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IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, *ex rel.* LESLIE A. NEWMAN in her official capacity as COMMISSIONER OF COMMERCE AND INSURANCE, on behalf of the employees of Norwalk Furniture Corporation of Tennessee (aka Norwalk Wood Products Division) for Tennessee self-insured workers' compensation benefits,	
Petitioner,	**No.** 09-384 III
vs.	
MIDWEST EMPLOYERS CASUALTY COMPANY, A Missouri domiciled insurance company, and NORWALK FURNITURE CORPORATION OF TENNESSEE, A Tennessee domiciled corporation.	
Respondents.	
Re: Bond for Workers' Compensation Self-Insurance of Norwalk Furniture Corporation of Tennessee – for claims incurred January 1, 1992 to July 1, 2007.	

VERIFIED PETITION FOR ORDER REQUIRING BOND COMPANY TO PAY BOND PENALTY SUM AND TO DISCHARGE BOND; FOR ORDER OF ADMINISTRATION OF BOND FUND, AND RELATED INJUNCTIONS AND NOTICES; REQUEST FOR EXPEDITED HEARING; FOR STAY OF WORKERS' COMPENSATION CLAIMS PROCEEDINGS PENDING COURT'S ORDER REGARDING BOND FUND ADMINISTRATION

Leslie A. Newman, in her official capacity as Commissioner of the Tennessee Department of Commerce and Insurance, states the following verified petition to obtain the maximum penalty sum of a bond issued by Midwest Employers Casualty Company, and to administer the bond funds for the use and benefit of the employees of Norwalk Furniture Corporation of Tennessee, the Cookeville employer that self-insured for its workers' compensation liability between January 1, 1992 and July 1, 2007, and that no longer is paying claims and appears unlikely to ever pay claims:

INTRODUCTION

1. This Commissioner's action enforces a statutory bond under Tenn. Code Ann. § 50-6-405(b) in Tennessee workers' compensation law in favor of Tennessee employees because their self-insured employer is failing and unable to pay lawfully owing benefits. The Commissioner brings suit and proposes entry of an Order to require that the Respondent bond company, Midwest Employers Casualty Company, (MWECC) immediately tender to the Commissioner on behalf of the State of Tennessee, the maximum penal sum of the Bond B002TN described in this petition, $500,000.00, securing the outstanding workers' compensation obligations of the principal on the Bond penalty, Respondent employer Norwalk Furniture Corporation of Tennessee ("Norwalk/TN") from its self-insurance period (1992 through June 2007). MWECC is not expected to object to the entry of this order. As of the filing of this Petition, MWECC already has tendered $7,500.00 to the Commissioner out of the Bond to meet certain immediate unpaid expenses. Upon MWECC's payment of the maximum penal sum of the Bond to the Commissioner, applicable law provides that MWECC will be fully and finally released from any further obligation on the bond and its obligations will have been satisfied.

2. The Commissioner's recourse to bond proceeds is required because the employer ran a woodworking factory in Cookeville, Tennessee that employed between 100 and 250 employees over the self-insured period. When the employer's parent company filed for bankruptcy liquidation, the plant closed down and ceased providing such self-insured benefits to its injured employees. The Commissioner finds the employer to be impaired and insolvent, and incapable of paying or administering its own workers' compensation liabilities. These employer liabilities now must be paid or furnished out of the resulting Bond Fund in lieu of the employer, and legal activities must be undertaken to determine those liabilities. The Commissioner seeks

the declaration that these circumstances require payment of the Bond and for this Court to take jurisdiction of the funds. Any and all other actions attempting enforcement against the Bond must be barred.

3. The Commissioner has a preferred plan for administration of the resulting Bond Fund. The Commissioner seeks Court approval and authority to negotiate and present for approval to this Court a transaction for a simple means to administer the Bond Fund, to shift any and all potential obligations of the Bond Fund under the Commissioner, and all recoveries to which it may be entitled under Norwalk/TN's excess policies and subrogation rights as an employer, to an authorized workers' compensation insurer through a loss portfolio transfer to cover all the remaining and outstanding claims of the run-off of Norwalk/TN's self-insured period, by using the proceeds of the Bond. This transaction will allow claims to be handled and fulfilled by the substitute insurance company, and allow resumption of normal workers' compensation procedures and run-off of Norwalk/TN's claims. If that transaction is not approved, the Commissioner will move the Court for an alternative plan of administration, such as long-term receivership or other administrator to be appointed for the Bond Fund. Also, a stay is requested pending the adoption of any plan, to postpone any proceedings or final settlements respecting Norwalk/TN's workers' compensation obligations until the Bond Fund administration is fully operational with the ability to act for, bind and expend the Bond Funds. The Commissioner, pending the approval of any plan, requires continued authority to expend Bond Funds for administration and required temporary disability and ongoing medical care to which workers may be entitled under workers' compensation law.

JURISDICTION AND VENUE

4. The Davidson County Chancery Court has jurisdiction for purposes of enforcing this statutory bond and granting an injunction and affording any equitable relief related to administering the bond held by the Commissioner for purposes of workers' compensation self-insurance in Tennessee. Venue is exclusive to this county for any matter of enforcement of the security for Tennessee workers' compensation self-insurance pursuant to Tenn. Code Ann. § 50-6-405(b)(1)(C).

THE PARTIES

5. The Petitioner is Leslie A. Newman, in her official capacity as the duly appointed Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") and holds the bond which is the subject of this action. The Commissioner has the exclusive right to enforce the bond: "Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the [Commissioner] for the benefit of the employees of the self-insured employer." Tenn. Code Ann. § 50-6-405(b)(1)(A). The Commissioner brings this action under Tenn. Code Ann. § 50-6-405(b)(1) on behalf of the Tennessee employees of Norwalk Furniture Corporation of Tennessee ("Norwalk/TN") who may be entitled to workers' compensation benefits self-insured in Tennessee. Those persons will be enabled by this case to seek recourse against the bond. The Commissioner is responsible under state workers' compensation statutes pertaining to the regulation of employers' workers' compensation insurance to review employers' financial ability to pay workers' compensation obligations and to take security filed by self-insured employers for the benefit of workers' compensation claimants under the provisions of Tenn. Code Ann. § 50-6-405.

6. The Respondent is Midwest Employers Casualty Company ("Bond Company" or "MWECC"), a corporation authorized to issue bonds and insurance policies in Tennessee, and domiciled in Missouri, which issued the bond B002TN for the Tennessee employer attached hereto, Collective Exhibit A, that is to be administered as a result of this action. MWECC has principal offices at 14755 North Outer Forty Drive, Suite 300, Chesterfield, MO 63017, and may be served with any pleadings through its counsel, Thomas L. Sandifer, Claims Attorney at that address.

7. Respondent Norwalk Furniture Corporation of Tennessee ("Norwalk/TN") is a Tennessee corporation with its principal place of business and registered office at 1100 S. Willow Avenue, Cookeville, Tennessee, 38502. It has done business under the name Norwalk Wood Products Division. Its agent for service of process is George Elmer at the registered office address, who is, on information and belief, the president. Respondent Norwalk/TN had been an employer approved to self-insure under Tenn. Code Ann. § 50-6-405 which posted the MWECC bond and is named as a party to this case, for the purpose of declaring its default in fulfilling its workers' compensation self-insured obligations. Under Tennessee rules and law as stated more fully herein, it is an "impaired employer" justifying the State's recourse to the MWECC Bond. Further the parties need certain equitable relief against Norwalk/TN to aid the administration of the Bond, since the bankruptcy of the parent company, according to information to Petitioner from the liquidating trustee, has *not stayed* workers' compensation proceedings concerning Norwalk/TN. Since October 2008, Norwalk/TN has continued to fail to fund its ongoing and outstanding workers' compensation liability and provided no funds to the administrator to pay benefits. The Commissioner has already declared Norwalk/TN to be impaired for failure to pay its claims. (*See*, Exhibit B, Administrative Order, January 27, 2009, of Commissioner). It is

unknown whether Norwalk/TN will participate in this matter, but the order sought by this Petition relies on the fact of default giving rise to the bond liability, to which it may be given this opportunity to respond.

8. Norwalk/TN operated a single plant in Cookeville which has been shut down. Norwalk/TN is a subsidiary of Norwalk Furniture Corporation (NFC), which commenced a bankruptcy no-asset liquidation proceeding in October 3, 2008, in the United States Bankruptcy Court for the Northern District of Ohio, *In re: Norwalk Furniture Corporation*, Chapter 7, Case No. 08-35222. Counsel for the Commissioner contacted the trustee's counsel for NFC, Louis Yoppolo, who has stated that liquidation proceedings of the parent company do not encompass Norwalk/TN, and that the automatic stay does not apply to Norwalk/TN or protect proceedings as to the bond for Norwalk/TN. The NFC trustee has no objection to the initiation of this bond case, nor any request to be given copies of pleadings, as the subsidiary is not part of that proceeding. But, no assets appear to remain available, and no funds have been provided for claims payment or resolution. Norwalk/TN's third-party administrator, Brentwood Services Administrators, Inc., was previously retained to administer run-off of the self-insured claims since July 1, 2007, but has been denied any funds for actual benefits by Norwalk/TN since the bankruptcy filing of the parent company.

9. While potentially more employees may become interested or require recourse to the Bond Funds, the employees of Norwalk/TN with active open claims, four (4) of them, shall be mailed copies of these initial pleadings. Two claimants had scheduled trials in late February for their workers' compensation matter, but defense counsel for Norwalk/TN reportedly informed their counsel and believed that the bankruptcy stayed the proceedings. All these counsel shall receive notice. These individuals are not necessary to obtain initial access to the bond, but the

purpose of the notice is to inform them of activities to empower replacement coverage of their claims, to impose temporary stays of any proceedings to ensure the integrity of the Bond Fund administration, and to describe the status of this matter to them. It is contemplated that later orders in this case will specify any notices or publication required to announce the Bond Fund administration to persons who had prior workers' compensation awards or closed cases. To the extent the Bond can only be enforced by the Commissioner, such employees cannot be permitted to use competing means of seeking coverage against the Bond, but should follow the Court's prescribed claims procedure.

TENNESSEE WORKERS' COMPENSATION INSURANCE STATUTE AND DESCRIPTION OF BOND FILED BY SELF-INSURED EMPLOYER

10. Under Tennessee's workers' compensation insurance statute, these circumstances justify the Commissioner obtaining possession of the Bond Funds to enable them to be expended for the intended beneficiaries through this action. Tenn. Code Ann. § 50-6-405 permits only the Commissioner to bring a lawsuit in the name of the employees of Norwalk/TN to enforce their worker's compensation claims directly against the security when their employer is not paying covered claims. The Commissioner is the nominal holder and obligee of the security in favor of the State of Tennessee. Stays or injunctions will be sought against independent recourse to Norwalk/TN for workers' compensation benefits taken without the Bond Fund's involvement, so as to remove the uncertainty and exposure to harm created by nominally active workers' compensation claims being unable to be properly defended or dealt with by Norwalk/TN.

11. Respondent MWECC's Bond was filed by Norwalk/TN with the Department to satisfy the Commissioner under statutory conditions imposed by Tenn. Code Ann. § 50-6-405(a)(2) and (b)(1), which enabled Norwalk/TN to self-insure for its workers' compensation

liability in Tennessee after having demonstrated financial ability to pay all its claims. Tenn. Code Ann. § 50-6-405 states in relevant part:

> (a) Every employer under and affected by the Workers' Compensation Law shall:
> (1) [Insure]. . .; or
> (2) Possess a valid certificate of authority from the [Commissioner] by furnishing satisfactory proof of such employer's financial ability to pay all claims that may arise against such employer under [Tenn. Code Ann. title 50, chapter 6] and guarantee the payment of the claims in the amount and manner and when due as provided for in this chapter.
>
> (b) If the employer elects to proceed under subdivision (a)(2), the [Commissioner] shall . . . require the applicant to file and maintain with the department of commerce and insurance the following:
> (1) *Security, in an amount to be determined by the [Commissioner],* but not less than five hundred thousand dollars ($500,000), in any of the following forms, as specified herein: negotiable securities*; a surety bond*; a certificate of deposit; or a letter of credit.
> (A) The security, or a contract between the self-insured employer, a depository institution and the [Commissioner] evidencing the security held in the depository institution for purposes of compliance with this section, *shall be held by the [Commissioner] and shall be conditioned to run solely and directly for the benefit of the employees of the self-insured employer. Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the [Commissioner] for the benefit of the employees of the self-insured employer.*
> (B) *The security held pursuant to this section may be used for the payment of any and all fees or costs required to administer the disbursement of the proceeds to or for the benefit of the employees.*
> (C) The venue for any suit filed by the [Commissioner] under this provision shall be in Davidson County.
> * * *

(Emphasis added).

12. Norwalk/TN was permitted by the Commissioner to furnish proof of its financial ability to pay all claims that might arise against the employer under Tenn. Code Ann. § 50-6-101 *et. seq.* and to guarantee the payment of the claims in the amount, manner and when due as provided in that chapter. Norwalk/TN satisfied the requirement under Tenn. Code Ann. § 50-6-405(b)(1) of securities or bond by providing bond that was effective for the period of self-

insurance. The Commissioner holds a Midwest Employers Casualty Company Bond, together with the applicable riders, filed by Norwalk/TN, as Principal, obligating MWECC up to a maximum penalty sum of $500,000.00, to cover the entire period of Norwalk/TN's self-insurance in this state, effective January 1, 1992 through June 30, 2007. The Bond # is identified as B002TN with riders that both raised and lowered the bond penalty sum over the period, such that it is currently set at $500,000 pursuant to a rider executed after Norwalk/TN ceased being self-insured. (Hereinafter "MWECC Bond", See Collective Exhibit A attached hereto, and incorporated by this reference.)

13. As of July 1, 2007, Norwalk/TN became fully insured through a licensed insurance company for workers' compensation (Wausau) (see Letter as Exhibit, A-2, dated July 11, 2007 from Norwalk/TN to the Department), so that the self-insured period covered by the Bond would only run for injuries incurred through June 30, 2007. MWECC further gave notice of cancellation of the bond, which puts an end to the effective period of the MWECC Bond coverage, even had Norwalk/TN not purchased insurance. This suit and the terms of the order requested, are intended to specify the scope of MWECC's obligation under the MWECC Bond, and conclude that obligation once MWECC pays the entire sum to the Commissioner, which will exonerate it from further liability on the bond, and in this case, provide a framework for employees' benefits secured by the bond to be paid or determined.

14. The MWECC Bond, on the form required by the Commissioner, states that it is a:

> . . .direct obligation by the principal and surety herein either jointly or severally, to the person who may be entitled to such sum for medical, surgical and other services, funeral expenses or compensation and may be sued upon and enforced in the name or names of such person or persons.

The Bond under the statute is a continuous bond until cancelled at the prescribed period after notice to the Commissioner. The Commissioner, only, may sue to enforce the bond for the

benefit of the employees, which helps to ensure an orderly, definitive, process to trigger resort to the bond.

15. The MWECC Bond liability for benefits and administration costs is capped at $500,000.00 (Five Hundred Thousand Dollars). "The surety shall be liable, within the penal sum mentioned, for the default of the principal in fully discharging any liability on its part accruing during the life of this obligation." Thus, the Bond in effect is discharging liability of the employer, and stands in the shoes of the employer to that extent. In such bonds required by the Commissioner and Tenn. Code Ann. § 50-6-405, the wording of the required bond makes the surety liable up to the maximum penal sum expressed on the face of the bond, for obligations arising out of injuries or deaths of employees which occurred during period of time covered by surety bond. *State of Tennessee, ex rel. Pope vs. United States Fire Insurance Company et al.*, 145 S.W.3d 529 (Tenn. 2004). Thus the Commissioner prays (and Respondent MWECC is expected to agree) this Court should enter an Order declaring that the total liability upon the MWECC Bond may not exceed $500,000.00, the maximum penalty sum under the last rider executed after Norwalk/TN had ceased being self-insured and had presented information to the Commissioner regarding its outstanding liabilities. This is warranted under the bond language, the history of all the riders, and the statutory law.

16. Under this Court's supervision, MWECC's Bond proceeds are available to furnish workers' compensation benefits and the expense of administering those claims to provide proper benefits to entitled employees of Norwalk Furniture Corporation of Tennessee, covering the employer's period of self-insurance on and after January 1, 1992 through June 30, 2007 (i.e. to July 1, 2007 at 12:01 a.m.), to meet its obligation under the Bond posted with the Commissioner. The Commissioner seeks a declaration that Norwalk/TN of Cookeville, Tennessee, has defaulted

in its workers' compensation payments so as to require the Commissioner's access to the MWECC Bond. Norwalk/TN is identified as a Respondent, but it is unknown whether they will or can appear. The Commissioner's access to the Bond is appropriate under these conditions whether or not Norwalk/TN participates. As stated, the Commissioner has been informed that no automatic stay of the Bankruptcy Code applies to actions against Norwalk/TN, but certain employee claimants have been given contrary information from Norwalk/TN's defense counsel. When a defaulting self-insured employer is not amenable to suit, the Commissioner proceeds only against the bond company based on the default.

17. Pursuant to Rules adopted by the Commissioner under the workers' compensation insurance statute, the Commissioner has determined that Norwalk/TN is an impaired employer, causing her to make demand for the Bond and trigger the need of setting up an account for the administration of Norwalk/TN's workers' compensation obligations from the self-insured period.

Under Rule 0780-01-83-.15, entitled Impaired Employers,

> If an Employer has become an Impaired Employer as determined by the Commissioner, the Commissioner shall protect the Employees of such Employer by promptly:
> (1) Calling the security deposit and placing the funds in an account identifying the Impaired Employer; and
> (2) Begin paying benefits out of the Impaired Employer's account under the authority of this Rule or as directed by the court that takes jurisdiction of the funds under applicable law.

Under Department Rule 0780-01-83-.02(08), an "Impaired Employer":

> ...means an Employer: (a) Whose liabilities exceed the value of its assets and/*or that has stopped paying debts in the ordinary course of business* or is unable to pay them as its debts fall due, as may be shown by an excess of the Employer's required reserves and other liabilities over its assets; (b) *Who has suspended payment of workers' compensation benefits as determined by the Commissioner*; (c) Who has filed for relief under bankruptcy laws; (d) Against whom bankruptcy proceedings have been filed; or (e) For whom a receiver has been appointed by a court of this state.

(Emphasis added). Norwalk/TN has suspended payment of worker's compensation benefits, as determined by the Commissioner, its parent company being in bankruptcy, it has ceased operations and apparently liquidated its assets, it has stopped paying debts in the ordinary course of business or is unable to pay them as its debts fall due. Thus Norwalk/TN is an impaired employer within the meaning of the rule requiring the Commissioner to establish an account with the Bond for payment of benefits. The Rule also contemplates that a Court taking jurisdiction of the funds may direct expenditures from the account.

COUNT I

DECLARATION OF DEFAULT BY NORWALK/TN, OF BOND COMPANY'S BOND LIABILITY AND ORDER FOR MWECC TO PAY THE PENALTY SUM

18. The foregoing paragraphs 1 through 17 are incorporated by this reference. The Court's equitable powers are invoked to assure that Bond funds are turned over to the Commissioner through this action and not sought by any party or person through any other case. They shall be administered in this action for their statutory purpose. The Bond is a direct obligation by the Bond Company to the persons who may be entitled to such sums for medical, surgical and other services, funeral expenses or compensation; but the Bond may be sued upon and enforced in the name or names of such person or persons *by the Commissioner alone*. To avoid confusion over their legal remedies, and conflicting suits and judgments regarding the Bond under Tenn. Code Ann. § 50-6-405, the Commissioner files this single equitable proceeding to establish Bond liability and the court-supervised administration of the Bond proceeds.

19. Due to Norwalk/TN's effective liquidation, closure and cessation of workers' compensation payments to its claims administrator for the self insured period in or around October 11, 2008, Norwalk/TN reasonably appears unable to fulfill any of the financial and

administrative obligations that Tennessee's workers' compensation law places on employers. Pursuant to statute and the bond, the bond is now payable upon the default of the employer to accomplish those same purposes for the benefit of the employees.

20. The Court is asked to declare a default by the employer Respondent Norwalk/TN, giving rise to Bond liability on the Respondent's MWECC Bond, and to declare that MWECC is liable to make payment to the Commissioner for the benefits and administration of benefits up to the penal sum of its Bond within the coverage period of that bond, pursuant to Tenn. Code Ann. § 50-6-405(b).

21. The Court is asked to declare, as to Respondent MWECC, that Respondent MWECC, upon paying the maximum penal sum of its bond to the Commissioner, in the amount of $500,000.00 in accordance with its MWECC Bond, should be released and fully discharged from any further liability upon the MWECC Bond. The Court should declare, because of the bond coverage period reflected including the date of Norwalk/TN obtaining insurance coverage (at which point that insurer should be liable), that MWECC proceeds are only available for Tennessee claims incurred (dates of injury) during the Self-Insurance Period, from January 1, 1992 to July 1, 2007 at 12:01 a.m.

22. The Commissioner requests that MWECC be ordered to immediately turn over the penal sum of the MWECC Bond to the Commissioner of Commerce and Insurance, $500,000.00 (including any amounts already paid to the Commissioner) to be deposited at interest for the use of and pending the outcome of the claims administration as ordered by this case.

23. The Commissioner is informed and believes based on currently available information submitted by Norwalk/TN's claims administrator, that there are four active claims

involving injury dates within the effective dates of the bonds, and that there are open and closed claims representing liability or potential liability within all of the bond coverage period represented by the MWECC Bond. The outstanding liability to such claimants as well as to others is unknown, but is estimated to be within the penal sum of the bond based on estimates currently available from the Norwalk/TN third party administrator, Brentwood Services Administrators, Inc. Therefore, due to the immediate need for money to be available and to provide services to the valid workers' compensation claimants against Norwalk/TN, including payment to its administrators and medical providers to such claimants, and to explore possible beneficial transactions for coverage of the employees, the Commissioner requests the order for the entire penal sum to be paid.

24. Injunctions are appropriate to unify the procedures against a common fund. For the purpose of administering and distributing the assets of a corporation so as to do justice to all the parties, one chancery court may enjoin the prosecution of separate suits in that court or other chancery courts, and draw all the litigation into one case, so that it may be conducted as an insolvency proceeding. *Smith v. St. Louis Mut. Life Ins. Co.*, 3 Tenn. Ch. 502 (1877); *Baxter v. Nashville & Hillsboro Tpk. Co.*, 78 Tenn. 488 (1882); *Voightman & Co. v. Southern Ry.*, 123 Tenn. 452, 131 S.W. 982, 1912C Ann. Cas. 211 (1910); *Adams v. Chattanooga Co.*, 128 Tenn. 505, 161 S.W. 1131 (1913). Here, depending on the form of the administration adopted, the Davidson Chancery Court does not need to draw in all the compensation claims to be adjudicated under this captioned case, but the Court will retain authority to supervise the enforcement of the Bond and to enter appropriate orders in future should the need appear. The requested order will provide that procedures authorized under this administration of the bond will be the **sole and exclusive source** to claimants for enforcement of the MWECC Bond that was filed with the

Commissioner. All claims concerning the Bond and the State shall *only* be made on the MWECC Bond to the extent provided in this proceeding, and other types of suits and proceedings are barred or of no effect.

25. As a necessary corollary to the Commissioner's sole standing to bring this action, the Court should protect the Court's jurisdiction over the Bond Fund, and grant injunctions and recognize the bar against any other legal action outside this case, to enforce or otherwise seek recourse against the Bond, which could irreparably harm the Bond Fund and its intended sufficiency to pay claims which are preserved by the orderly consideration and authorized defense of the claims that may be necessary, given the incapacity of the employer to act or make payments.

COUNT II

FOR ORDER OF ADMINISTRATION OF BOND FUND; ORDER FOR COMMISSIONER TO ADMINISTER FUND BY EFFECTUATING A LOSS PORTFOLIO TRANSFER OF BOND FUND RIGHTS AND POTENTIAL LIABILITIES TO AUTHORIZED INSURER

26. The Commissioner realleges and incorporates by this reference, paragraphs 1 through 25, above. Presuming receipt of the Bond Proceeds, the Commissioner seeks an immediate Order from this Court to declare that the resulting monies, termed the Bond Fund, shall be administered for its statutory purposes. The Commissioner seeks power to expend the Bond Fund when received by her for immediately necessary required disability and medical payments for valid workers' compensation claims, and further the authority to propose a comprehensive plan for dealing with all the claims that could be validly made against the Bond Fund. The Commissioner requires cooperation of Norwalk/TN's existing third party administrator (and has had such cooperation already pursuant to the administrative order) to

obtain access to the information and records respecting workers' compensation claims of the self-insured period.

27. In anticipation of receiving the Bond Fund, the Commissioner already has a preferred plan to deal with all valid claims, and provide for their future handling with the Bond Fund. If approved, this transaction should forestall or greatly reduce the need for ongoing supervision by this Court after an initial order. The Commissioner as administrator of the Bond Fund proposes to negotiate for insurance coverage through a transfer of the Bond Fund's liabilities and rights in the hands of the Commissioner to an authorized insurer, and the Commissioner would pursue that plan because it vastly simplifies the administration. It will assist such an order that the Court confirm that the Bond Fund succeeds to all the rights that the employer Norwalk/TN would have to subrogation recoveries on amounts that it pays or paid, to the same position with respect to the Tennessee Second Injury Fund, if applicable to a claim, and to recover any excess insurance for the benefit of the employees for high-cost claims that Norwalk/TN purchased for liabilities.

28. Under the wording of the MWECC Bond, the Bond obligation arises and is coextensive to the degree the principal, Norwalk/TN, is not meeting any of its workers' compensation obligations under Title 50, chapter 6. The employer was liable for all workers' compensation benefits, but the Rules of the Department and statutory scheme require a self-insured employer to obtain and maintain excess insurance, which Norwalk/TN certified to the Department (See renewal application, Exhibit A-3). The MWECC Bond amount, and indeed the employer's right to self-insure, relies on such excess insurance and the various rights of the employer to be reimbursed from the excess insurance. The Bond cannot have obligations greater than those of the employer it was securing, in that it is effective to the extent the employer has

failed in its workers' compensation obligations. Hence, the Bond Fund should recover any amounts and seek insurance coverage for any amounts that would have been covered while the employer was acting on its own.

29. Norwalk/TN had excess policies, also issued by Midwest Employers Casualty Company, insuring Norwalk/TN's obligations over certain attachment levels. These should be available to the Commissioner or any administrator of the resulting fund for reimbursement of any payments made out of the bond fund in excess of those attachment points. To be permitted to self-insure in Tennessee, such employers must purchase policies for high-cost and catastrophic levels of claims. The excess or stop loss policies are available to provide that layer of coverage if necessary in the instance of the Commissioner's recourse to the security for an impaired employer. Regarding access to excess policies: Rule 0780-01-83-.06, of the Department of Commerce and Insurance's Rules on Self-Insured Workers' Compensation Single Employers, requires that the Commissioner be allowed to assume the rights and responsibilities of the Employer, here Norwalk/TN, under any excess policy in the event of the insolvency of the Employer. Also, the benefits which are paid on behalf of the Employer by any form of security, i.e. such as out of the Bond Proceeds here, must be applied toward reaching the retention amount just like payments made by the Employer. The rules require of an excess policy that it contain:

> 3. *A provision allowing the Commissioner to assume the rights and responsibilities of the Employer under the policy in the event of the insolvency of the Employer*; and
> 4. A provision requiring all of the following benefits to which an injured Employee is entitled to be applied toward reaching the retention amount:
> (i) Payments made by the Employer;
> (ii) Payments due and owing by the Employer; and
> (ii) *Payments made on behalf of the Employer by any form of security as required by this Chapter*.

Rule 0780-1-83-.06. These provisions ensure that when a bond or other security posted by the Employer must be tapped by the Commissioner, the Commissioner has full rights to access the excess policy which has been obtained by the employer for the outsize claims and above any retention amount of the employer. The Commissioner must be able to access the policy, as well as any other recoveries and offsets to which an employer is entitled, or the Bond amount set is much more likely to be inadequate. Given the insolvency of the employer, it would be contrary to the Rule and public policy for the Commissioner to be unable at such a point of need to access the stop-loss insurance coverage which is the condition precedent to the employer's security or bond level.

30. Thus, the Commissioner requests the order that the Bond Fund and anyone administering proceeds of the Bond or as successor to the Bond shall access any third party recoveries to which an insurer or employer would be entitled in cases where such insurer/employer makes payments and a third party is liable to reimburse the insurer/employer. Moreover, Norwalk/TN obtained excess policies that would insure, through an authorized insurer, benefits furnished above certain retention levels. The Bond Fund, or any Loss Portfolio Transferee of the Commissioner's Bond Fund, must also be able to exercise these same rights.

31. Proposed Plan of Administration of Bond Fund – The Commissioner proposes this Court grant her the power, as Administrator of the Bond Fund, to negotiate to effectuate a Loss Portfolio Transfer transaction by which a sum certain paid out of the Bond Fund will obtain coverage from an authorized workers' compensation insurance carrier in Tennessee able to assume the risk of covering all the claims that may arise from the employer's self-insurance period, *whether or not all the claims could be satisfied by the penalty sum of the Bond.* The

Commissioner will move the Court to approve any such transaction as soon as negotiations are concluded and a definitive agreement can be presented to the Court.

32. A Loss Portfolio Transfer, to be effectuated by the Commissioner upon approval by this Court, would present the most simple resolution of the outstanding and future liabilities and statutory obligations for workers' compensation benefits arising from Norwalk/TN's long period of self-insurance in Tennessee. An LPT would eliminate certain other possible forms of administration of the Bond Fund, such as this Court's possible need to establish any bar date, to monitor the claims payments over the coming years against the balance remaining in the Bond Fund, or to set up any other form of long-term administration. It can eliminate the requirement of appointing a qualified person to administer the Bond Fund and handle legal, fiduciary and operational aspects of such administration. An LPT transaction also is most consistent with Workers' Compensation Law in that it avoids the necessity of establishing a specific bar date for filing of claims related to the Bond Fund (which is in addition to any claims procedures required by workers' compensation law), and allows the workers' compensation claimants to proceed as they would under the workers' compensation laws. An LPT protects the workers better than a Bond Fund alone, because it avoids the monetary cap which the Bond penalty sum has been held to impose on the total workers' compensation claims and administrative expenses that may be paid.

33. Alternative Plan if Rejection of LPT: If the Commissioner is not permitted to pursue an LPT, she will need to immediately consider a successor administrator or receiver, which the Commissioner may seek out and the Court would appoint, who could be competent fiduciary to administer and represent the Bond Fund for purposes of determining the claims and services that must be paid out of the Bond Fund. The Commissioner is not yet ready to make

such a recommendation. The Commissioner begs leave to move this Court to establish the exact terms of a plan of Administration or Receivership and to prescribe any plan for administration only if necessitated by a rejection of the LPT transaction, or if a LPT is not viable.

34. As stated, the temporary orders upon the Commissioner's receipt of the Bond Fund, shall grant the Commissioner the immediate power to administer the Bond funds, and to expend them for any temporary benefits or disability payments and necessary expenses of administering the benefits, pending further order of the Court. It is anticipated that the Commissioner would bring a motion within a month of the initial order, to specify the permanent plan of administration.

35. Because the Bond held pursuant to Tenn. Code Ann. § 50-6-405(b) may be used for the payment of any and all fees or costs required to administer the disbursement of the proceeds to or for the benefit of the employees, the Bond Fund will pay all expenses of the administration and benefits, and costs of appointing a receiver if needed. The legal, accounting, and operational duties on behalf of the Bond Fund require expertise in workers' compensation law in addition to skills with working with a limited fund and multiple claims on that fund.

36. Although Norwalk/TN had hired the services of a third-party administrator, Brentwood Services Administrators, Inc., (BSAI) to deal with all the administration of the self-insured period claims, Norwalk ceased funding the payment of claims. Because of BSAI's familiarity with the Norwalk/TN claims and maintenance of the claims files, the fact that Norwalk paid them in advance for all run-out claims administration, as well as their willingness to remain in this role, the Commissioner intends to retain their services for any claims administration services required from now on as this appears most economical and efficient. The Commissioner has already retained them for purposes of establishing an account from which

immediate workers' medical payments and benefits can be paid. If the LPT is consummated, the role as third party administrator will be chosen by the transferee insurance company.

37. Posture of Claims: The four open claims as of October display a mixture of circumstances. The four open claims at least are expected to require payment out of the Bond for resolution and/or benefits, and/or for legal defense. Many more closed claims exist, that would include individuals who incurred compensable injuries during the Norwalk/TN self insurance period who may be entitled to some form of workers' compensation payment in future. Two of the open claim matters were set for trial, for the claims of Darrell Denney and Clarence Grider, as appear in the service list hereto, and their counsel had been informed that a bankruptcy stay was in effect against them. The employees with open claims are receiving copies of this petition. Their claims cannot proceed appropriately while Norwalk/TN is impaired, and while no one has the power to defend the claim properly or to represent the Bond Fund. Brentwood Services Administrators, Inc., having acted as third party administrator for the duration of Norwalk/TN's self-insurance, will serve in any event as a point of contact for claims, who can inform persons who contact them about any information related to the changed circumstance due to the Bond Fund administration. A few listed open claims actually represented prior judgments against Norwalk/TN in which future medical treatment was awarded. Most of the open claims are ready to approach settlement or a litigated resolution once the Bond Fund, or Bond Fund LPT transferee, is empowered to act. Over the self-insured period, Norwalk/TN closed numerous past claims, which likely would remain inactive, though workers' compensation law creates a potential for certain awards to be reopened. Norwalk/TN's files and electronic databases from its Third-Party Administrator BSAI are still in possession of BSAI.

38. Notice: With this Petition, the Commissioner will cause notice to be given to immediately affected employees with active open claims against Norwalk/TN of the filing of this case, and of subsequent orders affecting them, such as those describing the administration and payment of the workers' compensation benefits under the Bond. With respect to Norwalk/TN's many closed claims, and old files, the Commissioner recommends that once the plan of administration is approved there should be a publication notice in the Cookeville/Putnam County vicinity regarding the existence of the bond administration, to instruct how further workers' compensation administration shall be handled. Also, orders shall be placed on the Department of Commerce and Insurance website for the Insurance Division.

39. Any orders sought here will be flexible enough to permit the Commissioner or the designated administrator of the Bond Fund to obtain further instructions or file motions to govern this proceeding.

40. **Temporary and Emergency Payment Authority Regarding Ongoing Medical Expense and TTD (Temporary Total Disability) or periodic Disability Payments** — Based on the activities and contacts received from employees since Norwalk/TN stopped authorizing treatment or paying claims, the Commissioner alleges that temporary benefits should be authorized upon review by the Commissioner or her designee or claims administrator for appropriateness, as a temporary order of this Court, until modified by this Court. The Commissioner has taken limited administrative action under her order-issuing power under Tenn. Code Ann. § 50-6-405(h) to administer some funds of the bond proceeds that were received by her to continue ongoing benefits or authorize services until any order is entered by this Court taking jurisdiction of the bonds. On the Order Setting Hearing of this Petition proposed, the Commissioner requests **emergency authority** pending the hearing for such payments as well.

The Court is asked to order the use of the bond proceeds for such temporary medical and disability benefits and pertinent administrative costs. Such temporary payments shall be reported to the Court, and reports may seek further instructions or alteration of the authority should it appear warranted.

41. **Expedited Entry of Order.** There is no reason to delay the payment over of the bond proceeds to the Commissioner for safekeeping in an account or accounts by her, such as the LGIP, and any checking account, such as that being established by her through the third party administrator familiar with the claims, which may be used by the Commissioner to pay workers' compensation benefits and expenses, to formalize the bond administration.

WHEREFORE THE PETITIONER PRAYS FOR THE FOLLOWING RELIEF:

A. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 20-13-101.

B. That this Court immediately set a date and time for hearing pursuant to the proposed Order Setting Hearing filed herewith (copy attached hereto), with continued emergency spending authority to the Commissioner for any amounts of the MWECC Bond possessed by her for immediate and previously ordered medical treatment and disability payments, and a stay of actions, that will promptly consider whether to grant this Petition and Injunctive Relief, with sufficient time for mailing notice and serving the petition and hearing order on the Respondent and certain employees and their counsel with open claims as reported to the Commissioner by Norwalk/TN's administrator. (*See* Service list)

C. That this court declare that a default by Norwalk/TN, the employer, has occurred giving rise to Bond liability on the MWECC Bond B0002TN attached to this Petition, and establish that Respondent MWECC is liable to make payment to the Commissioner for the

benefits and administration of benefits up to the penal sum of the MWECC Bond, payable to the Commissioner pursuant to Tenn. Code Ann. § 50-6-405(b).

D. That this Court declare that Bond Company Respondent MWECC has not yet paid the penal sum of its bond to the State, in the amount of $500,000.00 and declare that MWECC upon such payment to the Commissioner of amounts totalling $500,000.00 will be accordingly released and fully discharged from any further liability upon the MWECC Bond.

E. That this Court declare that MWECC Bond proceeds and the resulting Bond Fund shall only be available for the administration and provision of benefits under workers' compensation law for Norwalk/TN's Tennessee self-insured claims incurred (by dates of injury) during the period from January 1, 1992 (12:01 a.m.) to July 1, 2007 (12:01 a.m.) when Norwalk/TN obtained workers' compensation insurance coverage.

F. That this Court order MWECC to immediately turn over the penal sum $500,000.00 of the MWECC Bond (less any dollar amounts previously paid to the Commissioner under the administrative order) to the Commissioner of Commerce and Insurance, to be deposited at interest for the use of and pending the outcome of the claims administration in this case, which shall be the "Bond Fund." Upon MWECC's payment of the maximum penal sum of the Bond as stated herein, the Commissioner shall report the payment to this Court, and shall execute and deliver to MWECC a release of the Bond citing this Order.

G. That this Court order that the Bond Fund and anyone administering proceeds of the Bond or as successor to the Bond, succeeds to all the rights that the employer Norwalk/TN would have to recover on any specific or aggregate excess insurance policies obtained by Norwalk/TN for the benefit of the employees covering high-cost claims and losses, to third-party and subrogation recoveries on amounts that it pays or paid, and to claim the same position as

Norwalk/TN with respect to the Tennessee Second Injury Fund, if applicable to a claim. The Bond Fund and anyone administering proceeds of the Bond or as successor to the Bond shall access any such third party recoveries to which an insurer or employer would be entitled in cases where such insurer/employer makes payments and a third party is liable to reimburse the insurer/employer.

H. **Injunction.** That this Court order that the covered employees and any other individuals or entities who do or could make claim on the Bond Funds, who receive notice of the Order, be restrained and permanently enjoined from instituting any action, levy, attachment, or proceeding with any pending action, against the State, the Commissioner, Norwalk/TN, MWECC or the Bond Funds seeking satisfaction of their claims in any way against the Bond Funds, except as such claims are allowed in this proceeding in accordance with this order or any subsequent order of this Court. The procedures authorized under this administration of the bond will be the **sole and exclusive source** to claimants for enforcement of the MWECC Bond that was filed with the Commissioner.

I. That Norwalk/TN, its agents, officers, or other persons, acting for it, be restrained and enjoined from purporting to bind itself to any judgments or settlements and from taking any actions with respect to its workers' compensation liabilities which may harm the administration of the Bond Fund in this case. Norwalk/TN, its agents, officers, or other persons acting for it, shall provide the Commissioner and any successor administering the Bond Fund notice of any activities or events or legal actions of which they become aware that may affect its workers' compensation obligations.

J. Cooperation. That the Court order any administrators for Norwalk/TN, its attorneys and any attorneys representing injured workers and the workers themselves to fully

cooperate with the Commissioner and the Bond Fund in all respects, including turning over or furnishing requested records, including workers' compensation activities and medical records, that are necessary to assist the administration of the Bond Fund.

K. That the Court immediately authorize the Commissioner as Administrator of the Bond Fund to use Bond Fund proceeds turned over to continue furnishing and administering temporary medical and ongoing disability benefits due to employees pending consummation of any Plan of Administration.

L. That this Court approve as an initial Plan of Administration, the immediate use and administration of Bond Fund, by which the Commissioner is empowered to negotiate for a Loss Portfolio Transfer of the Bond Funds liabilities and rights, and to present by Motion any LPT for which she seeks approval, together with such orders of administration as should accompany the approval of this transaction.

M. That if such Loss Portfolio Transfer is not approved, alternatively, that this Court permit the Commissioner to file and move the court for a full plan of administration of the Bond Fund within a period to be determined, so as to propose an administrator, or receiver, and any other terms necessary to assist the orderly administration.

N. That summons be issued to Respondents; and

O. For the award of any and all further, general and equitable relief to which the State may be entitled.

THIS IS THE FIRST REQUEST FOR EXTRAORDINARY RELIEF.

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Respectfully submitted,

ROBERT E. COOPER, JR. (10934)
Attorney General & Reporter
State of Tennessee

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Office of the Attorney General
Financial Division
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Attorney for Petitioner Leslie A. Newman
Commissioner of the Tennessee Department
of Commerce and Insurance

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, *ex rel.* LESLIE A. NEWMAN) in her official capacity as COMMISSIONER OF) COMMERCE AND INSURANCE, on behalf of) the employees of Norwalk Furniture Corporation of) Tennessee (aka Norwalk Wood Products) for) Tennessee self-insured workers' compensation benefits,)		
Petitioner,	)	**No. _____**
vs.	)	
MIDWEST EMPLOYERS CASUALTY COMPANY,) A Missouri domiciled insurance company, and) NORWALK FURNITURE CORPORATION OF) TENNESSEE, A Tennessee domiciled corporation.)		
Respondents.	)	
Re: Bond for Workers' Compensation Self-Insurance of) Norwalk Furniture Corporation of Tennessee – for claims) incurred January 1, 1992 to July 1, 2007.)		

VERIFICATION

1. I, Leslie A. Newman, am the Commissioner of the Department of Commerce and Insurance for the State of Tennessee and the petitioner in the foregoing action.

2. I have read the Verified Petition and swear that the information and exhibits contained therein are true and correct to the best of my knowledge, information and belief. The Bond and bond riders attached to the Petition, and the administrative order respecting the default by self-insured employer Norwalk Furniture Corporation of Tennessee are certified to be true and correct copies found in the official records of the Insurance Division of this Department as required under Tenn. Code Ann. 50-6-405(b) workers' compensation self-insurance provisions.

3. I request expedited hearing on the Petition, so as to confirm the State's statutory enforcement of the Bond under circumstances where the self-insured employer has defaulted.

The terms sought are needed and establish the way for Norwalk Furniture Corporation of Tennessee's former employees who are workers' compensation claimants to obtain satisfaction from the Bond proceeds through the administration that shall be directed by this Court. Moreover, the Order is requested to clarify Midwest Employer Casualty Company's obligation on its Bond, and to assist in obtaining the proceeds of the Bond. The amount of available bond coverage is projected to provide ample funds to allow payment and handling of the claims in ordinary course of workers' compensation process, especially if the request to seek a Loss Portfolio Transfer with the Bond Fund can be consummated quickly. The requested order will also protect the Bond Company, with this Department, from the irreparable harm of any multiple or inconsistent lawsuits attempting to access the Bond, and to allow this Court to supervise any future issues of coverage by the Bond, and to issue any other pertinent instructions. Due to the closure of the Norwalk Furniture Corporation of Tennessee plant in Cookeville and the existence of active claims and prior medical benefit awards reported by Norwalk/TN's administrator, I respectfully request this Court to speedily confirm the payment of the bond over to myself to allow for the administration of those claims.

Further affiant sayeth nought.

Leslie A. Newman

LESLIE A. NEWMAN
Commissioner, Department of Commerce and Insurance for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this 24 day of February 2009.

April S. Miller

NOTARY PUBLIC
My Commission Expires: _____

APRIL J. MILLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.
My Commission Expires MAY 8, 2012

Certificate of Service

I hereby certify that the foregoing Verified Petition with attachments following including proposed order is being served by mail on the interested parties, and where indicated fax or email, and respondents set forth in the service list following on this the 27th day of February, 2009.

SARAH A. HIESTAND

Notice/ Service list

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Thomas L. Sandifer
Claims Attorney
Midwest Employers Casualty Company
14755 North Outer Forty Drive, Suite 300
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One Commerce Square, Ste 1700
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abrown@glankler.com and via email

Norwalk Furniture Corporation of Tennessee
ATTN: George Elmer, Registered Agent and President
1100 S. Willow Avenue
Cookeville, TN 38501-4139 Secretary of State Registered Agent
Ph. – 931-432-4171, fax 931-432-4176

Norwalk Furniture Corporation of Tennessee
P.O. Box 3067
Cookeville, TN 38502-3067
Ph. – 931-432-4171, fax 931-432-4176 Official Address of record with Department
Tenn. Code Ann. § 50-6-405(b)(5)

INTERESTED NON PARTY:
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104 Continental Place, Suite 200
Brentwood, Tennessee 37027
ATTN: Everett Sinor

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Norwalk/TN's Third Party Administrator via email

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Attorney for Kenneth D. Lane

Workers' Compensation Claimants – Open Claims, date of injury

Kenneth D. Lane, 1/28/94	Elbow
Johnny Shock, 1/29/03	Asthma
Darrell Denney, 5/12/03	Right hand
Clarence Grider, 7/27/04	Back