

VIRGINIA:

CIRCUIT COURT FOR THE COUNTY OF FAUQUIER

THOM TAENGSAP, et al.

Plaintiffs,

v.

Case No.: CL 20-484

DR. PHONEXAY MINGSISOUPHANH,

and

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

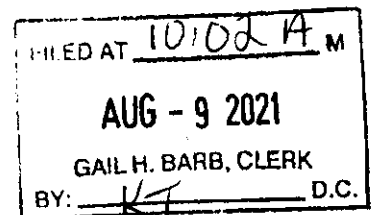
Defendants.

**PENNSYLVANIA NATIONAL MUTUAL CASUALTY  
INSURANCE COMPANY'S CROSS-CLAIM FOR INDEMNITY**

The defendant and cross-claimant, Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by counsel, in accordance with Rule 3:10 of the *Rules of the Supreme Court of Virginia*, files its Cross-Claim for Indemnity and moves the Court for the entry of an order awarding judgment in its favor as against Dr. Phonexay Mingsisouphanh on the grounds and for the reasons set forth below.

1. Penn National is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, where it also maintains its principal office and principal place of business. Penn National is duly authorized and licensed to engage in the surety business in the Commonwealth of Virginia.

2. Phra Chom Taengsap (the "Decedent"), a resident of Fauquier County, Virginia, died intestate on July 31, 2011. On or about January 24, 2012, Dr. Mingsisouphanh qualified as the Administrator of the Estate of Phra Chom Taengsap, Deceased (the "Estate") in the Circuit



Court for the County of Fauquier. In conjunction with his qualification, Dr. Mingsisouphanh sought and obtained a fiduciary bond from Penn National which, as surety, issued its Fiduciary Bond (Bond No.: SB 0360660) (the "Bond") naming Dr. Mingsisouphanh, as its principal and the Commonwealth of Virginia as its obligee. Under the terms and conditions of the Bond, Dr. Mingsisouphanh and Penn National firmly bound themselves unto the Commonwealth of Virginia in the amount of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) to secure Dr. Mingsisouphanh's faithful discharge of the duties of his office, post or trust as Administrator of the Estate.

3. In consideration of and as inducement for Penn National to issue the Bond, Dr. Mingsisouphanh executed a Commercial Surety Application and General Indemnity Agreement on January 19, 2012 (the "GIA"), promising to completely indemnify and save harmless Penn National from and against any and all demands, liabilities, costs, penalties, obligations, interest, damages and expenses of whatever nature of kind, including but not limited to attorneys' fees, costs and expenses whatsoever which Penn National incurs as surety or by reason of having issued the Bond, for the enforcement of the GIA, and in obtaining a release or evidence of termination under such Bond. A true and accurate copy of the written GIA is attached as Exhibit A and is incorporated by reference as if specifically set forth in this Cross-Claim for Indemnity.

4. As Administrator of the Estate, Dr. Mingsisouphanh filed his Petition for Approval of Wrongful Death Settlement against the party allegedly responsible for the Decedent's death in this Court in that case styled *Phonexay Mingsisouphanh v. Miguel Angel Velazquez Vite*, Civil Case No.: CL13-280. On January 20, 2015, this Court approved the Wrongful Death Settlement in the total sum of \$625,000.00, \$ 392,509.44 of which was to be deposited with Dr. Mingsisouphanh as Administrator of the Estate. A true and accurate copy of

the Order is attached as Exhibit B and is incorporated by reference as if specifically set forth in this Cross-Claim for Indemnity.

5. As a result of the Wrongful Death Settlement and the fact that the settlement generated additional funds in the amount of \$392,509.44 to be deposited with Dr. Mingsisouphanh as Administrator of the Estate, this Court entered its Order in *In re Estate of Phra Chom Taengsap*, Fiduciary No.: CWF2012-20, on January 20, 2015 directing Dr. Mingsisouphanh to increase the amount of the Bond or post a new bond in the amount of \$432,000.00. A true and accurate copy of the Order is attached as Exhibit C and is incorporated by reference as if specifically set forth in this Cross-Claim for Indemnity.

6. In accordance with the Court's January 20, 2015 Order, on January 28, 2015 Dr. Mingsisouphanh furnished his Bond issued by Penn National in the amount of \$432,000.00 to secure his faithful discharge of the duties of his office, post or trust as Administrator of the Estate.

7. On or about June 7, 2016, Dr. Mingsisouphanh filed his First and Final Account for Decedent's Estate. The Honorable Gary M. Pearson, Commissioner of Accounts for the Circuit Court for the County of Fauquier, filed his Report Concerning Accounting approving the First and Final Account which report was recorded in the Clerk's Office on October 3, 2016. No exceptions to the First and Final Account of Decedent's Estate or the report was filed by any of the statutory heirs, the plaintiffs in the instant case.

8. On or about October 13, 2020, the plaintiffs filed their Complaint against Dr. Mingsisouphanh and Penn National seeking damages in (a) Count One for Breach of Fiduciary Duty Against Dr. Mingsisouphanh, (b) Count Two for Indemnification against Penn National under the Bond, (c) Count Three for Fraud as against Dr. Mingsisouphanh and (d) Count Four

for Conversion against Dr. Mingsisouphanh. Penn National filed its Answer and Affirmative Defenses, and Dr. Mingsisouphanh filed his Plea in Bar re Statute of Limitations as to Counts One, Three and Four. By Order entered on July 19, 2021, the Court sustained Dr.

Mingsisouphanh's Plea in Bar and granted the plaintiffs leave to file an Amended Complaint.

9. The plaintiffs have filed their Amended Complaint seeking damages in (a) Count One to Falsify and Surcharge the First and Final Account against Dr. Mingsisouphanh, (b) Count Two for Indemnification Against both Dr. Mingsisouphanh and Penn National, jointly and severally, under the Bond, and (c) Count Three for Fraud against Dr. Mingsisouphanh.

10. Setting aside the claims for punitive damages against Dr. Mingsisouphanh under Counts One and Three, the plaintiffs seek damages and Penn National is exposed to potential losses under the Bond of at least \$369,500.00, plus interest and costs.

11. Penn National has also incurred, and will continue to incur, losses in the form of attorneys' fees, costs and expenses as a result of the issuance of its Bond and this litigation.

COUNT I  
CONTRACTUAL INDEMNITY

12. The allegations contained in ¶¶ 1-11 above are restated and incorporated by reference as if specifically set forth in this paragraph.

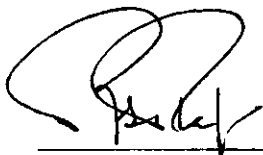
13. To the extent Dr. Mingsisouphanh is found to have (a) breached and/or violated his statutory and fiduciary duties as Administrator of the Estate, (b) failed to fulfill his duties as Administrator of the Estate, (c) failed to comply with the Commissioner's directives and/or this Court's orders, and/or (d) has otherwise breached the terms and conditions of his agreement to indemnify Penn National, pursuant to the terms of the GIA, he is obligated to indemnify and hold harmless Penn National for any and all losses suffered, including attorneys' fees, costs and expenses as a result of the issuance of the Bond.

WHEREFORE, Penn National, by counsel, requests the entry of an order awarding judgment against Dr. Mingsisouphanh in its favor as the evidence may establish for all of Penn National's losses, including, but not limited to, any principal forfeiture of the Bond, the statutory penalty of five percent (5%) of the principal forfeiture under the Bond in accordance with the provisions of Virginia Code § 49-27, and all of its attorneys' fees, costs and expenses incurred in this matter, plus pre- and post-judgment interest at the judgment rate from the date of judgment until paid in full, all as provided by the terms and conditions of the GIA.

Respectfully submitted,

PENN NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY

By Counsel



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*Counsel for Penn National Mutual*


*Casualty Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> 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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Richard T. Pledger

A COPY TESTE: GAIL H. BARB, CLERK  
BY Alistera Turner  
Deputy Clerk  
FAUQUIER COUNTY CIRCUIT COURT, VA