 your question, Your Honor, in a sense we all agree
10 there is certain notice. If your question to me is
11 whether or not the surety had the duty to defend or
12 an opportunity to defend, not a duty, an opportunity.

13 THE COURT: Uh-huh.

14 MR. MAUCK: And, in Drill South --

15 THE COURT: Well, did you seek -- when you
16 sought the default judgment and you got it, that
17 motion was only directed to the principal; was it
18 not?

19 MR. MAUCK: That's correct.

20 THE COURT: All right.

21 MR. MAUCK: I mean, at that time we had a
22 dispute obviously between the plaintiff and the
23 bonding company and the principal. And, I had
24 attempted to take the discovery repeatedly of the
25 principal. And, all of my discovery directed to the

1 bonding company was the principal is the entity that
2 knows the information, we're relying on our
3 principal. That's the position that the surety has
4 taken throughout this case. Our evidence is going to
5 be the evidence of our principal.

6 THE COURT: Of course, the default judgment
7 in that case was entered as a sanction.

8 MR. MAUCK: That's correct. This is not a
9 situation, although the Drill South case may say
10 otherwise, this is not a situation where the
11 principal never showed. In this case the principal
12 showed up, answered discovery, denied or made certain
13 allegations in interrogatories, and then their
14 counsel withdrew. And, it was at that point probably
15 about the same time that counsel was withdrawing, I'm
16 not really clear, that we began to try to take the
17 deposition pursuant to Rule 4:5(b)(6), to depose this
18 principal to ask him the basis of their defenses and
19 why they don't think they owe us the money that we
20 claim due. And, of course, they don't show. We've
21 had all these arguments with you before, Your Honor,
22 and on the last one you entered default judgment.

23 Now --

24 THE COURT: That default judgment was based
25 on a motion, I hope, an order to compel?

1 MR. MAUCK: That's under Rule 4:12, which
2 is the sanction that was within the Court's
3 discretion.

4 THE COURT: That was after an order to
5 compel was entered.

6 MR. MAUCK: That's correct. That's
7 correct. And, that's after notice.

8 THE COURT: Because our Court has spoken
9 fairly recently and we departed from what was, I
10 understood, the prior law consistent with federal
11 law, that you cannot move immediately to sanctions
12 until you have first in place an order compelling
13 discovery.

14 MR. MAUCK: You're exactly right, Your
15 Honor. And, what we did was we filed a notice of
16 deposition. We sent the notice to the bonding
17 company. We personally served that notice on all of
18 the directors, former directors of Nations, as well
19 as the entity Nations. Nobody showed. We came up to
20 see you. You entered an order that said take the
21 deposition in 14 days. That notice -- we then worked
22 with counsel. We got new dates and no one showed.
23 And, all the time the surety was involved in this
24 case. They knew the whereabouts of Janet Williams,
25 the person who we think should have come to the

1 deposition, the woman who ran Nations Environmental.
2 And, the key point I want to talk to you about this
3 morning on this opportunity to defend is really the
4 basis of the Drill South case and the same thing we
5 have here. And, it's the indemnity agreement.

6 Because what happened in this case is when we filed
7 suit against the surety the surety has an
8 indemnification agreement with the company and with
9 the individual owners of the company whereby in the
10 event that the surety has to do anything, has to pay
11 money out, the surety can then go get the money from
12 the indemnitors, in this case Nations Environmental,
13 in two principals, one named Janet Williams, the same
14 Janet Williams we were talking about who is a party
15 in this case, and another third party in this case.
16 So, let me back up a minute. We filed the lawsuit
17 against the principal and surety.

18 THE COURT: Right.

19 MR. MAUCK: Surety now files a third party
20 motion for judgment against two individuals and
21 attaches the indemnity agreement. That indemnity
22 agreement is part of the bonding company's pleadings
23 in this case. By virtue of being attached it becomes
24 a part of the pleadings. And, Your Honor, it's right
25 there in the file for you to look at. That indemnity

1 agreement grants the surety very broad rights. It
2 gives them the right -- it makes them power of
3 attorney. It makes the bonding company power of
4 attorney. It assigns all of the principal's
5 subcontracts, all of Nations Environmental
6 subcontracts, including the one with my client,
7 Mitchell, are assigned to the bonding company to
8 protect the bonding company under their right of
9 indemnification. So, there is a power of attorney,
10 there is an assignment of all contracts, and there
11 are other broad rights that are granted in the
12 indemnification agreement, which is part of their
13 pleadings in the case.

14 In Drill South the court, after stating
15 this principle, had a very similar situation in Drill
16 South. We had both bonding company and the principal
17 as defendants. Summary judgment was awarded in favor
18 of the creditor. And, the court says, "it is also
19 clear to the court that the bonding company" -- I'm
20 reading from page four -- had the legal right to step
21 in and defend the principal against the default
22 judgment at every stage of the proceedings pursuant
23 to its' agreement of indemnity." And, then it goes
24 into the terms of that indemnity agreement. Under
25 the terms of the indemnity agreement the bonding

1 company was the designated attorney of fact, giving
2 the bonding company the right to settle, adjust, or
3 compromise any claim, demand, suit, or judgment. We
4 agree with the district court that because the
5 bonding company had the right and, therefore, the
6 opportunity to defend the principal as its' surety
7 and attorney in fact, the bonding company should not
8 be permitted to stand back and allow a judgment to be
9 taken setting the amount of recovery against its'
10 principal without similarly being bound. And, on the
11 following page five there is a whole discussion about
12 -- including footnotes -- that talks about the role
13 this indemnity agreement plays in the bonding
14 company's rights. And, at the bottom of page five,
15 the first column, there is argument that might be
16 made by the bonding company here. "To the extent
17 that the bonding company argues that it had no
18 obligation to defend, we are not persuaded. We
19 believe the issue is not whether the agreement of
20 indemnity imposed an obligation on the bonding
21 companies to defend, but whether it conferred a right
22 to defend, the law only requires that a surety had
23 notice and an opportunity to defend before it's bound
24 by a judgment. We believe the bonding company had
25 this right and opportunity and simply chose, for

1 whatever reason, not to exercise that right." That's
2 exactly what happened in this case. The bonding
3 company asked us when we were in federal court to
4 name their principal as a defendant. We voluntarily
5 dismissed the federal suit and filed here.

6 Throughout this case the bonding company has known
7 the whereabouts of the key people. They have had the
8 ability at a corporate deposition to get someone here
9 and answer for their principal. They could have had
10 -- they could have -- they could have had -- they
11 could have even brought someone from the bonding
12 company in here to appear at the corporate deposition
13 of a principal to step in to do something because
14 they knew that if they didn't do anything, if they
15 allowed the discovery situation to continue, then
16 default judgment was likely to be entered. And, the
17 bonding company -- every time we had an argument with
18 Your Honor he has said, look, he doesn't need to take
19 the deposition of the corporation, he can go take the
20 deposition of these individuals, and that's what he
21 needs to do. What the bonding company should have
22 done is when this deposition was noticed they should
23 have called Janet Williams up on the telephone and
24 said you show up at that deposition and you be there
25 to answer the questions. Now, that didn't happen.

1 THE COURT: Do they have a similar right
2 to, as in this case "right to adjust settlement or
3 compromise?"

4 MR. MAUCK: Yes, they do. In fact, the
5 language quoted throughout this opinion is verbatim
6 from the language that's in the indemnity agreement
7 that's attached to the third party. It's the same
8 form, at least it appears to be based upon the quoted
9 portion that this court has selected. I can find in
10 the indemnity agreement that's attached to the third
11 party motion these same things.

12 Let me tell Your Honor why it would be
13 totally unfair if summary judgment were awarded,
14 because there is a motion in limine before Your Honor
15 today, too. We're going to get to this trial, if
16 Your Honor doesn't grant this motion, and the surety
17 doesn't have any of its' own evidence. They don't
18 have any evidence that we're not entitled to be paid.
19 They've got to rely on this principal. They've got
20 to bring Janet Williams to court. And, they're going
21 to bring Janet Williams to court, who denied the
22 debt, and we've never been able to take the corporate
23 deposition to find out why. They're going to come in
24 and put on the same evidence through the principal of
25 why we're not entitled to this money. I submit, Your

1 Honor, we've already got a default judgment against
2 that principal. The liability of the principal is
3 established. It's -- it's -- it's done with. And,
4 Janet Williams should not be able to come in and
5 testify on behalf of the bonding company when I
6 couldn't get the facts from the principal which led
7 to my having to get a default judgment. It gives the
8 bonding company two bites at the apple. And, that's
9 exactly the policy reason behind the Drill South and
10 some of these other cases. "We agree with the
11 district court that because the bonding company had
12 the right and, therefore, the opportunity to defend
13 as its' surety and attorney in fact, the bonding
14 company should not be permitted to stand back and
15 allow a judgment to be taken setting the amount of
16 recovery against its' principal without similarly
17 being bound." It's on page four. And, that
18 proposition is cited in all of the other cases I've
19 cited in my brief. And, it's the indemnity agreement
20 that makes this so.

21 And, in the cases that go the other way,
22 and there are cases that go the other way, and Ms.
23 Jordan's brief cites cases that don't stand for this,
24 that don't allow a default judgment to be preclusive.
25 But, those cases are distinguishable, one, because

1 the body -- because the principal wasn't a party in
2 the case which sued at the same time, but none of
3 those other cases talk about the indemnity agreement
4 like Drill South does. That's the key. It's the
5 ability of the surety to step into the shoes of the
6 principal the day the indemnity is signed and to
7 protect itself. And, if a deposition is to be taken
8 of the principal because the creditor wants
9 information, then the bonding company has the right
10 to step into the shoes of that principal and get
11 somebody there, get some answers in discovery. And,
12 it didn't do that. And, to allow default judgment to
13 be taken and now they want to try the case against my
14 client, and bring on the same people who should have
15 been in there in the deposition, and, it gives them
16 two bites at the apple and it's not fair. And,
17 that's why the surety ought to be held liable. And,
18 it's a simple proposition.

19 In this Drill South case, I submit to your
20 Honor, is very good authority and probably the most
21 modern authority for this very proposition,
22 particularly the discussion of the indemnity
23 agreement. Now, Ms. Jordan is going to argue the
24 motion in limine and she's going to argue to you this
25 morning that we shouldn't even be allowed to mention

1 to the jury the default judgment, that the jury
2 should never hear it. In other words, they get to
3 try their entire case anew as if no default judgment
4 was ever entered. That's not right. And, so, Your
5 Honor, for those reasons, and I've put together I
6 think a pretty decent brief on this which will assist
7 you if you want to look into it further --

8 THE COURT: Uh-huh.

9 MR. MAUCK: I believe that the law should
10 be in this state that in the situation like this
11 where we have participation by both parties in a
12 lawsuit, where we have an indemnity agreement that
13 grants broad rights to the bonding company to do all
14 kinds of things, to jump right into the contract, to
15 act as attorney in fact, to ratify every action,
16 that's all that document. In this case you can't sit
17 back knowing the other party is not getting discovery
18 and your principal -- you should get there and do
19 something because you know if you don't the court is
20 going to award a default judgment against the
21 principal. That's what's happened. And, we would
22 ask for a judgment against the bonding company
23 commensurate with the judgment against the principal.
24 Thanks.

25 THE COURT: Okay.

1 MS. JORDAN: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. JORDAN: Elaine Jordan, Sands,
4 Anderson, Marks & Miller, for the record. I have
5 misplaced a notebook this morning with lots of stuff
6 in it, but I believe that I still have all the
7 information here ready to argue this case.

8 Your Honor, we're here on summary judgment,
9 the standard of which that there is no genuine issue
10 of material fact. Now, Mr. Mauck did not stand up
11 here and say we don't have any dispute over the
12 facts. We've got lots of dispute over the facts.
13 The facts are very much in dispute. And, we will go
14 to that in one moment. Another thing Mr. Mauck did
15 not argue, although it is in his brief, it's actually
16 attached to this brief, Your Honor, is a case decided
17 in Virginia as opposed to Drill South, which is an
18 Alabama law case, federal court applying Alabama law.
19 But, in the year 2000 the Arlington Circuit Court did
20 decide an issue similar to this. And, that case is
21 Airlines Reporting Corporation v. Auto Owners
22 Insurance Company. Again, that opinion is attached
23 to the brief by Mr. Mauck, but he didn't bring it up
24 today. That's Virginia law. And, in that opinion
25 the facts were a little different than what we have

1 here. But, the judge did not -- the judge only said
2 that the damages -- that the trial would go forward
3 on the issue of damages. The default judgment by the
4 principal would only be a preclusive affect as to
5 liability, not as to damages. It allows the trial to
6 go forward on damages. So, that's very different
7 than what the Drill South case held. But, this case
8 is even different than Airlines. So, let's go
9 through the procedural issue a few moments, Your
10 Honor.

11 THE COURT: In Airlines -- I can't recall
12 -- was the surety a party?

13 MS. JORDAN: Yes, I believe it was, Your
14 Honor. There was a default judgment. And, the
15 default, though, was based because the principal
16 failed to respond. That's very different than what
17 we have here. And, that's why the procedural issue
18 is important. This case was started in February of
19 2002 by filing in federal court. Now, what the
20 surety did is there is a Virginia statute on point.
21 And, it says that when the plaintiff files suit only
22 against the surety that we can then demand, the
23 surety can demand, that you file suit against the
24 principal as well because the surety obviously wants
25 to have all of the issues litigated and wants them to

1 go against the primary party responsible. And,
2 that's the statute. And, because then the diversity
3 was destroyed by him having to bring in the principal
4 he had to dismiss the suit in federal court, refile
5 it here. He did that in April of '02. He filed this
6 suit here in the City of Richmond against Nations and
7 against American Safety. Nations appeared. So,
8 there's the first difference. They filed a
9 responsive pleading saying we deny liability. And,
10 that's the very first procedural difference between
11 this case and the Airlines Reporting case where there
12 was no appearance.

13 Now, Mr. Mauck, on behalf of his client,
14 moved to strike that pleading by Nations, saying it's
15 not verified, it wasn't filed under oath. And, this
16 Court denied that motion and allowed the denial to
17 stand. So, the responsive pleadings and grounds of
18 defense by Nations is a denial, even though they
19 moved to the contrary. They propounded written
20 discovery to Nations. Nations responded in July of
21 2002, denying liability and explaining why in sworn
22 answers to interrogatories. And, Your Honor, we
23 actually filed -- one of the motions notice set for
24 today was a motion for filing of discovery to make
25 Nations' discovery responses part of the record, so

1 you will see that they deny that under oath.

2 Now, Your Honor, Mr. Mauck is going to say
3 we've been denied the opportunity to depose Nations.
4 But, Your Honor, those discovery -- they filed this
5 lawsuit here in April, federal court in February.
6 They don't move to take that corporate deposition
7 until almost eight months later. Now, what had
8 happened in the intervening months between the time
9 that Nations responded to discovery and the time they
10 moved to take the deposition? Well, it wasn't until
11 December 31 Nations was terminated as a corporation
12 by the SCC, involuntary termination. So, they have
13 sat back and done nothing and Nations goes out of
14 business. Nations is involuntarily terminated by the
15 SCC. Nations' counsel withdraws as counsel of record
16 in this case. And, the claimant knows all of that
17 and knows that it's pending because a motion has been
18 filed for some time, sitting back doing nothing.
19 Then two months later, almost two months later,
20 February 24th, plaintiff comes in and says, oh, well,
21 now we want to take the corporate deposition. Mr.
22 Mauck says I should have called Janet Williams and
23 told her to appear. Well, what was I supposed to do?
24 He is saying I had the opportunity to do it. I
25 didn't, Your Honor. What was I going to do? Call

1 her up and say, pretty please? I mean, this is not
2 an insurance policy. This is a surety bond. It's
3 not an insurance policy where I can say if you don't
4 cooperate with me, if you don't cooperate by
5 appearing at this deposition, then I'm going to jerk
6 your coverage. That's not what is at issue here. I
7 don't have the ability to enforce a corporate
8 designee to appear. Janet Williams was represented
9 by a lawyer, Bill Baldwin. Mr. Moody was represented
10 by a lawyer, Jim Skilling. They both notified Mr.
11 Mauck the corporation is terminated, the individuals
12 have resigned as officers and directors, they will
13 appear individually if you subpoena them. So, Mr.
14 Mauck was notified by counsel for the individuals.
15 They just said we cannot appear pursuant to this
16 corporate notice. So, Mr. Mauck had the ability to
17 take all the depositions that he wants. He has been
18 very strategically setting up this corporate
19 deposition to default -- the motion to compel and the
20 default -- simply trying to get to this point. So,
21 when he talks about it's not fair, fairness is not
22 the issue here. Now, Your Honor --

23 THE COURT: You couldn't have come in and
24 asserted a defense on behalf of the principal?

25 MS. JORDAN: The defenses were already

1 asserted.

2 THE COURT: Well, I mean you couldn't have
3 prevailed upon the principals to appear at the
4 deposition, the appropriate person?

5 MS. JORDAN: Not any more than he could.
6 It would have been a subpoena. It would have been a
7 subpoena to the individual, which is the same thing
8 he had. I had no greater power on this issue. Now,
9 Your Honor, if Nations had not filed a response to
10 this lawsuit we would be here in a very different
11 posture. The indemnity agreement that he provided
12 and he has attached, and I attached to my pleading,
13 in one of the footnotes in his memorandum he pulls
14 out language from that indemnity agreement. Read
15 that language very carefully, Your Honor, because it
16 gives them power of attorney but it gives them power
17 of attorney in very limited circumstances. We can
18 sign documents on their behalf. We can present
19 documents on their behalf. So, again, if Nations had
20 not filed a response I had the ability to file a
21 response on its' behalf. I did. But, that's not the
22 issue. The issue is a notice of deposition -- and I
23 can't -- that's not a document that I can do. I
24 don't have that power any more than a subpoena power
25 that he likewise has to make someone appear at a

1 deposition. And, like I said, he sat back and waited
2 for several months while Nations got terminated and
3 counsel withdrew, et cetera.

4 THE COURT: Well, you mentioned the
5 subpoena. Could you have subpoenaed?

6 MS. JORDAN: I could have subpoenaed Janet
7 Williams.

8 THE COURT: To appear?

9 MS. JORDAN: Yes, and so could he. But, it
10 would not have been the corporate deposition like the
11 designation that he wanted under the 4:5(b)(6). And,
12 Ms. Williams' testimony would have bound the
13 corporation because she was a prior officer because
14 the facts that were going to be discussed were the
15 facts that occurred while she was the president.

16 THE COURT: Okay.

17 MS. JORDAN: But, it's no greater ability
18 than what he has and it would not accomplish that
19 notice. I'm sure if we had done that he would have
20 said -- he would have objected to the deposition of
21 her saying this isn't the corporate deposition.

22 Your Honor, the fairness argument just
23 doesn't apply here. And, Your Honor, Mr. Mauck is
24 correct, this really is a pretty interesting legal
25 issue and the Drill South case is one case out of

1 Alabama. There are other cases that we have cited
2 which hold to the contrary.

3 And, Your Honor, the motion in limine, I'm
4 just going to argue that right now if you don't mind
5 because it is together.

6 THE COURT: Uh-huh.

7 MS. JORDAN: The Virginia Supreme Court in
8 1995 in the case Angst v. Atlanta Mutual Insurance
9 Company. What happened in that case, Your Honor, is
10 that there was a default judgment against an insured
11 for failure to appear at a deposition. In the
12 subsequent case the insurance company filed the dec
13 action and said I don't have to cover that judgment
14 because the insured failed to appear and they,
15 therefore, violated their duty of cooperation. The
16 trial court allowed evidence of the default judgment
17- in against the insured. The Virginia Supreme Court
18 reversed the trial court, saying that the default
19 judgment against the insured should not have ever
20 been allowed as evidence at trial. It was
21 prejudicial and it did not give the preclusive
22 effect. So, even though, Your Honor, we don't have
23 the Virginia Supreme Court exactly on point on this
24 issue, we've got pretty good guidance, one, from the
25 Arlington case where Judge --

1 THE COURT: Alden.

2 MS. JORDAN: Yes. Thank you. -- did not
3 allow collateral estoppel to apply all the way when
4 no response was filed. But, the Virginia Supreme
5 Court in a discovery sanction said it's not even
6 admissible and reversed the trial court. There is
7 another case on a motion in limine, Your Honor, we
8 cited in our brief in opposition to summary judgment.
9 It was decided up in New York and it's the United
10 States for the use of Vigilante v. Pfeiffer. I had
11 another copy of it here. This is under facts very
12 similar to this one, Your Honor, in that it is a
13 surety bond case. It's under the Miller Act, whereas
14 this is under the little Miller Act. And, here the
15 prior default of the principal the trial court
16 excluded evidence, and this opinion says that was an
17 appropriate ruling by the trial court. So, they
18 affirmed the trial court where the evidence was
19 excluded at the prior default, whereas the Virginia
20 Supreme Court in a case similar reversed the trial
21 court for allowing the evidence in. So, what we have
22 here, Your Honor, is just two absolutely opposing
23 legal views. And, I think the Virginia point is
24 we're not going to allow or should not allow the
25 evidence of a prior default. And, particularly Your

1 Honor, like in Airlines, we have not had any
2 litigation on this issue. The facts are very much in
3 dispute. On the default judgment, as you recall,
4 they didn't put in any evidence of damages. And, we
5 objected to that saying, Judge, we objected to
6 default judgment but we object to there being an
7 amount because what's the evidence of damages? All
8 we had was the motion for judgment, but that had been
9 denied.

10 THE COURT: Who objected, you?

11 MS. JORDAN: Yes, Your Honor.

12 THE COURT: The surety?

13 MS. JORDAN: Yes, I did, Your Honor.

14 THE COURT: How could you object to the
15 deposition when you didn't have any or couldn't have
16 any contribution or couldn't make any contribution in
17 the defense of the case?

18 MS. JORDAN: I can defend American Safety,
19 Your Honor.

20 THE COURT: Well, the default judgment is
21 against the surety.

22 MS. JORDAN: The principal.

23 THE COURT: The principal.

24 MS. JORDAN: The principal, Nations.

25 THE COURT: But, you objected you say to

1 any evidence, the lack of evidence that supports the
2 number --

3 MS. JORDAN: Yes, Your Honor.

4 THE COURT: -- against the principal?

5 MS. JORDAN: Yes.

6 THE COURT: But, at the same time you say
7 you're not able to defend or come in to defend the
8 principal, or I think you're saying you had no power
9 to have the corporate representative made present?

10 MS. JORDAN: Yes, Your Honor. That's all
11 I'm saying in this case because that's the only issue
12 before the Court. I did not have the ability to make
13 a corporate designee appear. And, that's what the
14 default judgment was based on. I did have the
15 ability to file a response on behalf of Nations.
16 But, I didn't have to because it was already done.
17 And, I do have the ability to come in and produce
18 evidence, cross examine witnesses, et cetera. And,
19 Mr. Mauck is just simply wrong when he says that our
20 only evidence is through our principal. That's not
21 an accurate statement. For example, there's going to
22 be lots of evidence that's going to be presented in
23 this case. His client, C. G. Mitchell, Mr. Mitchell
24 himself, the individual, he will get up here and
25 testify. We will cross examine him. There will be

1 other witnesses. We will be using documents from
2 Turner Construction, the general contractor on the
3 job, to attack the credibility of these witnesses and
4 to show that the damages that they are claiming are
5 just inflated and wrong. If you recall at prior
6 hearings we've gone through the facts of this case
7 that Steve Godwin, the project manager for Nations,
8 was also the fulltime employee and contractor
9 designatee of C. G. Mitchell. That inherent
10 conflict, the fox guarding the hen house -- so, there
11 are lots of facts that are in dispute. Mr. Mauck is
12 trying to get beyond the facts. He just wants to go,
13 well, I got the default judgment and I know I didn't
14 put on any evidence as to damages, and I know that
15 the corporation was terminated, and so we all knew
16 that they weren't going to show up for deposition,
17 but, Judge, forget all of that and just give me my
18 judgment. Your Honor, the surety -- I mean, there
19 are so many facts that are in dispute. The surety
20 has actually paid \$60,000.00, gotten rid of liability
21 to C. G. Mitchell of \$60,000.00, so if you enter
22 judgment today against the surety C. G. Mitchell
23 would automatically have a windfall. I mean, it's
24 just the facts in evidence is all very contrary and
25 contradictory to each other. But, Mr. Mauck doesn't

1 want to get into that.

2 But, the law, Your Honor, on this motion
3 for summary judgment and the motion in limine and the
4 motion for filing discovery, I would like to put all
5 those kind of together. Nations' discovery responses
6 should be produced by the record. The summary
7 judgment should be denied because the facts are very
8 much in dispute and because the law of the case is
9 that the surety has not had the opportunity to defend
10 this case and that the default judgment against
11 Nations under these circumstances that we have here
12 should not have collateral estoppel or preclusive
13 effect against the surety.

14 And, then thirdly, Your Honor, indeed based
15 upon Virginia Supreme Court law and the law from
16 other states, the default judgment against Nations
17 - should not even be allowed to be introduced as
18 evidence.

19 Thank you.

20 THE COURT: Okay.

21 MR. MAUCK: It's an interesting issue, to
22 say the least, Your Honor. Certainly, for those of
23 us who practice construction and surety law it's a
24 fascinating issue. It may not be to you. Your know,
25 it's the old saying that whenever you're defending

1 against a motion for judgment you pound the table and
2 argue that all facts are in dispute. And, I don't
3 blame counsel for doing that. That's what you have
4 to do when you're faced with a motion for summary
5 judgment.

6 She covered a couple of points and I just
7 want to respond to them briefly. I said most of what
8 I want to say. The Arlington Circuit Court, Judge
9 Alper, she actually decided that case based upon
10 collateral estoppel. And, she determined that the
11 default judgment against the principal can serve for
12 the basis as a judgment has to a liability in surety,
13 but that the case on damages ought to go forward.
14 And, she reached that conclusion because she said
15 that the issue of damages had not been actually
16 litigated under the collateral estoppel. In this
17 case, unlike that case where there was no appearance,
18 my client filed a sworn affidavit which requires the
19 other party to come in and deny under oath. They
20 didn't. We came before Your Honor and moved to
21 strike that as being an inadequate response. Your
22 Honor overruled the motion and an order has not been
23 entered. If we ever get that far we would like a non
24 pro tunc order to reflect that. Maybe I should have
25 brought one today. But, they didn't deny it under

1 oath. They should have in my view. They didn't.
2 They never have. We then went through all of this
3 discovery attempts to try to take the corporate
4 deposition. The timing, whether it be -- I didn't
5 intentionally wait eight months until I knew the
6 corporation -- I didn't know the corporation was
7 belly up. But, I don't think it matters. I think
8 that's all beside the point. The point is the
9 principals were personally served. And, the point
10 that I think counsel specifically never addressed
11 with Your Honor in any of the arguments was the
12 significant importance of the indemnity agreement and
13 the fact that under the agreement there is an
14 immediate assignment of all rights under a contract.
15 There is the right to ratify and take any sort of
16 action that the bonding company needs to do to
17 protect itself. There is a power of attorney.

18 THE COURT: The attorney says they had no
19 right or power to compel, that the instance that
20 brought about the default judgment --

21 MR. MAUCK: Right.

22 THE COURT: -- for the non-appearance of
23 the corporate representative or the failure to
24 designate one and the non-appearance, they had
25 nothing to do with that, they had no power to compel

1 or participate in that. Do you agree with that?

2 MR. MAUCK: No, I don't. And, I think for
3 a couple of reasons. First of all, we have no
4 evidence that they attempted to do anything. In all
5 of the hearings that we came --

6 THE COURT: I think she's saying even if
7 she attempted she had no right of power.

8 MR. MAUCK: Right.

9 THE COURT: Even in a contractual
10 relationship.

11 MR. MAUCK: The bonding company has the
12 right to step into the principal's shoes and to
13 defend the principal in whatever way it wants to.

14 THE COURT: She says she doesn't. She says
15 it's not like in automobile liability policies where
16 you can defend.

17 MR. MAUCK: We can parsh through the
18 indemnity agreement and you can see that for
19 yourself.

20 THE COURT: I guess that's really what is
21 going to in large measure depend on what the
22 agreement is between the parties.

23 MR. MAUCK: Well, it would be the agreement
24 between the bonding company and the individual
25 indemnitors, which are the corporation, which is

1 defunct, and the two individuals who personally
2 guaranteed or/and agreed to indemnify. And, of
3 course, that's the Drill South basis.

4 THE COURT: Right.

5 MR. MAUCK: That's the whole basis. And,
6 the New York case that Ms. Jordan cited, actually
7 cites the general proposition that I'm talking about
8 that where the surety there has notice. But, it
9 doesn't talk about an indemnity agreement. I mean,
10 the indemnity agreement is where the surety has the
11 right to step in and do things. Now, what I think
12 Your Honor is asking is as a practical matter could
13 the bonding company have forced this woman to come in
14 and appear to answer for the bonding company? My
15 response is, (a), we don't know -- we don't know that
16 they tried voluntarily, (b), I suppose they could
17 subpoena her. They have the right to do that. I
18 mean, they have the right to do all kinds of things.
19 They could subpoena her and get her to come in. They
20 could have put up someone from the bonding company to
21 speak for the principal. I mean, a bonding company
22 representative could have come in and answered my
23 questions and acted for the principal. None of those
24 things happened. And, there may be other ways to do
25 it. But, none of those things happened. What always

1 happened was, well, you know, you're going after a
2 defunct corporation, but you should go down the road
3 and see Ms. Williams. Well, where the heck is Ms.
4 Williams? You know, why don't they get her here?
5 She's got counsel, Bill Baldwin. Call Bill Baldwin
6 up on the telephone and say, Bill, we don't want a
7 default judgment taken against us if the -- or
8 judgment summary against the bonding company because
9 this guy is going to get a default judgment if she
10 doesn't get in there, and if she doesn't do that
11 she's going to be violating -- she's going to be
12 personally liable for all of the monies that we have
13 to pay. That's what the indemnification agreement
14 provides. There is no -- there is no effort that has
15 been demonstrated to the Court. What happened is we
16 noticed up all of these and we sent out notices to
17 everyone and everybody kind of sat back and really
18 almost knowing that no one was going to show up.
19 And, we came up and saw Your Honor. We got the
20 order, and --

21 THE COURT: That's the impression I got
22 that nobody did anything but I think she didn't do
23 anything because she had no right or power to.
24 That's what they said.

25 MR. MAUCK: I think maybe there should be a

1 showing, a proffer of some sort, that these are the
2 things that we attempted to do and we failed, we
3 couldn't do it. But, there hasn't been. I think
4 what happened, and I'm not -- nothing that I say is
5 against counsel in the way that they handled their
6 case. But, I think what happened is everybody knew
7 that nobody was coming. And, we hire a Court
8 Reporter and we give notice to everybody and we show
9 up and there is nobody there. And, then what happens
10 is the same lady is going to come in and testify at
11 trial and she is going to come in and say the same
12 things and put on the same evidence and all of who
13 shot John for the bonding company. Because you know
14 what? No one at the bonding company knows anything
15 about this case. They've got to rely on their
16 principal. The only thing the bonding company knows
17 is this: They know how much money they've paid out
18 to subcontractors of mine and it would seem to me
19 that the appropriate thing to do, if you want to let
20 the bonding company put that evidence on, you award
21 summary judgment on the issue of liability, you
22 strike all defenses of the bonding company where they
23 rely on the principal's defenses because the
24 principal is in default and they're gone. And, the
25 only evidence that the bonding company can put on is

1 evidence that the bonding company has of what we, the
2 bonding company, have paid out to subcontractors of
3 Mitchell which would work as an offset to the amount
4 of money that Mitchell claims. I mean, it seems to
5 me that's the -- if there's a fallback position it's
6 a fallback position on damages, not attacking the
7 default judgment number itself, it's too late for
8 that, but only putting on the evidence of an offset
9 that they have. Ms. Jordan mentioned \$60,000.00. If
10 she wants to get a bonding company guy to come in and
11 testify we pay out \$60,000.00 on behalf of Mitchell's
12 subcontractors under this bond, I suppose that's --
13 if you want to talk about a trial on damages,
14 liabilities established on a trial on damages --

15 THE COURT: Uh-huh.

16 MR. MAUCK: -- that that's the evidence of
17 damages. But, I don't think they get to go back and
18 put on evidence of why we're not entitled to anything
19 for the use of the principal because it's too late.
20 They had the opportunity. They should have permitted
21 or assisted us in getting some discovery. And,
22 everyone sat around and let it all happen and now
23 they want to come in and try it. So, I think that's
24 -- if there is -- if there is --

25 THE COURT: What about the two other

1 matters, the limine motion and --

2 MR. MAUCK: Well, the motion in limine says
3 we shouldn't be able to mention it. I mean, none of
4 the cases that I've seen the parties cite have gone
5 that far. She mentions this Angst v. Atlantic Mutual
6 case. That doesn't involve an indemnity agreement.
7 That's and insurer and insured. This is principal
8 and surety. There is a totally different
9 relationship here, plus we have the relationship of
10 the indemnitee and the indemnitor under this
11 agreement. That case doesn't have anything to do
12 with this. This is default judgment under totally
13 different circumstances.

14 I think what my motion raises and her
15 motion in limine raises is if you're not going to
16 give summary judgment for the full amount that we're
17 asking for what are we going to try? What is the
18 scope of the evidence in this case?

19 THE COURT: It's wide open.

20 MR. MAUCK: Are they going to go get to put
21 everything on all again?

22 THE COURT: I guess so.

23 MR. MAUCK: Should there be some -- her
24 brief suggests that it's prima facie evidence. It
25 cites some cases where it says it's prima facie

1 evidence. Is it at least prima facie evidence? Do I
2 get to tell the jury that there is a default judgment
3 of \$312,000.00 and then they get to try it all?

4 THE COURT: Well, on the fallback of this I
5 know that is not what you're urging, but if the Court
6 took that position they could present defenses that
7 the claim would be limited to the amounts of money
8 they paid to the subs thus far?

9 MR. MAUCK: Yes, sir.

10 THE COURT: What about any other matter?
11 That wouldn't cover your judgment, would it?

12 MR. MAUCK: No. Ms. Jordon I think said --
13 I wrote it down -- \$60,000.00 to subs of Mitchell.
14 Our judgment is for \$312,000.00. So, if they wanted
15 to have a representative come in here and say that
16 there were \$60,000.00 worth of claims against
17 Mitchell's subcontractors and those were made against
18 the bond and we paid that so that would be a credit
19 against the amount that Mitchell should recover, I
20 suppose that if you're going to send it to a trial on
21 damages that would at least be damage defense unique
22 to the bonding company. Nations wouldn't have any
23 knowledge of that. That would be an amount that the
24 bonding company paid on their bond. But, to come in
25 and go back through the default judgment and

1 basically try the whole thing over or throw
2 everything on the default judgment out I think is
3 improper and is totally inconsistent with the case
4 law that I've cited and Ms. Jordan cited. So, I
5 think the motion in limine ought to be overruled with
6 the caveat that I mentioned, that maybe it's the way
7 to get to it to allow them to put on the \$60,000.00
8 or whatever the number one is, only by way of offset.

9 THE COURT: Then you would urge -- why have
10 a case about that? Why have a trial about that? I
11 mean, that's pretty certain.

12 MR. MAUCK: I would expect if that would be
13 Your Honor's ruling that Ms. Jordan would call me up
14 and we would work that out. We have been trying to
15 work it out.

16 THE COURT: So, you would get a judgment
17 for the \$60,000.00 less --

18 MR. MAUCK: Correct --

19 THE COURT: -- the \$312,00.00 or any other
20 applicable amount that had been made?

21 MR. MAUCK: Correct. If actually they paid
22 \$90,000.00 and she is wrong today then we will -- but
23 not coming in and getting into all of the stuff that
24 are Nations. You see our contract is with Nations.
25 And, they denied our case, our entire \$312,000.00.

1 And, we submitted them the discovery, written
2 discovery, and we tried to take their deposition.
3 They don't answer why. In the discovery that Ms.
4 Jordan wants to file with the Court, you can read it
5 for yourself, what Nations says is just a denial.
6 There is no reason. And, the problem that we had and
7 what we wanted to do in the case is to take the
8 deposition of Nations and not hear about somebody
9 being licensed for two different people. Tell us
10 where we didn't do the work that you say we didn't
11 do. We can't get the answer. So, we shouldn't be
12 relitigating the \$312,000.00.

13 I would submit, and I think Your Honor when
14 you granted default judgment, that is a liquidated
15 sum. That's the amount sued for under oath and
16 that's the amount that you granted. At the time that
17 you entered a default judgment against the principal
18 there was no requirement that we have evidence of
19 that. I think Your Honor was entirely right in
20 entering the default judgment based on the amount
21 sued for. I think the law is clear on that. There
22 was some suggestion that Ms. Jordan was denied the
23 opportunity to put on evidence of damages. But, we
24 were simply seeking a default judgment against the
25 principal at that time.

1 THE COURT: But, the principal wasn't here
2 to participate.

3 MR. MAUCK: After court order and all of
4 that. That's correct. That's why we have the
5 sanction of default judgment for failure to abide by
6 discovery. And, that's within Your Honor's
7 discretion. So, I don't think there is any problem
8 with that at all. Thank you.

9 Well, there is one more motion, I guess.
10 That was her motion, I guess to file discovery.
11 Isn't that the third one?

12 THE COURT: I thought you just spoke to
13 that?

14 MS. JORDAN: Yes.

15 THE COURT: You said if it were filed it
16 would be replete with denials.

17 MR. MAUCK: I think the Nations' discovery,
18 which is the defunct party, would essentially say
19 that, and not give a whole lot of reasons.

20 THE COURT: That discovery was made
21 available before the default judgment?

22 MR. MAUCK: Yes. But, that's all by the
23 board because we now have the default judgment. So,
24 I think that's immaterial. If she wants to file
25 discovery with the Court that's within Your Honor's

1 discretion. I don't really care about that, frankly.
2 Thank you.

3 THE COURT: All right. Well, counsel, I
4 tell you, the, let me call it for lack of a better
5 term, the fallback position, has some appeal to me
6 because the only authority we have in Virginia that's
7 directly, most directly on this point, except for the
8 slight difference in how it's -- it may not be slight
9 -- the way we got the default judgment and discovery
10 sanctions as opposed to failure to appear and respond
11 in this case as opposed to Judge Alper's case. That
12 has the most appeal to me of all of the approaches in
13 the case. And, the fallback position also has appeal
14 because of various payments being made to subs to the
15 tune of \$60,000.00 or whatever the number is. Why
16 not allow the plaintiff now on the bond and obtain a
17- judgment for the defense? That's a very certain
18 ascertainable thing. It's just a matter of numbers
19 if counsel can work out what those numbers are. Did
20 we come here specifically on that shade of the
21 motion? I don't know. But, my inclination tells me
22 plaintiff could be awarded judgment for that, for the
23 offset of whatever amount that was paid. That's in
24 the area of sixty some thousand dollars?

25 MS. JORDAN: Your Honor, if the Court is

1 going to rule that the only evidence of damages --

2 THE COURT: Why would there be a need for
3 trial if we allow that approach?

4 MS. JORDAN: If you follow that approach as
5 far as only allowing the surety to get the benefit of
6 the damages, evidence on damages as far as the amount
7 that it has paid --

8 THE COURT: Right.

9 MS. JORDAN: -- to subcontractors?

10 THE COURT: Right.

11 MS. JORDAN: Then I think that amount is
12 very ascertainable between counsel. I mean, there's
13 no question of what that is. We would obviously
14 object to that being allowed.

15 THE COURT: I understand.

16 MS. JORDAN: But, that's definitely
17 ascertainable.

18 THE COURT: All right. I would be prepared
19 to enter judgment for that amount on the bond with
20 the determination that this is a liability --
21 liabilities foreclose by virtue of what happened to
22 the principal on that default judgment and the issue
23 of damages -- are the damages now ascertainable to a
24 point of certainty and plaintiff could have judgment
25 for that.

1 MR. MAUCK: Your Honor, I would like to
2 prepare an order to that effect. I think I
3 understand what Your Honor is saying. I think Your
4 Honor is saying that the summary judgment is granted
5 only in part and that the --

6 THE COURT: Would that make it a complete
7 relief?

8 MR. MAUCK: Well, it does. I guess what
9 you're saying is the motion is granted subject to
10 counsel determining the amount of any set off?

11 THE COURT: Right.

12 MR. MAUCK: And, if we could do that we
13 would state that in the order.

14 THE COURT: Right.

15 MR. MAUCK: And, then state the total sum
16 that would be due.

17 THE COURT: Right.

18 MR. MAUCK: I think Ms. Jordan and I can
19 work an order out.

20 THE COURT: All right. See what you can
21 do.

22 MR. MAUCK: And, the motion in limine, Your
23 Honor, is overruled?

24 THE COURT: Well, I think that moots the
25 point in the limine motion because the in limine

1 motion was brought forward in anticipation of trial.
2 Why do we tell the jury there is a default judgment
3 already obtained against the principal? But, under
4 this approach it sort of renders it moot.

5 MR. MAUCK: So, the order would reflect
6 that that motion is moot and the order permitting the
7 filing of discovery would also be moot? I just want
8 to make an order.

9 MS. JORDAN: No. I would ask that the
10 motion for filing of discovery be granted.

11 THE COURT: All right.

12 MS. JORDAN: Because that's simply to make
13 it part of the record.

14 THE COURT: For the record.

15 MS. JORDAN: Yes.

16 THE COURT: That might be helpful.

17 MR. MAUCK: All right. We will get an
18 order up. Thank you very much.

19 THE COURT: Thank you.

20 MS. JORDAN: Your Honor, one other motion
21 that was for today.

22 THE COURT: What was that?

23 MS. JORDAN: It will just be real quick,
24 Your Honor. And, again, I think it needs to be part
25 of the record. American Safety had sent a subpoena

1 to the Department of Professional and Occupational
2 Regulations for certain records for C. G. Mitchell,
3 Inc., and Steve Godwin, et cetera. We sent a
4 subpoena.

5 THE COURT: Uh-huh.

6 MS. JORDAN: Of course, we sent a subpoena
7 duces tecum. Obviously, a copy was sent to opposing
8 counsel. There has been no objection filed by
9 opposing counsel. But, the Board of Contractors who
10 actually Mr. Eric Olson, the Executive Director, is
11 here today just to be present. But, he sent the
12 documents under seal to the Court.

13 THE COURT: What kind of records, again,
14 Occupational?

15 MS. JORDAN: The Board of Contractor's
16 records, to get your license.

17 THE COURT: Oh.

18 MS. JORDAN: So, it's the licensing record
19 for C. G. Mitchell, Inc.

20 THE COURT: All right.

21 MS. JORDAN: And, particularly with the
22 application. And, that has been one of the major
23 issues in the case between the two of them. And,
24 those documents, Your Honor, are here in the court
25 but under seal because the Board of Contractors,

1 that's the way they typically do it, and to see
2 particularly if opposing counsel would want to
3 object, or whatever. There has been no objection
4 filed. I believe the records are relevant to this
5 case. And, we would just ask that they be produced.

6 THE COURT: I thought they were already
7 here but under seal?

8 MS. JORDAN: Yes.

9 THE COURT: What do you want me to do with
10 them, to unseal them?

11 MS. JORDAN: Unseal them.

12 THE COURT: And, have them made part of the
13 record?

14 MS. JORDAN: Yes, so then that we may see
15 them, yes. We haven't been able to see them.

16 THE COURT: Why is that important?

17 MS. JORDAN: Well, Your Honor, one-because
18 I think they're very relevant to this case. And,
19 two, while apparently there is not going to be a
20 trial going forward on this, Your Honor, I think that
21 they need to be part of the record, and they're not
22 right now part of the record because they're under
23 seal. And, both sides should be able to look at the
24 documents to the extent to have made them part of
25 argument, et cetera, then I think they should be

1 allowed.

2 THE COURT: Argue what?

3 MS. JORDAN: I anticipate there will be an
4 appeal of this case, of this ruling, and summary
5 judgment, and looking at the facts and the facts that
6 would be adduced from those records would be highly
7 relevant.

8 THE COURT: I'm certainly willing to allow
9 the record to be as complete as it can be so you can
10 assert whatever rights or claims you want to do on
11 appeal, but I'm having trouble trying to decide now
12 why this would be important to an appeal.

13 MS. JORDAN: Well, Your Honor --

14 THE COURT: What kind of defenses would
15 this relate to that you bring against this plaintiff
16 on the claim against you?

17 MS. JORDAN: Your Honor, one of the
18 critical factual issues that has always been involved
19 in this case is the licensing.

20 THE COURT: The licensing?

21 MS. JORDAN: The licensing of C. G.
22 Mitchell, Inc., the claimant represented by Mr.
23 Mauck. Under Virginia law we haven't even gotten to
24 this point because we never got the opportunity to
25 defend on this issue.

1 THE COURT: Are you claiming they're not
2 properly licensed?

3 MS. JORDAN: Yes, Your Honor. That's it
4 exactly. And, Virginia law, of course, precludes
5 recovery if you're not properly licensed. And, Your
6 Honor, we are going --

7 THE COURT: What are they, a Class --

8 MS. JORDAN: Class A.

9 THE COURT: So, you would dispute whether
10 they were properly constituted as a Class A
11 contractor?

12 MS. JORDAN: Yes. And, the reason is
13 because, Your Honor, Steven Godwin, the designated
14 employee of C. G. Mitchell --

15 THE COURT: Uh-huh.

16 MS. JORDAN: He is also, we believe the
17 Board of Contractor records will show, that he was
18 the designated employee for at least three other
19 companies. And, you have to be a fulltime employee.

20 THE COURT: Did this ever come up before in
21 this case?

22 MS. JORDAN: Not this issue, Your Honor,
23 because the facts --

24 THE COURT: Let's call it a standing issue.
25 Can you characterize it properly as a standing

1 question, that is, the right and ability of this
2 company to pursue a claim because it was not properly
3 licensed?

4 MS. JORDAN: Your Honor, we raised it as an
5 affirmative defense.

6 THE COURT: But, have I ever heard about
7 it? Have I heard about it?

8 MS. JORDAN: You haven't heard the
9 arguments on it, Your Honor, no.

10 THE COURT: It's never been noticed up
11 before?

12 MS. JORDAN: No, Your Honor, because it
13 would take facts. I mean, you have to show facts.
14 Because the Virginia law is that you have to have --
15 that the individual, Mr. Mitchell in this case, would
16 have to have knowledge of the licensing law and then
17 that he did not abide with the licensing law in order
18 to preclude him to bar his recovery. So, it wasn't
19 appropriate for summary judgment because the facts
20 weren't before the Court and facts were going to be
21 introduced at trial.

22 THE COURT: Uh-huh.

23 MS. JORDAN: I mean, that has been this
24 whole case. There's lots of facts in dispute. We
25 believe that would be a complete bar. That's a

1 defense we have not been able to raise.

2 THE COURT: Well, you have been able to
3 raise it but you haven't pursued it.

4 MS. JORDAN: Your Honor, one, I haven't had
5 the Board of Contractor's records. They have been
6 produced under seal. Two, we can't come in and
7 produce a witness on a summary judgment. I mean, it
8 would have to be --

9 THE COURT: Well, if your theory is right
10 then any judgment claims against you would not be
11 valid.

12 MS. JORDAN: Yes, Your Honor, that's true.

13 THE COURT: Well, I would like to pass on
14 this before it goes anywhere else.

15 MS. JORDAN: But, Your Honor, how do we do
16 that unless we bring it in and have a trial? Because
17 this -- I'm sure Mr. Mauck disagrees with me.

18 THE COURT: My impression is that all the
19 focus in this case has been on the propriety of
20 whether or not this default judgment, how is that
21 going to operate for any future trial between the
22 plaintiff and the surety? Now, I hear that there is
23 a question by the surety as to whether or not the
24 plaintiff is properly constituted to even bring the
25 case. Right?

1 MS. JORDAN: Yes, Your Honor. And, that
2 has been in discovery, that has been written
3 discovery, responses that have been --

4 THE COURT: I haven't had a chance to
5 decide that yet.

6 MS. JORDAN: I know, Your Honor.

7 THE COURT: What's your position on that?

8 MR. MAUCK: I'm glad you asked, Your Honor.
9 I don't believe there is an affirmative defense by
10 the bonding company that has been stated in the
11 pleadings that says we don't have a claim because
12 we're not licensed.

13 THE COURT: Uh-huh.

14 MR. MAUCK: What has happened -- because we
15 had a license. C. G. Mitchell did hold a Class A
16 Virginia Board of Contractor's license at the time
17 they did this work.

18 THE COURT: Uh-huh.

19 MR. MAUCK: What has happened is that the
20 qualified employee, this person that you have to --
21 the license that you obtain has to be a person who
22 takes the test and he has to be designated.

23 THE COURT: Right.

24 MR. MAUCK: That person for C. G. Mitchell
25 was a fellow named Steve Godwin. And, Steve Godwin,

1 while he was serving in that capacity for Mitchell
2 and employed by Mitchell while Mitchell was doing the
3 work on this project, that gentleman, Mr. Godwin, was
4 also employed by Nations, the party that hired him.
5 And, in fact, Mr. Godwin would sign tickets every day
6 which showed how many hours and how many trucks
7 Mitchell had. And, so during the course of this case
8 the bonding company, well, actually, again, this is
9 the principals --

10 THE COURT: I remember hearing something
11 about that.

12 MR. MAUCK: This is not a defense that the
13 surety had. This is a principal defense. Your
14 contract with me is void because you weren't
15 licensed.

16 THE COURT: All right.

17 MR. MAUCK: That's a defense of Nations.
18 It's not a defense on the bond, I don't think. It
19 hasn't been pled as a defense by the bonding company.
20 It hasn't been pled as a defense by Nations. Nations
21 didn't plead any affirmative defenses. And, what we
22 have is, in my view, has been an effort to take this
23 unusual circumstance from Mr. Godwin who is employed
24 by both, but he's also the qualified employee for the
25 license for the party doing the work for Nations, and

1 to throw it all up and make a huge issue out of the
2 credibility of this man working for two people --

3 THE COURT: Uh-huh.

4 MR. MAUCK: What I think counsel is arguing
5 to you that somehow another the license that we had,
6 and this isn't a situation where we didn't have a
7 license to do work, we had a license -- is that now
8 we want to go back two years later and look at that
9 license and look at who the qualified person was and
10 try to come up with an argument that, well, you had a
11 license or you shouldn't have had a license, and, we
12 want to go back and undue everything to try to come
13 up with a defense if there is no contract. I would
14 submit, Your Honor, that --

15 THE COURT: Well, is there anything in the
16 law that would say that you become enabled in some
17 way to prosecute a claim like this because of this
18 alleged conflict that Godwin wears two hats?

19 MR. MAUCK: Right.

20 THE COURT: Is there anything?

21 MR. MAUCK: I'm not aware of any legal
22 proposition that says you can't do that. The only
23 thing that -- other than to attack the man's
24 credibility to the jury and say, well, you know, the
25 fox is guarding the hen house kind of thing.

1 THE COURT: Uh-huh.

2 MR. MAUCK: But, other than that there is
3 not any legal like an estoppel or some other kind of
4 principal, that bars the claim. Now, the inability
5 -- I mean, the failure to have a license -- there is
6 a statute in Virginia on licensing. And, if a
7 contractor is unlicensed and does work, depending on
8 the notice that contractor has of the requirements --
9 I don't have the code section in front of me. Ms.
10 Jordan probably knows it off the top of her head.

11 THE COURT: Uh-huh.

12 MR. MAUCK: That can be the basis for
13 voiding that contract. But, that's between Nations
14 and -- Nations -- the party that hired us. And, they
15 haven't made that defense. That was a defense that
16 disappeared on default judgment. It was never
17 asserted to begin with.

18 THE COURT: It wasn't asserted by Nations?

19 MR. MAUCK: No. The only thing that
20 Nations ever asserted was that there looks like
21 there's some hanky-panky going on. But, that's
22 different than saying, well, you know, Godwin only
23 worked for you for 30 hours a week and only in the
24 last month -- this case has been pending since last
25 April -- only in the last month has counsel

1 subpoenaed -- they ran a subpoena over to DPOR and
2 said we'd like all the applications you've got in the
3 name of Godwin and we'd like all the applications
4 you've got in the name of Mitchell. And, they're
5 trying to see whether Godwin back at that time was
6 the qualified person for others. They don't know
7 what it says because the file is under seal. It
8 doesn't make any difference. It doesn't make any
9 difference because you can't go and undue a license.
10 The license was held. And, even if you could undue a
11 license --

12 THE COURT: I wonder if this question was
13 put to a jury would we get that issue to a jury?
14 Jury, because of Godwin's activities here you can't
15 consider whether or not the plaintiff was the proper
16 party in bringing this suit because he was somehow,
17 and I will use the word again, somehow disabled or
18 unabled, if that's a word, to pursue the claim
19 because of what you call hanky-panky.

20 MR. MAUCK: The jury can hear perhaps the
21 argument that, Mr., you know, that Mr. Godwin while
22 he is signing these tickets he's over there getting
23 paid by Mitchell.

24 THE COURT: Yes.

25 MR. MAUCK: I think the jury can hear that.

1 THE COURT: Yes.

2 MR. MAUCK: But, I don't think the jury is
3 going to decide whether the company was licensed
4 properly. That's not for the jury to decide. That's
5 not a jury question.

6 THE COURT: That's a legal question.

7 MR. MAUCK: Yes, it is. And, the wrong
8 parties -- this is another example of trying to step
9 into the principal's shoes to take a defense that the
10 principals never asserted, and I don't see how they
11 can do that.

12 THE COURT: Do you have any objection to
13 the records being --

14 MR. MAUCK: No.

15 THE COURT: -- made available --

16 MR. MAUCK: Well, my --

17 THE COURT: -- either closed or unsealed or
18 made a part of the record?

19 MR. MAUCK: They had actually tendered to
20 me a protective order because it's my client's
21 records. I mean, they got them under the Freedom of
22 Information Act, basically. And, they presented a
23 protective order to me. My concern is -- and I
24 suppose the answer to that question is no, subject to
25 a protective order, but I don't understand what the

1 relevance of these documents are. And, I mean, DPOR
2 has filed this stuff under seal. I don't see what
3 the relevance is. If they want to come in here and
4 argue about --

5 THE COURT: Well, I think they want to say
6 they want this material made a part of the record so
7 that in an appeal, in the event of an appeal, they
8 can assert that as some kind of error. And, that's
9 what I was concerned about.

10 MR. MAUCK: Well, I understand, Your Honor.
11 And, I would just as soon it go ahead and be part of
12 the record so the record is complete.

13 THE COURT: Well, my point is it's never
14 been raised. It's never come up. It's sort of like
15 an afterthought. And, I remember some comments about
16 Godwin's conflict, but it's never been postured and
17 put to the Court in a definitive way or ruling --

18 MR. MAUCK: Right.

19 THE COURT: -- and now I'm being asked,
20 well, Judge, make it part of the record so we can
21 assert this on an appeal when I haven't had a chance
22 to read it.

23 MR. MAUCK: Well, that's right. You've
24 heard the fox in the hen house stuff.

25 THE COURT: Yes.

1 MR. MAUCK: What you haven't heard is --

2 THE COURT: I haven't heard anything about
3 the --

4 MR. MAUCK: -- the evidence that the
5 license is invalid.

6 THE COURT: -- something about this is
7 enabling in terms of the plaintiff's license, and
8 thus, its' ability to prosecute this claim.

9 MR. MAUCK: Well, I'm not going to oppose
10 the motion. They have presented the protective
11 order. And, I will endorse that order just so this
12 licensing stuff isn't disseminated.

13 THE COURT: Well, that's fine. But, the
14 record ought to be clear that the Court has never
15 been asked to rule on this claim and because I
16 haven't had a ruling on it and I've never been asked
17 to rule on it I haven't made a ruling.

18 MR. MAUCK: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 MS. JORDAN: Thank you, Your Honor.

21

22 HEARING CONCLUDED

23

24

25

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. LP-937-1
)	
NATIONS ENVIRONMENTAL SERVICES, INC., <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

On June 20, 2002, came the plaintiff C.G. Mitchell Construction, Inc. ("Mitchell"), by counsel, on plaintiff's Motion to Strike the Unverified Pleading and for Entry of Default and was argued by counsel.

Upon considering the motion, the argument of counsel, and it otherwise being proper to do so, it is hereby

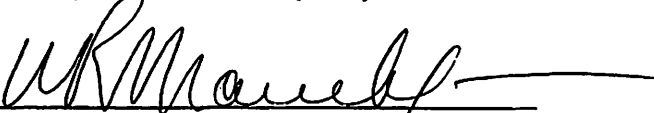
ORDERED, that plaintiff's Motion to Strike is OVERRULED and this Order is entered *nunc pro tunc* effective June 20, 2002.

The Clerk shall send an attested copy of this Order to counsel of record.

ENTER: 9/3/2003


The Honorable Melvin R. Hughes, Jr., Judge

Seen and objected to for the reason that Va. Code § 8.01-28 required defendant Nations Environmental Services, Inc. to file a written pleading under oath denying its indebtedness if it wished to preclude the entry of judgment without further evidence. See Snead v. Bendigo, 240 Va. 399, 397 S.E.2d 849 (1990):



William R. Mauck, Jr. (VSB No. 25439)

E. Livingston B. Haskell (VSB No. 42844)

WILLIAMS MULLEN

A Professional Corporation

Two James Center, 11th Floor

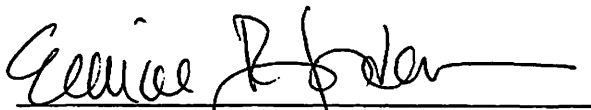
1021 East Cary Street

P.O. Box 1320

Richmond, VA 23218

Counsel for C.G. Mitchell Construction, Inc.

Seen:



Elaine R. Jordan (VSB No. 27284)

Randall H. Wintory (VSB No. 43312)

SANDS, ANDERSON, MARKS & MILLER, P.C.

P.O. Box 1998

Richmond, VA 23218-1998

Tel: (804) 648-1636

Fax: (804) 783-7291

Counsel for American Safety Casualty Insurance Company

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. LP-937-1
)	
NATIONS ENVIRONMENTAL SERVICES, INC., <i>et al.</i> ,)	
)	
Defendants.)	

FINAL ORDER

On July 28, 2003, came the plaintiff C.G. Mitchell Construction, Inc. ("Mitchell") and the defendant American Safety Casualty Insurance Company ("American Safety"), to be heard on various motions before the Court. Upon considering the motions, memoranda and other pleadings filed by the parties, the record in this case, and the argument of counsel, the Court makes the following findings:

1. By Order entered March 25, 2003, the Court found that, upon proper notice, a representative of defendant Nations Environmental Services, Inc. ("Nations") failed to appear at a deposition pursuant to Rule 4:5(b)(6) of the Rules of the Supreme Court of Virginia and the Court ordered a representative of Nations to appear for a deposition within 14 days from entry of the Order.

2. By Order entered May 20, 2003, the Court found that, having received proper notice, Nations violated the Court's Order of March 25, 2003 by failing to appear at a deposition pursuant to Rule 4:5(b)(6) of the Rules of the Supreme Court of Virginia and the Court ordered

that judgment be entered in favor of Mitchell and against Nations in the amount of \$312,500.09, together with interest at the rate of nine percent (9%), as provided by law, until paid, plus costs of \$184.00.

3. American Safety had notice of the claim of Mitchell against Nations.

4. Pursuant to the terms of a General Agreement of Indemnity dated May 23, 2000, between American Safety, as surety, and Nations, Janet C. Williams ("Williams") and Chijioke Ude ("Ude"), as indemnitors, a copy of which was attached to American Safety's Third-Party Motion for Judgment, American Safety had the right and the opportunity to defend Nations.

5. Accordingly, the judgment entered against Nations is binding and conclusive upon the surety, American Safety, and Mitchell is entitled to summary judgment against American Safety in the amount of \$312,500.09, plus interest and costs, all as provided for in the Court's Order of May 20, 2003, subject to offset for claims against the subject payment bond asserted by subcontractors and vendors to Mitchell which have been resolved by American Safety, which amounts were included in Mitchell's claims herein.

6. American Safety and Mitchell agree that the total amount of offsets to which American Safety is entitled is \$57,110.86.

7. By order entered on July 18, 2003, the Court granted American Safety's motion for sanctions against Ude and awarded judgment in favor of American Safety and against Ude in the amount of any judgment awarded against American Safety in favor of Mitchell in this action.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Plaintiff's Motion for Summary Judgment Against Defendant American Safety Casualty Insurance Company is GRANTED, and judgment is entered in favor of Mitchell and

against American Safety in the amount of \$255,389.23, together with interest at the rate of nine percent (9%) from May 20, 2003, until paid, plus costs of \$184.00;

2. As a result and in accordance with the order previously entered by the Court, judgment is entered in favor of American Safety and against Ude in the amount of \$255,389.23, together with interest at the rate of nine percent (9%) from May 20, 2003, until paid, plus costs of \$184.00, plus American Safety's attorney's fees and costs in the amount of \$70,894.87.

3. American Safety's Motion in Limine is rendered MOOT by the entry of summary judgment;

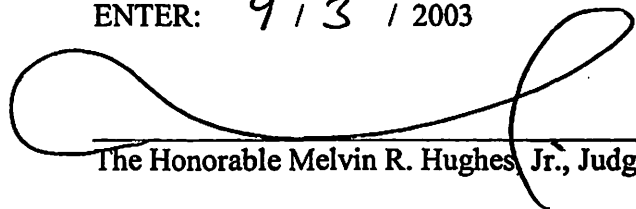
4. American Safety's Motion for Filing of Discovery is GRANTED, and the discovery previously lodged with the Court as Exhibits 1 and 2 to said motion is hereby deemed filed and made a part of the record of this case; and

5. American Safety's Motion to Overrule Objections To Subpoena Duces Tecum served on the Virginia Department of Professional and Occupational Regulation (the "DPOR"), to unseal records (the "DPOR Records") that the DPOR filed with the Court under seal, and to make the DPOR Records a part of the record, is GRANTED, the objections are OVERRULED, and the DPOR Records are, hereby, unsealed and made a part of the record in this matter, subject to a further ORDER of the Court that the DPOR Records shall be used only in this case, kept strictly confidential and not disclosed to any non-party (a person or entity not a party, not a party's legal counsel, or a person or entity not directly involved in this litigation) by any of the parties to this litigation or their counsel, and upon the completion of the captioned litigation, any and all copies of the DPOR Records in the possession of the parties shall be destroyed.

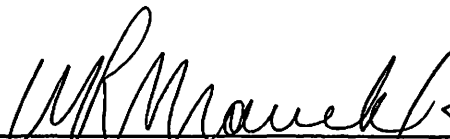
And nothing further remaining to be done, this Order is Final, and the Clerk is directed to remove this action from the docket and place it with the ended matters.

The Clerk shall send an attested copy of this Order to counsel of record.


ENTER: 9 / 3 / 2003


The Honorable Melvin R. Hughes, Jr., Judge

Seen and agreed:


William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

Seen and objected to for the reasons stated in the pleadings, memoranda and at the hearings in this matter: (1) as to the granting of Plaintiff's Motion for Summary Judgment (but agreeing that American Safety has resolved certain claims of subcontractors and vendors to Mitchell in the amount of \$57,110.86, which offset Mitchell's claim); and (2) as to the determination that defendant's Motion in Limine is moot; and (3) as to the basis that the Court made no "Findings" when it enunciated its ruling at the hearing on July 28, 2003.


Elaine R. Jordan (VSB No. 27284)
Randall H. Wintory (VSB No. 43312)
SANDS, ANDERSON, MARKS & MILLER, P.C.
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291
Counsel for American Safety Casualty Insurance Company

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.)

Plaintiff,)

v.)

Civil Case No. LP-937-1

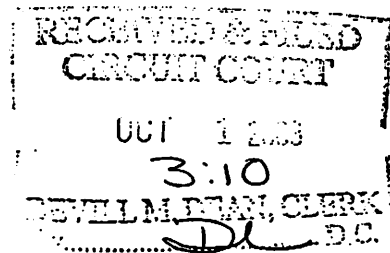
NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*)

Defendants.)

NOTICE OF APPEAL AND FILING OF TRANSCRIPT

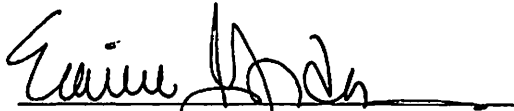
The defendant American Safety Casualty Insurance Company ("American Safety"), by counsel, hereby gives notice as follows:

1. American Safety gives notice of appeal to the *Supreme Court of Virginia*, pursuant to Rule 5:9 of the *Rules of the Supreme Court of Virginia* (the "*Rules of Court*"), from the orders entered by the Court on March 25, 2003, May 20, 2003, and the final order entered on September 3, 2003.
2. American Safety certifies that a transcript was ordered from the court reporter who reported the hearing before the Honorable Melvin R. Hughes, Jr., Judge, held on July 28, 2003 in the above-styled matter, and hereby gives notice that American Safety filed the transcript of this hearing with the Clerk of the Circuit Court for the City of Richmond on the 1st day of October, 2003.
3. American Safety further gives notice that a written statement of facts, testimony, and other incidents of the case may be filed pursuant to Rule 5:11 of the *Rules of Court*.



AMERICAN SAFETY CASUALTY
INSURANCE COMPANY

By Counsel



Elaine R. Jordan, Esquire
S. Vernon Priddy III, Esquire
Randall H. Wintory, Esquire
Sands, Anderson, Marks & Miller, P.C.
801 East Main Street
P. O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636
Fax: (804) 783-7291

CERTIFICATE

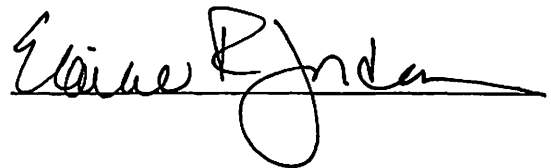
I hereby certify that a copy of this Notice of Appeal was mailed or delivered, on this 1st

day of October, 2003, to:

William R. Mauck, Esquire
E. Livingston B. Haskell,
Williams Mullen
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

Janet C. Williams
2100 College Park Avenue
Ettrick, VA 23803
Former president of Nations Environmental Services, Inc.

Chijioke Ude
1504 Mallicotte Court
Richmond, Virginia 23231
Former vice president of Nations Environmental Services, Inc.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

Plaintiff,)

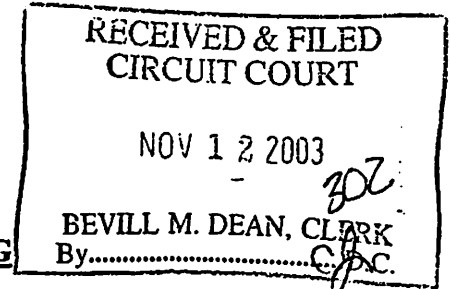
v.)

Civil Case No. LP-937-1

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*,)

Defendants.)

**WRITTEN STATEMENT OF FACTS
REGARDING MARCH 25, 2003 HEARING**



Pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia, defendant American Safety Casualty Insurance Company ("American Safety") and plaintiff C.G. Mitchell Construction, Inc. ("Mitchell") submit the following written statement of facts regarding the hearing held on March 25, 2003 (the "March 25th Hearing") in this case on Mitchell's Amended Motion for Sanctions and/or to Compel (the "Motion to Compel"):

1. Counsel for Mitchell, American Safety and third-party defendant Chijioke Ude ("Ude") appeared at the hearing. No one appeared at the hearing on behalf of defendant Nations Environmental Services, Inc. ("Nations") or third-party defendant Janet C. Williams ("Williams"). No evidence was offered by any of the parties. A court reporter was not present at the hearing and the proceedings were not transcribed.

2. As the moving party, Mitchell, by counsel, represented to the Court that on February 24, 2003, Mitchell had issued a Notice of Rule 4:5(b)(6) Deposition for the deposition

of Nations to be held on March 7, 2003, at 1:00 p.m. (the "Notice"). A copy of the Notice was attached to the Motion to Compel as Exhibit B.

3. Mitchell's counsel represented to the Court that no witness appeared on behalf of Nations on March 7, 2003 at the time and place specified in the Notice. Mitchell's counsel advised the Court that Nations' corporate status had terminated as of December 31, 2002. Mitchell's counsel argued that Mitchell was entitled to take the deposition of Nations pursuant to Rule 4:5(b)(6) regarding the matters set forth in the Notice, and that Nations' failure to appear at the deposition frustrated Mitchell's ability to conduct discovery, make use of a Rule 4:5(b)(6) deposition as provided by the Rules of the Supreme Court of Virginia and otherwise prosecute its case. Mitchell's counsel requested that, pursuant to Rule 4:12, the Court issue an order compelling Nations to appear for a deposition pursuant to Rule 4:5(b)(6).

4. In response to the arguments of Mitchell, Ude's counsel represented to the Court that Ude had resigned as vice-president and director of Nations. Ude's counsel also noted that Nations' corporate status had been terminated and questioned whether Nations was still a proper party to the lawsuit in view of such status. Ude's counsel stated it was his belief that, upon termination of corporate status, Nations' individual officers and/or directors were the proper parties defendant as trustees for Nations. Ude's counsel did not refer the Court to any case law or statutory authority to support this position.

5. American Safety's counsel represented to the Court that Williams had also resigned as president and director of Nations. American Safety's counsel advised the Court that this information had been provided to her by Williams' personal bankruptcy counsel, William R. Baldwin, Esq.

6. American Safety's counsel further represented to the Court that Ude and Williams were the only persons at Nations with personal knowledge of the matters identified in the Notice. American Safety's counsel argued that, although Williams and Ude were no longer officers or directors of Nations, a deposition of the corporation was not necessary as Mitchell could obtain discovery by issuing subpoenas to Williams and Ude and deposing them about their personal knowledge.

7. American Safety's counsel further argued that entry of an order compelling the deposition of Nations pursuant to Rule 4:5(b)(6) was inappropriate given Nations' terminated corporate status, the resignation of Ude and Williams as officers and directors, and her belief that Ude and Williams were subject to subpoena for depositions in their individual capacities. American Safety's counsel did not refer the Court to any case law or statutory authority to support these arguments.

8. On rebuttal, Mitchell's counsel argued that under Virginia law, Nations remained a proper party to the lawsuit despite the termination of its corporate existence. Mitchell's counsel did not refer the Court to any case law or statutory authority to support this argument. Mitchell's counsel further argued that the resignations of Ude and Williams as officers and directors of Nations and the purported availability of Ude and Williams for depositions in their individual capacities did not deprive Mitchell of the right to take the deposition of Nations pursuant to Rule 4:5(b)(6) and to use such deposition for any and all purposes permitted by the Rules of the Supreme Court of Virginia.

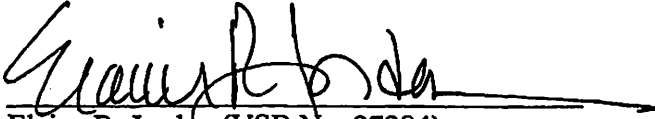
9. At the conclusion of argument, the Court entered its Order dated March 25, 2003.

ENTER:

11 / 14 / 2003


The Honorable Melvin R. Hughes, Jr., Judge

Seen and agreed:



Elaine R. Jordan (VSB No. 27284)

Randall H. Wintory (VSB No. 43312)

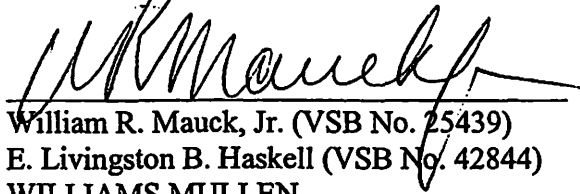
SANDS, ANDERSON, MARKS & MILLER, P.C.

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Tel: (804) 648-1636; Fax: (804) 783-7291

Counsel for American Safety Casualty Insurance Company



William R. Mauck, Jr. (VSB No. 25439)

E. Livingston B. Haskell (VSB No. 42844)

WILLIAMS MULLEN

A Professional Corporation

Two James Center, 11th Floor

1021 East Cary Street

P.O. Box 1320

Richmond, VA 23218

Counsel for C.G. Mitchell Construction, Inc.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,)

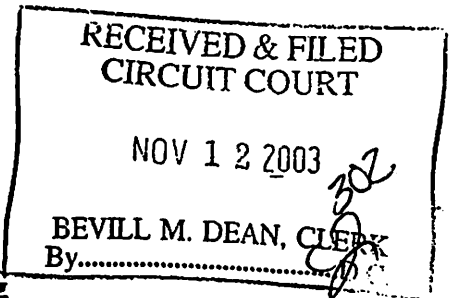
Plaintiff,)

v.)

Civil Case No. LP-937-1

NATIONS ENVIRONMENTAL SERVICES, INC., *et al.*,)

Defendants.)



WRITTEN STATEMENT OF FACTS
REGARDING MAY 20, 2003 HEARING

Pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia, defendant American Safety Casualty Insurance Company ("American Safety") and plaintiff C.G. Mitchell Construction, Inc. ("Mitchell") submit the following written statement of facts regarding the hearing held on May 20, 2003 (the "May 20th Hearing") in this case on Mitchell's Motion for Sanctions (the "Motion for Sanctions"):

1. Counsel for Mitchell, American Safety and third-party defendant Chijioke Ude ("Ude") appeared at the hearing. No one appeared at the hearing on behalf of defendant Nations Environmental Services, Inc. ("Nations") or third-party defendant Janet C. Williams ("Williams"). No evidence was offered by any of the parties. A court reporter was not present at the hearing and the proceedings were not transcribed.

2. As the moving party, Mitchell, by counsel, reminded the Court that, despite proper notice, Nations had failed to appear for a deposition to be taken pursuant to Rule 4:5(b)(6) on March 7, 2003. Counsel for Mitchell further reminded the Court that, by Order entered

March 25, the Court ordered Nations to appear for a deposition within 14 days of the Order.

Mitchell's counsel then represented to the Court that on March 28, 2003, Mitchell had issued a Notice of Rule 4:5(b)(6) Deposition for the deposition of Nations to be held on April 8, 2003, at 9:00 a.m. (the "Second Notice"). A copy of the Second Notice was attached to the Motion for Sanctions as Exhibit C.

3. Mitchell's counsel represented to the Court that no witness appeared on behalf of Nations on April 8, 2003 at the time and place specified in the Second Notice.

4. Mitchell's counsel argued that Mitchell was entitled to take the deposition of Nations pursuant to Rule 4:5(b)(6) regarding the matters set forth in the Second Notice, and that Nations' failure to appear at the deposition violated the Court's Order of March 25, 2003, and frustrated Mitchell's ability to conduct discovery, make use of a Rule 4:5(b)(6) deposition as provided by the rules of court and otherwise prosecute its case.

5. In response to concerns raised by counsel for Ude and American Safety at the hearing held on March 25, 2003 that Nations was no longer a proper party defendant because its corporate status had been terminated, Mitchell's counsel referred the Court to Virginia Code § 13.1-755 and argued that Nations remained a proper party to the suit despite the termination of its corporate existence. Counsel for Mitchell then reviewed the sanctions available to the Court under Rule 4:12 and requested the Court to enter judgment by default against Nations for the liquidated sum sought in the Motion for Judgment.

6. In response to the arguments of Mitchell, Ude's counsel and American Safety's counsel represented to the Court that Ude and Williams were the only persons at Nations with personal knowledge of the matters identified in the Second Notice. Counsel for Ude tendered to the Court copies of correspondence from counsel for Ude to counsel for Mitchell. Copies of

these letters are attached as Exhibit A. Ude's counsel and American Safety's counsel argued that, although Williams and Ude were no longer officers or directors of Nations, a deposition of the corporation was not necessary as Mitchell could obtain discovery by issuing subpoenas to Williams and Ude and deposing them about their personal knowledge. Neither American Safety's counsel nor Ude's counsel referred the Court to any case law or statutory authority to support their contention that Nations was no longer a proper party to this suit or to rebut counsel for Mitchell's argument that Va. Code § 13.1-755 permitted the action to proceed against Nations as a corporation despite termination of its status.

7. Ude's counsel and American Safety's counsel further argued that entry of default judgment against Nations was an inappropriate sanction under the circumstances.

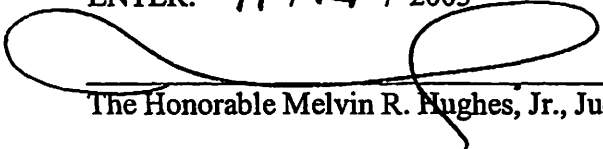
8. American Safety's counsel further argued that entry of default judgment against Nations in the amount sued for by Mitchell was inappropriate because, other than an affidavit attached to its Motion for Judgment, which was denied by Nations in its Grounds of Defense, Mitchell had not presented evidence of its damages claimed against Nations, and there existed genuine issues of material fact as to the amount that Nations owed Mitchell and as to any defenses asserted by Nations in its Grounds of Defense and matters addressed in Nations' answers to Mitchell's interrogatories.

9. On rebuttal, Mitchell's counsel noted that entry of default judgment as a sanction under Rule 4:12 was within the sound discretion of the Court. Mitchell's counsel argued that default judgment was warranted in the case given that the corporation had terminated, its counsel had withdrawn from representation for non-payment of fees, no substitute counsel had appeared and, despite notice to the former officers and directors of Nations and the Court's Order of March 25, 2003, no one had appeared for Nations at the appointed time and date for depositions.

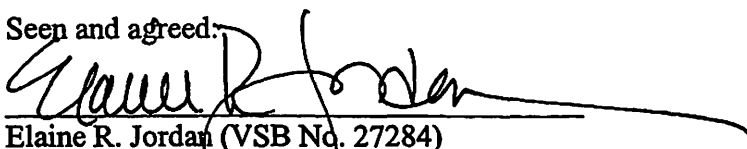
Mitchell's counsel further argued that it was entitled by law to depose the corporation and that the availability of former officers and directors of Nations for depositions in their individual capacities was neither a justification for Nations' failure to appear nor a reason why a sanction in the form of a default judgment was not appropriate. Mitchell's counsel further argued that the amount sued for in the Motion for Judgment was a liquidated sum, verified by affidavit pursuant to Va. Code § 8.01-28, and that the Court therefore need not hear evidence to fix the amount of damages.

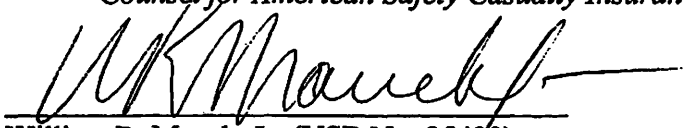
10. After hearing argument from the parties, the Court entered its Order dated May 20, 2003.

ENTER: 11 / 14 / 2003


The Honorable Melvin R. Hughes, Jr., Judge

Seen and agreed:


Elaine R. Jordan (VSB No. 27284)
Randall H. Wintory (VSB No. 43312)
SANDS, ANDERSON, MARKS & MILLER, P.C.
P.O. Box 1998
Richmond, VA 23218-1998
Tel: (804) 648-1636; Fax: (804) 783-7291
Counsel for American Safety Casualty Insurance Company


William R. Mauck, Jr. (VSB No. 25439)
E. Livingston B. Haskell (VSB No. 42844)
WILLIAMS MULLEN
A Professional Corporation
Two James Center, 11th Floor
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218
Counsel for C.G. Mitchell Construction, Inc.

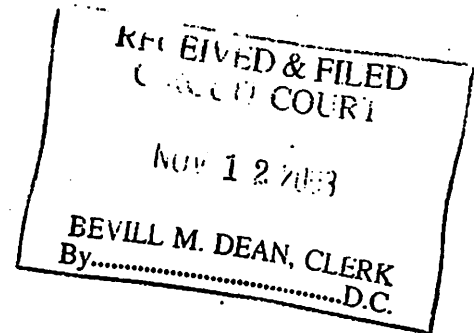
BUTLER WILLIAMS & SKILLING

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February 28, 2003

E. Livingston B. Haskell, Esquire
Williams Mullen
P.O. Box 1320
Richmond, VA 23218



Re: *C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc.,
et al.*
Case No. LP-937-1

Dear Livingston:

This will confirm that Mr. Ude will not be appearing as a corporate designee on behalf of Nations Environmental. As we discussed, Mr. Ude was a minority shareholder and had previously resigned from the corporation. Accordingly, I will not be appearing on March 7, 2003 at 1:00 p.m. for the taking of Nations' deposition.

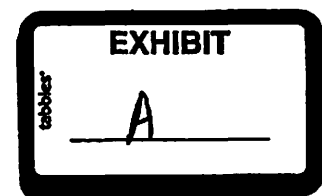
In the event you would like to schedule Mr. Ude's deposition individually, please contact my office for scheduling. Should you have any questions, please do not hesitate to contact me.

Very truly yours,


James C. Skilling

JCS/cch

cc: William R. Baldwin, Esquire
Elaine R. Jordan, Esquire
Mr. Chijioke Ude



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March 3, 2003

E. Livingston B. Haskell, Esquire
Williams Mullen
P.O. Box 1320
Richmond, VA 23218

Re: *C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc.,
et al.*
Case No. LP-937-1

Dear Livingston:

As we discussed, instead of your office serving Mr. Ude with a corporate notice of deposition for Nations Environmental Services, Inc., as counsel of record for him individually, I agreed to accept service of such notice. Enclosed is my Acceptance of Service.

Nevertheless, as we further discussed, Mr. Ude informed me that he resigned as an officer of the company and as its employee prior to this litigation. Furthermore, he was a minority shareholder and never had the authority to act on behalf of the corporation even when he was so employed by it. Finally, Mr. Ude does not have any of the corporate documents or job file for this project. It is my understanding that you have been informed that Janet Williams has the care, custody and control of those documents. Accordingly, Mr. Ude does not have the authority or right to speak on behalf of the corporation or designate anyone else to appear.

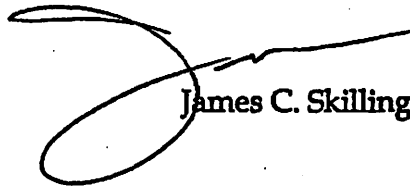
As we specifically discussed, Mr. Ude will not be appearing to testify as a corporate designee pursuant to the notice, which has scheduled the corporate deposition for March 7, 2003 at 1:00 p.m.

E. Livingston B. Haskell, Esquire
March 3, 2003
Page 2

Nevertheless, should you wish to depose Mr. Ude individually or as a fact witness, please let me know and we can schedule that deposition as our schedules will permit.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be "James C. Skilling", written over a horizontal line.

JCS/cch
Enclosure

cc: William R. Baldwin, Esquire (w/encl.)
Elaine R. Jordan, Esquire (w/encl.)
Mr. Chijioke Ude (w/encl.)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

C.G. MITCHELL CONSTRUCTION, INC.,

Plaintiff,

v.

NATIONS ENVIRONMENTAL SERVICES, INC.,
and AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,

Defendants.

Case No. CL02P-937

ACCEPTANCE OF SERVICE

I, James C. Skilling, Esq., attorney and authorized agent for Chijoke Ude, hereby accept service of the Notice of Rule 4:5(b)(6) Deposition issued by C.G. Mitchell Construction, Inc. for the deposition of the corporate designee of Nations Environmental Services, Inc. in the above-styled matter.

DATE: 3.3.03


James C. Skilling, Esq.

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of Richmond to-wit:

Subscribed and sworn to before me, the undersigned Notary Public, this 3rd day of March, 2003.


Notary Public

My commission expires: June 30, 2005.

BUTLER WILLIAMS & SKILLING

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www.buterwilliams.com

March 26, 2003

E. Livingston B. Haskell, Esquire
Williams Mullen
P.O. Box 1320
Richmond, VA 23218

Re: *C.G. Mitchell Construction, Inc. v. Nations Environmental Services, Inc.,
et al.*
Case No. LP-937-1

Dear Livingston:

Since it is now an uncontested fact that Nations Environmental Services, Inc. is dissolved, or to be dissolved, and will not be designating a corporate representative, my presence is not necessary at any of the proposed deposition dates and therefore you may schedule it without regard to my conflicts.

Pursuant to my prior correspondence dated February 28, 2003 and March 3, 2003, this will confirm that Mr. Ude will not be appearing as a corporate designee on behalf of the corporation. Mr. Ude was a minority shareholder and had previously resigned from the corporation. Nevertheless, if you wish to schedule Mr. Ude's deposition individually to ask him about all discoverable knowledge concerning the project, please contact my office for scheduling that particular deposition.

Very truly yours,

James C. Skilling

JCS/ajlo

cc: William R. Baldwin, Esquire
Elaine R. Jordan, Esquire
Mr. Chijioke Ude

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in granting the motion of C.G. Mitchell Construction, Inc. to compel the deposition of the corporate designee of Nations Environmental Services, Inc.
2. The Circuit Court erred in granting the motion of C.G. Mitchell Construction, Inc. for sanctions and entering default judgment against Nations Environmental Services, Inc. for the full amount alleged in the Motion for Judgment.
3. The Circuit Court erred in granting C.G. Mitchell Construction, Inc. summary judgment against American Safety Casualty Insurance Company in the full amount of the default judgment entered against Nations Environmental Services, Inc., subject to a credit for certain monies paid by American Safety.