

# **TO SERVE AND PROTECT: A SURETY'S OBLIGATIONS**

## **Rights and Best Practices When Handling Disputed Claims**

Presented by  
Greg Brown and  
Bennett Acuff



HILL WARD HENDERSON  
ATTORNEYS AT LAW

To Serve and Protect:  
A Surety's Obligations

# Limiting Exposure

- A. Bond language
- B. Investigate claims
- C. Pay in good faith
- D. Cautiously engage in litigation



# Limiting Exposure

**A. First step: include vesting authority in bond language.**

- i. Vest complete discretion with surety**
- ii. Be as broad as possible**



# Limiting Exposure

## A. Include following provisions:

- i. Prima Facie; and
- ii. Right to settle.



# Prima Facie

A. In the event of payments by the Surety, the Principal agrees to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof and of the Principal's liability to the Surety.



# Prima Facie Effect

- A. A prima facie provision shifts the burden of proof onto a principal to prove bad faith.
- B. Increases likelihood of summary judgment.



# Right-to-Settle

- A. Vesting full settlement authority with the surety.
- B. Even if the principal is not liable for the underlying claim.



# Bond Language is not Unfettered

A. Surety is entitled to indemnification only for payments that were made in good faith.



HILL WARD HENDERSON  
ATTORNEYS AT LAW

To Serve and Protect:  
A Surety's Obligations



# Disputed Claims: General Options

- A. Refuse to pay the claim;
- B. Pay and seek indemnification.



# Duty to Investigate

A. Paid claims

B. Unpaid claims



HILL WARD HENDERSON  
ATTORNEYS AT LAW

To Serve and Protect:  
A Surety's Obligations

# Duty to Investigate

- A. Unpaid claims
- B. As long as surety acts reasonably in response to a claim made by its obligee, the surety does not risk bad faith tort liability.



# Duty to Investigate

## A. Paid claims

- i. Payment must be made in good faith.
- ii. Bad faith usually involves fraud or collusion.



HILL WARD HENDERSON  
ATTORNEYS AT LAW

To Serve and Protect:  
A Surety's Obligations

# Investigation

## A. Establish protocol

- i. Evaluate documents supporting claim.
- ii. Solicit principal's opinion.
- iii. Closely examine any objection to payment.
- iv. Provide principal explanation for payment.



# Take Caution

- A. Do not rest on laurels when solvent principal is willing to accept tender of the surety's defense and mounts a defense of its own.
- B. Surety may nonetheless be liable if it fails to reasonably investigate or pay a claim.



**This presentation is made available by Hill Ward Henderson for educational purposes only to provide you general information and a general understanding of the law, it is not intended to provide nor does it constitute legal advice. The presentation should not be used as a substitute for specific legal advice from a licensed professional attorney. Further, the subject matter contained in this presentation is complex and subject to change. Any tax statements in this material are not intended to suggest the avoidance of U.S. federal, state or local tax penalties.**

