

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Plaintiff,

v.

MEMORANDUM AND ORDER
07-cv-439-jcs

HANZ CONTRACTORS, INC., HANZ TRUCKING, INC.,
JOHN HANZ, SCOTT HANZ, DAVID HANZ and
ALICE HANZ,

Defendants.

Plaintiff Fidelity & Deposit Company of Maryland ("F & D") commenced this action seeking indemnification from defendants Hanz Contractors, Inc., Hanz Trucking, Inc., John Hanz, Scott Hanz, David Hanz and Alice Hanz (collectively "defendants"). The matter is currently before the Court on plaintiff's unopposed motion for summary judgment.

MEMORANDUM

Plaintiff is a corporation that has its principal place of business in the State of Maryland. All defendants reside and/or have their principal place of business in the State of Wisconsin, which provides complete diversity between the parties. Also, the amount in controversy is \$703,849.34 which exceeds \$75,000.00 exclusive of interest and costs. Accordingly, the Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(a).

Plaintiff requests that it be indemnified by defendants for all losses sustained and incurred in its issuing of certain bonds. Plaintiff's request is in accordance with the General Agreement of Indemnity ("GAI") that was entered into by the parties on April 29, 1999. As defendants have failed to oppose plaintiff's motion for summary judgment, the Court accepts plaintiff's findings of fact as undisputed in accordance with the procedure to be followed on motions for summary judgment as provided to the parties by the Court.¹ Plaintiff's facts being undisputed leaves no material issues of fact in dispute concerning its entitlement as a matter of law to be indemnified by defendants in accordance with the GAI. Under Federal Rule of Civil Procedure 56 summary judgment is appropriate "when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Goldstein v. Fidelity & Guar. Ins. Underwriters, Inc., 86 F.3d 749, 750 (7th Cir. 1996) (citing Fed. R. Civ. P. 56). Accordingly, plaintiff is entitled to summary judgment on its request to be indemnified by defendants in the amount of \$703,849.34.

ORDER

IT IS ORDERED that plaintiff's unopposed motion for summary judgment is GRANTED.

¹Plaintiff filed its motion on November 15, 2007. Defendants were to respond to the motion with any opposition by December 5, 2007. The Court took this motion under advisement on December 20, 2007 after defendants failed to provide any response.

IT IS FURTHER ORDERED that under Count I of plaintiff's complaint all defendants are jointly and severally liable to pay plaintiff \$703,849.34.

Entered this 31st day of December, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge