

VIRGINIA:

CIRCUIT COURT FOR THE COUNTY OF FAUQUIER

THOM TAENGSAAP, et al.

Plaintiffs,

v.

Case No.: CL 20-484

DR. PHONEXAY MINGSISOUPHANH,

and

PENNSYLVANIA NATIONAL MUTUAL
CASUALTY INSURANCE COMPANY,

Defendants.

**PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE
COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' AMENDED COMPLAINT**

The defendant, Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by counsel, in accordance with the provisions of Rule 3:8 of the *Rules of the Supreme Court of Virginia*, files its Answer and Affirmative Defenses in response to the Amended Complaint filed on behalf of the plaintiffs, Thom Taengsap, Aum Taengsap, Rat Taengsap, Sommai Taengsap, Phom Taengsap and Phaen Saechaiyaphom. For the reasons set forth below, Penn National respectfully requests the entry of an order dismissing this matter, with prejudice.

ANSWER

1. Penn National denies each and every factual allegation and legal conclusion set forth in the Amended Complaint not specifically admitted in this Answer and, therefore, demands strict proof.

FILED AT <u>10:02 A</u> M
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GAIL H. BARB, CLERK
BY: <u>KT</u> D.C.

2. In response to *all* of those paragraphs in the Amended Complaint which refer to documents attached as exhibits, charts, and screen shots of text messages, bank statements and checks, including, but not limited to, those items referenced in ¶¶ 13, 36, 39-49, 53-56, 60 and 71-72, Penn National admits only that those items attached as exhibits and those appended to the various respective paragraphs purport to be copies of documents in the exhibits, charts and screen shots. However, not having the ability to compare the copies of the documents, exhibits, charts, screen shots of text messages, bank statements and checks to the originals, Penn National is unable to either admit or deny the genuineness or authenticity of the various documents, exhibits, charts, and screen shots of text messages, bank statements and checks, and, therefore, demands strict proof.

3. In response to the allegations set forth in ¶ 1 of the Amended Complaint, Penn National is advised that Phra Chom Taengsap died as a result of an automobile accident in Fauquier County, Virginia on July 31, 2011, and that a wrongful death case was filed against the other driver. In further response, Penn National has insufficient information to either admit or deny the remaining allegations in ¶ 1 and, therefore, demands strict proof.

4. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 2 and 3 of the Amended Complaint and, therefore, demands strict proof. In further response, the Final Order attached as Exhibit 1 speaks for itself.

5. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 4 through 8 of the Amended Complaint and, therefore, demands

strict proof. In further response Penn National incorporates its Motion to Strike contemporaneously filed with this Answer.

6. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 9 through 11 of the Amended Complaint and, therefore, demands strict proof.

7. The allegations set forth in ¶ 12 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Penn National understands that Dr. Phonexay Mingsisouphanh was required to furnish a bond upon his initial qualification in the amount of \$25,000.

8. In response to the allegations set forth in ¶ 13 of the Complaint, Penn National admits only that on January 24, 2012 it, as surety, issued its bond (Bond No. SB 0350660) in the amount of \$25,000 naming Phonexay Mingsisouphanh as its principal and the Commonwealth of Virginia as its obligee. In further response and subject to its response set forth in ¶ 2 above, Penn National admits only that a document which purports to be a copy of a Bond issued by Penn National in the amount of \$432,000 naming Phonexay Mingsisouphanh as its principal and co-obligor and the Commonwealth of Virginia as its obligee dated January 28, 2015 is attached as Exhibit 2. The remaining allegations in ¶ 13 constitute legal conclusions to which no response is required and, therefore, Penn National demands strict proof.

9. In response to the allegations set forth in ¶ 14 of the Amended Complaint, Penn National admits only that this court has jurisdiction and venue is appropriate in the County of Fauquier.

10. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 15 through 20 of the Amended Complaint and, therefore, demands strict proof.

11. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 21 of the Amended Complaint, and, therefore, demands strict proof. In further response, Penn National incorporates its Motion to Strike contemporaneously filed with this Answer.

12. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 22 of the Amended Complaint, and, therefore, demands strict proof.

13. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 23 of the Amended Complaint, and, therefore, demands strict proof. In further response, Penn National incorporates its Motion to Strike contemporaneously filed with this Answer.

14. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 24 through 26 of the Amended Complaint, and, therefore, demands strict proof. In further response, Penn National incorporates its Motion to Crave Oyer filed contemporaneously with this Answer.

15. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 27 through 35 of the Amended Complaint and, therefore, demands strict proof.

16. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 36 of the Amended Complaint, and cannot respond to whatever

is contained in the pictures of numerous text messages appended to that paragraph as they are in a foreign language, presumably Thai. See also Penn National's response set forth in ¶ 2 above. Therefore, Penn National demands strict proof.

17. The allegations set forth in ¶¶ 37 and 38 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Penn National states that the Court's records speak for themselves.

18. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 39, 40, 41, 42, 43, 44, 45 and 46 of the Amended Complaint and, therefore, demands strict proof. In further response to the allegations set forth in ¶ 46, Penn National incorporates its Motion to Strike filed contemporaneously with this Answer.

19. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 47 of the Amended Complaint, all of which constitute legal conclusions, and, therefore, demands strict proof.

20. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 48 of the Amended Complaint and, therefore, demands strict proof. the remaining allegations

21. In response to the allegations set forth in ¶ 49 of the Amended Complaint, Penn National denies the allegations and, therefore, demands strict proof. In further response, Penn National incorporates its Motion to Strike filed contemporaneously with this Answer.

22. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 50 through 52 of the Amended Complaint, and, therefore, demands strict proof.

23. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 53, 54, 55, 56, 57, 58 and 59 of the Amended Complaint and, therefore, demands strict proof.

24. In response to the allegations set forth in ¶ 60 of the Amended Complaint, Penn National states that the flow chart appended to that paragraph constitutes argumentative conclusions and a mere summary of suppositions and allegations rather than factual statements to which no response is required by Penn National. To the extent a response is required, Penn National has insufficient information to either admit or deny the factual basis for each and every transaction allegedly represented in the flow chart or the remaining allegations and, therefore, demands strict proof.

25. In response to the allegations set forth in ¶ 61 of the Amended Complaint, Penn National states that the allegations constitute argumentative conclusions and a mere summary of allegations and suppositions rather than factual statements to which no response is required by Penn National. To the extent a response is required, Penn National has insufficient information to either admit or deny the factual basis for each and every transaction allegedly included in its summary or the remaining allegations and, therefore, demands strict proof.

26. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 62 of the Amended Complaint, and, therefore, demands strict proof.

27. The allegations set forth in ¶¶ 63 through 66 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Penn National denies the allegations and, therefore, demands strict proof.

28. In response to the allegations set forth in ¶ 67 of the Amended Complaint, Penn National has insufficient information to either admit or deny the allegations and, therefore, demands strict proof. In further response, Penn National incorporates its Motion to Strike filed contemporaneously with this Answer.

29. Penn National has insufficient information to either admit or deny the allegations set forth in ¶¶ 68 through 70 of the Amended Complaint, and, therefore, demands strict proof.

30. Upon information and belief, Penn National understands the allegations set forth in ¶¶ 71 and 72 of the Amended Complaint are correct. In further response, Penn National states that the court's records will speak for themselves.

31. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 73 of the Amended Complaint and, therefore, demands strict proof. Penn National also states that the documents supplied by the Commissioner of Accounts are not referenced or attached, unless they are the documents attached as Exhibit 11 to the Amended Complaint and, if so, Penn National incorporates its response in ¶ 2 above.

32. The allegations set forth in ¶ 74 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Penn National has insufficient information to either admit or deny the allegations and, therefore, demands strict proof.

33. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 75 of the Amended Complaint and, therefore, demands strict proof.

34. The allegations set forth in ¶¶ 76 and 77 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Penn National has insufficient information to either admit or deny the allegations and, therefore, demands strict proof.

35. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 78 of the Amended Complaint, and, therefore, demands strict proof.

36. The allegations set forth in ¶ 79 of the Amended Complaint constitute pure speculation to which no response is required. To the extent a response is required, Penn National has insufficient information to either admit or deny the allegations and, therefore, demands strict proof.

37. In response to the allegations set forth in ¶ 80 of the Amended Complaint, Penn National states that the court's Final Order in the wrongful death settlement will speak for itself.

38. The allegations set forth in ¶¶ 81 and 82 of the Amended Complaint constitute mere speculation as to a third party's knowledge and legal conclusions to which no response is required. To the extent a response is required, Penn National has insufficient information to either admit or deny the allegations and, therefore, demands strict proof.

39. Penn National has insufficient information to either admit or deny the allegations set forth in ¶ 83 of the Amended Complaint, and, therefore, demands strict proof.

40. The allegations set forth in ¶ 84 of the Amended Complaint constitute speculation and a statement of what Plaintiffs' counsel may do, none of which is not based upon fact and to which no response is required. To the extent a response is required, Penn National denies the allegations and, therefore, demands strict proof.

COUNT ONE

VA. CODE § 8.01-245 CLAIM TO FALSIFY AND SURCHARGE

41. Penn National restates and incorporates the responses set forth in ¶¶ 1 through 40 above as if set fully set forth in this paragraph.

42. The allegations set forth in ¶¶ 86 through 90 of the Amended Complaint, as well as the relief requested in the WHEREFORE clause following ¶ 90, are all directed against another party defendant to which no response is required by Penn National. To the extent a response is required, Penn National denies the allegations, all of which constitute legal conclusions and, therefore, demands strict proof.

COUNT TWO

INDEMNIFICATION AGAINST DEFENDANT PENNSYLVANIA NATIONAL MUTUAL [SIC] INSURANCE COMPANY AND DEFENDANT MINGSISOUPHANH

43. Penn National restates and incorporates the responses set forth in ¶¶ 1 through 42 above as if set fully set forth in this paragraph.

44. In response to the allegations set forth in ¶ 92 of the Amended Complaint and subject to its response set forth in ¶ 2 above, Penn National restates and incorporates its response in ¶ 8 of this Answer and Affirmative Defenses, and admits only that it

issued a bond naming Phonexay Mingsisouphanh as its principal and co-obligor, and the Commonwealth of Virginia as its obligee. The remaining allegations constitute legal conclusions to which no response is required and, therefore, Penn National demands strict proof.

45. The allegations set forth in ¶¶ 93, 94 and 95 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Penn National denies the allegations and, therefore, demands strict proof.

46. Penn National denies that the Plaintiffs are entitled to the relief they seek in the WHEREFORE clause following ¶ 95 of the Amended Complaint or any amount whatsoever and, therefore, demands strict proof.

COUNT THREE

FRAUD AS TO DEFENDANT MINGSISOUPHANH

47. Penn National restates and incorporates the responses set forth in ¶¶ 1 through 46 above as if set fully set forth in this paragraph.

48. The allegations set forth in ¶¶ 97 through 101 of the Amended Complaint, as well as the WHEREFORE clause following ¶ 101, are all directed against another party defendant and constitute legal conclusions to which no response is required by Penn National. To the extent a response is required, Penn National has insufficient information to either admit or deny the allegations and, therefore, demands strict proof.

AFFIRMATIVE DEFENSES

Penn National raises the following affirmative defenses to the Amended Complaint, if and to the extent applicable, and whether they are defenses unique to Penn National or are jointly shared with its principal, Phonexay Mingsisouphanh.

1. The Plaintiffs have or may have failed to mitigate their damages.
2. The Plaintiffs have allowed a substantial period of time to elapse prior to asserting their claims, did not file exceptions to the First and Final Account for Decedent's Estate or the Commissioner's Report Concerning Accounting, and have prejudiced Penn National, as surety, in protecting and enforcing its rights.
3. To the extent the Plaintiffs seek to recover for any of Phonexay Mingsisouphanh's actions or failures to act prior to the issuance of the bond, including, but not limited to that period when Phonexay Mingsisouphanh was operating under the powers of attorney, any such claims are not recoverable under the bond.
4. The Plaintiffs' claims, to the extent any exist, are or may be barred by the applicable statute of limitations.
5. If and to the extent Plaintiffs have asserted claims for punitive damages, the Plaintiffs are not entitled to recover these amounts under the bond.
6. If and to the extent Phonexay Mingsisouphanh, Penn National's principal, reasonably relied upon the advice of professionals, including but not limited to accountants, financial advisors and/or attorneys, in connection with the administration of the Estate of Phra Chom Taengsap, then the Plaintiffs have no claim against him or Penn National as his surety.
7. The Plaintiffs' claims, to the extent any exist, are or may not be the proper subject of the bond issued by Penn National or covered by the bond.

Penn National reserves the right to amend its Answer and to add any other Affirmative Defenses which may become available based upon any evidence disclosed during investigation, discovery or trial.

WHEREFORE, and by reason of the foregoing, Penn National requests the entry of an order dismissing the Amended Complaint, with prejudice, and awarding it its costs.

Respectfully submitted,

PENNSYLVANIA NATIONAL MUTUAL
CASUALTY INSURANCE COMPANY

By Counsel



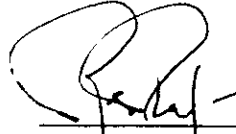
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August 2021, a true and correct copy of the foregoing was sent via email and U.S. Mail, postage prepaid, to:

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A handwritten signature in black ink, appearing to read "Richard T. Pledger", written over a horizontal line.

Richard T. Pledger