

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

THE HARTFORD, a Connecticut corporation,)	
)	
Plaintiff,)	No.
)	
vs.)	
)	
GRACE ELECTRICAL CONSTRUCTION and)	
SOON JA CHUNG, individually,)	
)	
Defendant.)	

**HARTFORD'S
INDEMNITY COMPLAINT AGAINST DEFENDANTS**

THE HARTFORD ("Hartford"), by and through its attorneys, John E. Sebastian and Gretchen A. Eck, of the law firm of Hinshaw & Culbertson LLP, sets forth the following complaint against defendants, Indemnitors:

PARTIES

1. Hartford is a Connecticut corporation with its principal place of business in the City of Hartford in the state of Connecticut.
2. Defendant Grace Electrical Construction ("Grace") is an Illinois corporation with its principal place of business located at 10350 Dearlove Rd., City of Glenview, County of Cook, Illinois and are citizens of the state of Illinois.
3. Soon Ja Chung ("Chung") is an Illinois citizen residing in the City of Glenview, County of Cook, and State of Illinois.

JURISDICTION AND VENUE

4. This court has jurisdiction over this cause under 28 U.S.C. § 1332(a)(1) in that the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.00, and is between citizens of different states.

5. Venue is proper in this Court under 28 U.S.C. §1391(a) because all Defendants reside in this District.

FACTS COMMON TO ALL COUNTS

6. Grace entered into various construction contracts with various entities within the State of Illinois, and other private companies wherein in exchange for payment, Grace agreed to perform work on numerous projects.

7. In accordance with the Illinois Public Construction Bond Act, 30 ILCS 550 *et seq.*, and pursuant to various contracts, Grace was required to obtain and provide payment and performance surety bonds for the Projects to guarantee (a) Grace's performance obligations under the contracts and (b) to ensure the payment obligations of Grace to its subcontractors and materialmen that it engaged for the Projects, subject to the terms of the bonds, the contracts, the Illinois Public Construction Bond Act, and the law.

8. Pursuant to the request of Grace, and in exchange for the Indemnitors entering into a General Indemnity Agreement, Hartford, as surety, issued numerous payment and performance bonds (the "Bonds") to various state entities and companies as Obligee, on behalf of Grace, as principal, for the following construction contracts and projects:

<u>Obligee/Owner</u>	<u>Bond No.</u>	<u>Project Name</u>
Northfield Township High School District 225	83BCSEJ1947	2007 Additions and Renovations-Glenbrook South High School
Poulos, Inc.	83BCSEB7711	Bradford Anderson Oglesby Public Library
Poulos, Inc.	83BCSEJ1942	Stickney Village Hall
Poulos, Inc.	83BCSEJ1943	Central Campus Science Laboratory
Poulos, Inc.	83BCSEB7701	Sunny Hill Skilled Rehab Center Renovations
Valley View School District/Wight Construction	83BCSEJ1926	Jane Adams Middle School
Valley View School District/Wight Construction	83BCSEJ1925	Hubert H. Humphrey Middle School
Valley View School District/Wight Construction	83BCSEJ1932	Jonas E. Salk Elementary School

(A true and accurate copy of the Bonds is attached hereto as Group Exhibit 1).

9. As a condition for Hartford's issuance of Bonds on behalf of Grace, Hartford first required that the Indemnitors enter into a General Indemnity Agreement (the "Indemnity Agreement") with Hartford.

10. On or about May 11, 2005, the Indemnitors each executed the Indemnity Agreement. (A true and correct copy of the Indemnity Agreement executed by Indemnitors is attached hereto as Exhibit "2").

11. The Indemnity Agreement requires the Indemnitors to indemnify and hold Hartford harmless, in part, from all liability under the bonds it issues on behalf of Hartford. Specifically, the Indemnity Agreement provides, in relevant part, the following:

5. **Indemnity and Exoneration.** The Indemnitors are jointly and severally liable to Hartford, and will indemnify, exonerate, and hold Hartford harmless from all loss, liability, damages and expenses including, but not limited to, court costs, interest,

attorney's fees, professional fees and consulting fees, which Hartford incurs or sustains (1) because of having furnished any Bond, (2) because of failure of an Indemnitor to discharge any obligations under this Agreement, (3) in enforcing any of the provisions of this Agreement, (4) in pursuing the collection of any Loss incurred hereunder, or (5) in the investigation of any claim submitted under any Bond. Hartford may bring separate suits on this Agreement as causes of action accrue, and the bringing of such 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 actions.

(Indemnity Agreement, Exhibit "2" ¶5).

12. Pursuant to ¶ 11 of the Indemnity Agreement, each of the Indemnitors agreed to treat, whether in their possession or not, all contract funds paid on projects that Hartford issues bonds as "trust funds" "in favor of Hartford for the purpose of satisfying the conditions of that bonded contract and shall be used for no other purpose until such conditions have been fully satisfied." (Indemnity Agreement, Exhibit "2" ¶ 11).

13. As of March 2008, Hartford has been sued and/or received bond claims totaling over \$2,500,000.00 against the Bonds.

14. In order to discharge its obligations under the Bonds, Hartford, in accordance with its indemnity rights, hired a consultant and an attorney to assist it in investigating, defending and resolving the Bond claims.

15. As of January 2009, in order to discharge its obligations under the Bonds, Hartford has paid \$1,795,832.95 to resolve the Bond claims including expenses. (A copy of the payments made by Hartford is attached hereto as Exhibit "3").

16. Hartford has continually notified Indemnitors of the Bond claims and requested that the Indemnitors indemnify and hold Hartford harmless from the pending claims. As of March 16, 2009, the Indemnitors have not indemnified Hartford. (See Hartford's Final Indemnity Demand Letter attached hereto as Exhibit "4").

17. Hartford faces additional potential exposure under its Bonds for pending Bond claims.

**Count I
(Breach of Contract)**

18. Hartford adopts and re-alleges paragraphs 1 through 17 for paragraphs 1 through 17 of Count I as though fully set forth herein.

19. The Indemnitors are obligated to (a) indemnify Hartford to and from all losses in connection with the Bonds and the costs and expenses incurred by Hartford in enforcing the terms of the Indemnity Agreement. (Indemnity Agreement, Exhibit "2").

20. Despite Hartford's demand, the Indemnitors have breached the agreement between the parties by failing and refusing to indemnify and hold Hartford harmless from the Bond claims.

21. Hartford has been damaged by the Indemnitors' material breach of the Indemnity Agreement in the initial amount of \$1,496,076.13.

**Count II
(Specific Performance of the Indemnity Agreement)**

22. Hartford adopts and re-alleges paragraphs 1 through 17 for paragraphs 1 through 17 of Count II as though fully set forth herein.

23. Hartford has demanded that the indemnitors indemnify and hold Hartford harmless from any and all costs resulting from the Bonds it issued for the Projects.

24. As of March 16, 2009, the Indemnitors have failed to indemnify Hartford.

25. Hartford lacks an adequate remedy at law and will suffer irreparable harm if the relief sought is not granted.

PRAYER FOR RELIEF

WHEREFORE, The Hartford respectfully requests that the Court enter judgment in its favor in the amount of the total payments it has made to date in the amount of \$1,795,832.95, together with such additional relief this Court deems equitable and just.

Respectfully submitted,
THE HARTFORD INSURANCE COMPANY

By: s/John E. Sebastian

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