



NELSON • LEVINE • de LUCA & HORST

A LIMITED LIABILITY COMPANY
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June 23, 2006

Andrew M. Brewer, Esquire
Maraziti Falcon Healy, LLP
150 John F. Kennedy Parkway
Short Hills, NJ 07078

JUN 26 2006

Re: Borough of Ringwood

Dear Mr. Brewer:

Enclosed please find the duly executed Non-Waiver Agreement in regards to the above-referenced matter.

If you have any questions, feel free to contact the undersigned directly.

Very truly yours,

NELSON LEVINE de LUCA & HORST, LLC

Kim Hollaender

KH/nst
Encl.

NON-WAIVER AGREEMENT

THIS AGREEMENT ("Agreement") is by and between the Borough of Ringwood (the "Borough") and ARI Insurance Company ("ARI"), Selective Insurance Company of America ("Selective"), and Maryland Casualty Company ("Maryland") ("the Insurers") (collectively "the Parties") concerning the defense of the Borough in certain matters set forth below.

WITNESSETH:

WHEREAS, each Insurer has or may have issued an insurance policy or policies, to the Borough (the "policies"); and

WHEREAS, on September 21, 2005 the Environmental Protection Agency ("EPA") issued an Administrative Order for Investigative Work to the Borough of Ringwood, styled In the Matter of Ringwood Landfill/Mines Superfund Site, ("Administrative Order") with respect to the performance of supplemental investigation work at the Ringwood Landfill/Mines Superfund site located in the Borough of Ringwood, New Jersey (the "Site"); and

WHEREAS, on December 20, 2005, a Notice of Claim was filed by numerous individuals against the Borough in the matter entitled Mildred Batchelor, et al. v. Borough of Ringwood and Ringwood Solid Waste Management Authority alleging bodily injury and property damage caused by the alleged exposure to hazardous and toxic substances from the Site. Plaintiffs in the Notice of Claim have indicated that the Borough will be brought into a lawsuit entitled Wayne Mann et al. v. Ford Motor Company et al. venued in Passaic County, New Jersey. The Administrative Order, the Notice of Claim and the Mann suit are collectively referred to as the "Environmental Actions"; and

WHEREAS, the Borough has demanded that the Insurers provide it with a defense and indemnification under the policies with respect to the Environmental Actions;

WHEREAS, the Insurers have either denied that they have any obligation or have reserved their rights with respect to any obligation to defend or indemnify the Borough in the Environmental Actions; and

WHEREAS, the Borough filed a declaratory judgment action captioned Borough of Ringwood v. ARI Insurance Company Insurance Company, et al., No. L-738-06, venued in the Superior Court of New Jersey, Passaic County ("the Declaratory Judgment Action").

NOW, THEREFORE, in consideration of the agreements contained herein, and intending to be legally bound, the Parties hereby agree as follows:

DEFINITIONS

1. The term "Environmental Actions" as used in this Agreement means the Administrative Order, the Notice of Claim and the Mann suit.
2. The term "defense costs" as used in this Agreement includes (a) reasonable and necessary attorneys' fees; (b) reasonable and necessary expert fees; and (c) other reasonable and necessary out-of-pocket fees and expenses, all of which are directly attributable to the defense of the Borough in the Environmental Actions. The term "defense costs" does not include (a) administrative or other expenses, including internal expenses and salaries of employees of the Borough or the Insurers for unallocated expenses such as, but not limited to, general overhead; (b) administrative or internal expenses of counsel representing the Borough in the Environmental Actions; (c) attorneys' fees and expenses incurred by counsel designated by the Borough to represent the Borough's interests independent of costs incurred in defending the Borough in the

Environmental Actions pursuant to the terms of this Agreement; and (d) attorneys' fees, costs and any other expenses incurred by the Borough in connection with efforts it has undertaken, or will undertake, to secure defense and insurance coverage from any insurer including costs that are associated with bringing the Declaratory Judgment Action.

DEFENSE OF THE BOROUGH IN THE ENVIRONMENTAL ACTIONS

3. The Insurers agree to pay for all of the reasonable and necessary defense costs incurred in the defense of the Borough in the Environmental Actions.

4. The Borough shall submit to the Insurers or their designated representatives, on a quarterly basis, detailed statements of legal services rendered and defense costs incurred in connection with specific legal and/or expert work performed for any individual Environmental Action. Said statements shall include a description of all legal and/or expert services rendered, an identification of the person(s) performing the tasks and the time spent on a daily basis. Within forty-five (45) days of receipt of such statements, each Insurer shall remit its respective one-third share directly to Ringwood, by check made payable to "Borough of Ringwood" or shall advise defense counsel and all other Insurers of any item or items contained in such statements that it believes to be unreasonable or beyond the scope of this Agreement. The failure by an Insurer to pay a disputed item of defense costs shall not relieve such Insurer of its obligation under this Agreement to pay defense costs covered by this Agreement and not disputed.

PAST DEFENSE COSTS

5. Upon execution of this Agreement, the Borough shall submit detailed statements to the Insurers to the extent not already provided setting forth the amount of defense costs incurred prior to execution of this Agreement in the defense of the Borough in the Environmental

Actions. Each Insurer is only responsible for its one-third allocated share of past defense costs. No Insurer is responsible for defense costs incurred prior to the tender by the Borough to that Insurer of the respective Environmental Action. Within forty-five (45) days of receipt of such statements, the Insurers shall remit their respective one-third share of reasonable and necessary fees and costs. Should they have any reasonable questions regarding the documentation provided by the Borough such questions will be raised in that 45-day period.

DISMISSAL OF DECLARATORY JUDGMENT ACTION

6. By reason of the undertakings and agreements of the Parties as set forth herein, Ringwood agrees to dismiss, without prejudice, the Declaratory Judgment action. Upon full execution of this Agreement, the Borough will execute a Stay/Tolling Agreement of 60 days of the Declaratory Judgment action. The Borough shall file a voluntary dismissal without prejudice of the Declaratory Judgment action within ten days after payment is received by Ringwood in relation to the past defense costs forwarded to the Insurers pursuant to Paragraph 5 of this Agreement.

RELEASE

7. This Agreement, in conjunction with payment of defense costs in conformity with this Agreement, nullifies any claims of bad faith, breach of contract, breach of duty, sanctions, violations, exemplary or extra contractual damages arising from or in connection with the Insurers' handling of the claims submitted by Ringwood or the obligation to pay past or future defense costs with respect to the Environmental Actions, prior to or during the period this Agreement is in effect. The nullification shall be effective upon the date the dismissal without prejudice set forth in Paragraph 6 of this Agreement is filed with the Court. This release shall not

preclude the Borough from seeking to recover defense costs which any Insurer declines to pay.

NON-WAIVER OF RIGHTS

8. The Insurers have entered into this Agreement in good faith and without any admission of liability. The Parties recognize that the execution of this Agreement represents a compromise by the Insurers and the Borough and that neither the Agreement nor its terms are an admission by the Insurers that defense or indemnity is owed to the Borough under the policies. Subject to the terms of this Agreement, the Insurers reserve all rights with regard to all issues of defense and indemnity, and the Parties acknowledge each Insurer's reservation of rights. The Insurers specifically reserve their rights as to allocation of indemnity or future defense costs not paid under this Agreement. Further, the Insurers expressly agree that neither the execution of this Agreement nor its terms constitute a waiver of any rights that the Insurers have under the policies with respect to matters outside the scope of this Agreement.

TERMINATION AND WITHDRAWAL

9. Each Insurer shall have the right to withdraw from participation in this Agreement upon the provision of thirty (30) days written notice to all other Parties of an intention to withdraw. This Agreement shall thereafter terminate upon the expiration of said thirty (30) days unless each remaining Insurer and/or the Borough agrees in writing to continue with the Agreement and reallocate the contribution percentage of the withdrawing Insurer. In the event that any Insurer elects to withdraw pursuant to this Paragraph within 6 months of the execution of this Agreement and the Borough files a second declaratory judgment action to compel payment of its defense costs related to the Environmental Actions, the Borough will not have waived its right to seek reimbursement of the legal fees incurred in the first Declaratory

Judgment action. This Paragraph is not intended nor shall it be construed as an admission that the Borough is entitled to recover such legal fees.

GENERAL PROVISIONS

10. This Agreement shall be binding upon and inure only to the benefit of the Parties hereto and their respective successors and assigns.

11. Each of the Parties to this Agreement has participated in its drafting and, consequently, the language of this Agreement shall not be presumptively construed against any of the Insurers hereto.

12. This Agreement, including any exhibits hereto, is an integrated agreement, containing the entire understanding among the Parties regarding the matters addressed herein and, except as is set forth in this Agreement, no representations, warranties or promises have been made or relied upon by the Insurers to this Agreement. This Agreement shall prevail over prior communications between the Parties or their representatives regarding the matters contained herein.

13. No amendment or variations to the terms of this Agreement shall be valid unless made in writing and signed by all Parties hereto.

CONFIDENTIALITY AND COMPROMISE

14. The Parties to this Agreement expressly recognize that the terms of this Agreement are confidential and may not, unless expressly ordered to by a court of competent jurisdiction, be disclosed to any person or entity other than to the respective reinsurers and/or auditors of the Insurers.

EXECUTION AND NOTICE

15. This Agreement may be executed in duplicate counterparts.
16. All notices under this Agreement shall be sent by registered or certified mail, return receipt requested, to the following designated individuals on behalf of each Insurer or to such other individuals as may be, from time to time, designated by the Insurers:

For the Borough: Andrew M. Brewer
Maraziti Falcon & Healey LLP
150 John F. Kennedy Pkwy
Short Hills, New Jersey 07078

For ARI: Kim Holiander, Esq.
Nelson Levine DeLuca & Horst
457 Haddonfield Road
Cherry Hill, NJ 08002

For Selective: Margaret F. Catalano
CARROLL, McNULTY & KULL L.L.C.
120 Mountainview Boulevard
P.O. Box 650
Basking Ridge, New Jersey 07920

For Maryland: Robert W. Muilenburg
Coughlin Duffy LLP
350 Mount Kemble Ave
Morristown New Jersey 07962

IN WITNESS HEREOF, the Parties subscribing to this Agreement have, through their authorized representatives, executed this Agreement in counterparts on the dates set forth under their respective signatures as set forth below:

BOROUGH OF RINGWOOD

By

Joanne Adams

Date

6/16/06

ARI INSURANCE COMPANY (as successor to Farmer's Reliance Insurance Company)

By:



June 19, 2006
Date

Kim Hollaender, Esq.
Nelson Levine DeLuca & Horst
457 Haddonfield Road
Cherry Hill, NJ 08002

SELECTIVE INSURANCE COMPANY (formerly Selective Risks Insurance)

By:

Margaret F. Catalano, Esq.
CARROLL, McNULTY & KULL L.L.C.
120 Mountainview Boulevard
P.O. Box 650
Basking Ridge, New Jersey 07920

Date

MARYLAND CASUALTY COMPANY

By:

Date