

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
MOBILE DIVISION**

**TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA, a
corporation,**

Plaintiff,

vs.

JAMES WOHLERS, an individual,

Defendant.

Civil Action No. _____

COMPLAINT

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff **Travelers Casualty & Surety Company of America (Travelers)** is a corporation organized and existing pursuant to the laws of the State of Connecticut having its principal place of business in Hartford, Connecticut. At all relevant times, Travelers has been authorized and duly licensed to conduct business in the State of Alabama and this Judicial District.

2. Defendant **James Wohlers (Wohlers)** is an individual resident of the State of Alabama, who resides in Monroe County, Alabama, and who is over the age of nineteen (19) years.

3. Jurisdiction exists by virtue of the diversity of citizenship which obtains between Travelers and Wohlers pursuant to 28 U.S.C. § 1332, and in light of the amount in controversy, which exceeds the sum of \$75,000, exclusive of interest and costs.

4. Venue is proper in this Judicial District inasmuch as Wohlers is a resident therein and because the action and conduct made the subject of this action occurred in this judicial district.

II. FACTS

5. Effective October 1, 2018, Travelers issued a Crime Policy in favor of its insured, **GBR Equipment, Inc. (GBR)**, a corporation headquartered in Anchorage, Alaska. Said policy contains an insuring agreement which provides insurance coverage with a limit of \$500,000 for loss resulting from employee dishonesty. Specifically, the Policy provides as follows:

1. **INSURING AGREEMENTS.**

A. **FIDELITY.**

i. Employee Theft.

The Company will pay the **Insured** for the Insured's direct loss of, or direct loss from damage to, **Money, Securities, and Other Property** directly cause by **Theft** or **Forgery** committed by an **employee** whether identified or not, acting alone or in collusion with others.

6. On August 16, 2019, GBR Equipment reported an employee theft loss to Travelers, in which GBR contended that it had sustained a loss in the amount of \$895,220.45 by virtue of fraudulent conduct by its employee, Defendant James Wohlers. GBR subsequently submitted a Sworn Proof of Loss to Travelers, a copy of which is attached as Exhibit "A."

7. In the Proof of Loss, GBR claimed that while an employee of GBR, Wohlers caused unauthorized or improper charges for his personal benefit on an American Express card issued to GBR, and on a Bank of America credit card issued to GBR, between January 1, 2015 and July 30, 2019. GBR further contended that Wohlers caused unauthorized and

improper Automated Clearing House payments to be made for his personal credit cards during the period of January 1, 2015 through July 23, 2019. GBR further contended that Wohlers caused unauthorized and improper wire transfer payments to be made to vendors other than GBR during 2016. GBR submitted extensive documentation to Travelers in support of its claim.

8. Based upon its investigation of the claim and the supporting documentation, Travelers has issued payment in the amount of \$500,000, which is the limit of liability for the applicable insurance coverage under the policy in question. A copy of Travelers' check payable to GBR is attached as Exhibit "B."

9. By virtue of its payment pursuant to the aforesaid insurance policy, and by virtue of GBR's assignment of all claims to the extent of Travelers' loss as set forth in Exhibit C attached hereto, Travelers is entitled to seek reimbursement of its loss from Defendant Wohlers as stated herein.

III. CLAIMS FOR RELIEF

COUNT ONE

FRAUD, MISREPRESENTATION, AND SUPPRESSION

10. Travelers adopts and incorporates all averments of Paragraphs 1 through 9 of the Verified Complaint as if set forth in full herein.

11. During the course of his employment with GBR, Wohlers engaged in a pattern and practice of fraudulent and dishonest conduct which resulted in a loss to GBR in an amount excessive of the \$500,000 limit of liability for the applicable insurance coverage. The specific wrongful action and conduct by Wohlers was as follows:

- (a) Between January 1, 2015 and July 30, 2019, Wohlers made unauthorized and improper purchases using a GBR American Express card for his personal use and benefit. The total value of these unauthorized purchases was \$374,378.01.

- (b) Between January 6, 2016 and February 14, 2016, Wohlers made unauthorized and improper wire transfer payments to Alabama Steel, a vendor of GBR, in the amount of \$34,533.59.
- (c) On February 25, 2016, Wohlers made an unauthorized and improper wire transfer payment to QUI YNG in the amount of \$16,171.
- (d) Between April 6, 2015 and July 8, 2019, Wohlers made unauthorized and improper purchases using GBR's visa credit card for his personal benefit and gain in the estimated amount of \$84,752.85.

12. Additionally, Wohlers caused unauthorized and improper Automated Clearing House (ACH) payments to be made for his personal American Express account, for his personal Chase credit card account, and for his personal CitiCard account. The total value of these unauthorized ACH payments is \$385,385.

13. The aforesaid conduct of Defendant Wohlers constitutes Civil Fraud, Suppression and Deceit as defined by Ala. Code §§ 6-5-100 through 6-5-104. Having discharged its contractual obligation under the policy with GBR, Travelers is entitled to assert all claims available to GBR against Wohlers.

WHEREFORE, PREMISES CONSIDERED, Travelers demands judgment against Defendant Wohlers in the amount of \$500,000, plus interest by law and all costs of this action.

COUNT TWO
CONVERSION

14. Travelers adopts and incorporates all averments of Paragraphs 1 through 13 of the Verified Complaint as if set forth in full herein.

15. During the course of his employment with GBR, Wohlers wrongfully converted to his personal use assets of GBR having a value in excess of the \$500,000 limit of liability for the applicable insurance coverage. By virtue of its payment to GBR,

Travelers is subrogated to all rights of GBR and is entitled to assert all claims available to GBR against Wohlers

WHEREFORE, PREMISES CONSIDERED, Travelers demands judgment against Defendant Wohlers in the amount of \$500,000, plus interest by law and all costs of this action.

COUNT THREE
UNJUST ENRICHMENT

16. Travelers adopts and re-alleges all averments of Paragraphs 1 through 15 of the Verified Complaint as if set forth in full herein.

17. By virtue of his wrongful action and conduct while an employee of GBR, Wohlers has been unjustly enriched in an amount in excess of the \$500,000 limit of liability for the applicable insurance coverage. By virtue of Travelers' payment to GBR, it is entitled to assert all claims available to GBR against Defendant Wohlers.

WHEREFORE, PREMISES CONSIDERED, Travelers demands judgment against Defendant Wohlers in the amount of \$500,000, plus interest by law and all costs of this action.

Respectfully Submitted,

/s/ L. Graves Stiff, III

L. Graves Stiff, III (ASB-0693-S70L)
Jordan W. Gerheim (ASB -4390-D45G)
Averie L. Armstead (ASB -3698-D00R)
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ala@starneslaw.com

Counsel for Travelers Casualty & Surety Company, Inc.

PLEASE SERVE DEFENDANT VIA PROCESS SERVER:

James Wohlers
152 S Mount Pleasant Avenue
Monroeville, Alabama 36460

Exhibit A

PROOF OF LOSS

Name and Address of Insured GBR Equipment, Inc. / GBR Oilfield Services 6300 Petersburg St., Anchorage AK 99516		Bond or Policy Number(s) 086-LB-106000100
Date(s) of Loss January 1, 2015 to July 23, 2019	Date Insured Discovered Loss July 23, 2019	Date Loss Reported to Company or Agent August 16, 2019

SECTION I. (TO BE COMPLETED FOR EMPLOYEE DISHONESTY OR EMPLOYEE THEFT CLAIMS)

I, Billy Mack Reynolds certify that
(Name & Title (e.g. Owner, Partner, Managing Director, President, Chief Financial Officer, etc.) Of Person Signing This Proof of Loss)

GBR Equipment Inc./ GBR Oilfield Services has sustained a loss as a result of
(Name of Insured)

Employee Dishonesty or Employee Theft committed by James Joseph (Jim) Wohlers James (Jim) Wohlers
(Name of Employee(s))

while employed as General Manager
(Job Title of employee(s))

SECTION II. (TO BE COMPLETED FOR ALL OTHER CLAIMS)

I, Billy Mack Reynolds certify that
(Name & Title (e.g. Owner, Partner, Managing Director, President, Chief Financial Officer, etc.) Of Person Signing This Proof of Loss)

GBR Equipment Inc./ GBR Oilfield Services has sustained a loss as a result of (check appropriate box);
(Name of Insured)

- | | |
|---|---|
| <input type="checkbox"/> Forgery | <input checked="" type="checkbox"/> Computer Crime |
| <input type="checkbox"/> On Premises | <input checked="" type="checkbox"/> Funds Transfer Fraud |
| <input type="checkbox"/> In Transit | <input type="checkbox"/> Personal Accounts Protection |
| <input type="checkbox"/> Money Order or Counterfeit Money | <input type="checkbox"/> Claim Expense |
| | <input checked="" type="checkbox"/> Other: employee theft |

SECTION III. (TO BE COMPLETED FOR ALL CLAIMS)

I further certify that: (1) the amount of money or property loss is Eight Hundred Ninety Five Thousand Two Hundred Twenty and 45/100
(Amount in Words) (\$ 895,220.45);

(2) that said amount is a true net loss for the period from January 1, 2015 to July 23, 2019 ;

and (3) that the following is a detailed statement of loss:

In the space below specify how the loss was caused; when the loss occurred; the name and addresses of all persons who have knowledge of the details of the loss; and how and when the loss was discovered; and provide all documents available to support the claimed loss or identify and state where such documents are located and available for review and copying. Attach Additional Pages If Necessary.

-Mr. Wohlers caused unauthorized/improper personalized charges to be made on GBR's American Express Card (Credit Card Number: 3767404501 32037 and 3767404501 31005) and Bank of America Credit Card between January 1, 2015 through July, 2019

-Mr. Wohlers caused unauthorized/improper Automated Clearing House (ACH) payments to be made for his personal credit cards such as: American Express, Chase and Citi Card. Such payments were made from January 1, 2015 to July 23, 2019.

- Mr. Wohlers caused unauthorized/improper wire transfer payments to be made for non-GBR vendors during 2016.

-Betsy Rush, Marissa Tarkington and Ella Reynolds have knowledge of the details of the loss.

- The loss was discovered when Ella Reynolds reconciled the bank statements from FNBA and American Express Credit Card in July of 2019. Documents in GBR's possession will be provided, or made available for inspection.

SECTION IV. (TO BE COMPLETED FOR ALL CLAIMS)

(Attach Additional Pages If Necessary)

In the space below describe: Each item of loss for which claim is made and the amount claimed, (if merchandise list cost to insured) and each credit to be applied to this loss. Credits include any item of value available to offset against or reduce the loss. Attach additional sheets if necessary.

Date of Loss or Credit	Description of Item of Loss or Credit	Amount Claimed or Credited
January 1, 2015 to July 30, 2019	Mr. Wohlers made unauthorized/improper purchases using GBR's American Express Card (CARD NUMBER: 3767 404501 32037 AND 3767 404501 31005) that are personal in nature.	\$ 374, 378.01
January 6,12 and February 14, 2016 February 25, 2016	Mr. Wohlers made unauthorized/improper wire transfer payments to Alabama Steel	\$ 34, 533.59
	Mr. Wohlers made unauthorized/improper wire transfer payments to Qui Yang	\$ 16, 171.00
April 6, 2015 to July 8, 2019	Mr. Wohlers made unauthorized/improper purchases with GBR's Visa Credit Card (4003 9010 1723 4616) that are personal in nature.	\$84, 752.85* (*Amount is estimated, GBR is still attempting to determine the total amount)
January 1, 2015 to May 31, 2019	Mr. Wohlers caused unauthorized/improper ACH payments to be made for Mr. Wohlers' personal American Express Credit Card (FNBA ACCOUNT NUMBER: XXX6993).	\$ 332,439.20
March 29 to February 12, 2018	Mr. Wohlers caused unauthorized/improper ACH payments to be made for Mr. Wohlers' for his personal Chase Credit Card (FNBA ACCOUNT NUMBER: XXX6993)	\$ 22,224.80
March 30, 2017 to February 12, 2018	Mr. Wohlers caused unauthorized/improper ACH Payments to be made for Mr. Wohlers' personal Citi Card (FNBA ACCOUNT NUMBER: XXX6993)	\$30, 721.00
	*GBR is still investigating this matter and reserves the right to supplement or amend this proof of loss.	
Total Loss		approximately \$895, 220.45

It is understood that the above facts and details of loss are subject to verification. The acceptance and retention of this form by the Company as completed by the undersigned does not constitute a waiver of any stipulation or condition of the bond or policy, or an admission of coverage or liability thereunder.

Fraud Warning: The undersigned affirms that he/she has reviewed the attached list of fraud warnings and has carefully read the fraud warning applicable in the state where the insured listed above is located, which fraud warning is hereby fully incorporated herein by reference.

STATE OF ALASKA)
) ss.:
THIRD JUDICIAL DISTRICT)

Billy Reynolds being duly sworn, states that, he/she is
President of B&B Equipment the insured listed

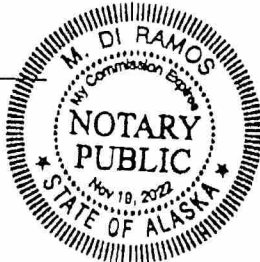
above, and that the statements above, on the reverse side and in any papers attached constitute a complete and truthful recital of all facts now known concerning this claim; and that no material facts are being withheld or suppressed by the insured.

Billy Reynolds
(Signature Of Person Completing This Proof Of Loss)

Subscribed and sworn to before me, this

3rd day of September 2019

[Signature]
Notary Public
STSP_FWI_



(Notary Seal)

Date: _____

RE: Account Number _____

Dear: _____

This letter is to advise you that this company has suffered a loss involving the negotiation of the check(s) listed below. Your institution was a party to the negotiation of the instrument(s) on dates to be determined. Please accept this letter as notice that your actions may have caused or contributed, in whole or in part, to our loss. As our investigation continues, we, or our insurance carrier, will inform you of the full particulars of our loss:

<u>Date:</u>	<u>Check #</u>	<u>Payee</u>	<u>Amount:</u>
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Yours very truly,

cc: Travelers

FIDELITY LOSS SUPPORTING DETAIL

Insured GBR Equipment Inc./ GBR Oilfield Services

Principal (Employee) Billy Mack Reynolds

1. Do you have an outside accounting firm? If yes, were they hired to conduct an Audit, Review, or Compilation? What was the date of the most recent report prepared by the accounting firm?
Yes. Compilation. September 9, 2017

2. Identify all services performed by your outside accountants in addition to those stated in their engagement letters (i.e. bookkeeping functions, preparation of payroll tax returns, sales tax reports, reconciliations and accounting procedure review, etc.)
-Fiscal 09/30/2017 (Year: 2016) Income Tax Return
-Quarter Ended 12/31/18 Payroll Tax Return
- Year 01/01/19 Property Tax Returns

3. Does your company have an Internal Audit Department? If yes, how long has it been operating? What involvement does the outside accountant have in the internal audit function? Did the internal audit dept. perform any reviews involving the area in which the embezzlement occurred?
No

4. Does your company have an Accounting Procedures Manual? If so, how long has it been in use? Have the outside accountants made inquiries regarding the manual and/or have they been given a copy? Did the manual include procedures relative to the area of accounting in which the embezzlement occurred?
No

5. What steps have been taken to prevent a similar loss of this nature in the future?

Mr. Wohlers was terminated and we made Ella Reynolds Comptroller/ General Ledger to oversee payables and receivables.

6. Do you have copies of any of the outside accountant's workpapers? If yes, please attach to this form.

Yes.

PLEASE ATTACH THE FOLLOWING DOCUMENTS TO THIS FORM :

** * Provide for EACH year beginning with the year preceding the date the loss began through the year preceding the date the loss was discovered * **

1. Outside Accountant's Engagement Letters
2. Outside Accountant's Management Reports
3. Outside Accountant's Financial Statements
4. All communication between your Company and the outside Accountants

FRAUD WARNINGS BY STATE

State	Fraud Warning
All States Not Separately Listed Below	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.
Alaska	Any person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.
Arizona	For your protection Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.
Arkansas	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
California	For your protection, California law requires the following to appear on this form: Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.
Colorado	It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.
Washington, D.C.	WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
Delaware	Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.
Florida	Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

Idaho	Any person who knowingly, and with intent to defraud or deceive any insurance company, files a statement of claim containing any false, incomplete, or misleading information is guilty of a felony.
Indiana	A person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.
Kentucky	Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
Louisiana	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Maine	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.
Maryland	Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly and willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Minnesota	A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.
New Hampshire	Any person who, with a purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638.20.
New Jersey	Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.
New Mexico	ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.
New York	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.
Ohio	Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Oklahoma	WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
Oregon	Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement may be guilty of insurance fraud.
Pennsylvania	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.
Puerto Rico	Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation with the penalty of a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances are present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.
Rhode Island	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Tennessee	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
Virginia	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
Washington	It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.
West Virginia	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Claim Service Guide & FAQ Commercial Crime and Financial Institution Bond Claims

Travelers understands that life is full of uncertainty. Rest assured that whenever possible, our claim professionals are ready to help. When you call you can always expect to be assisted promptly and treated with the utmost respect, integrity, professionalism and skill.

I reported a claim. Now what?

The lifecycle of a claim varies depending on the nature of the claim. However, the claim process generally includes the following steps:

1. Acknowledgment

Now that you have received the attached letter acknowledging Travelers' receipt of the claim notice, you have the claim number and the name and contact information of the claim professional assigned to your matter. It also includes instructions regarding the submission of your proof of loss.

2. Proof of Loss Submission

Within 120 days of discovery, unless modified by endorsement, you must submit a proof of loss, duly sworn to, with full particulars.

3. Information gathering

Our formal investigation begins upon our receipt of the proof of loss. The claim professional may engage an expert and you may receive communications requesting additional information in order to assist in the investigation of the claim.

4. Coverage determination

Travelers will send you a letter which outlines the coverage available under the policy. This letter should be viewed as an informative document setting forth the terms, conditions and exclusions contained within the policy that may apply to your claim. It will also explain why a matter does not fall within the coverage provided.

5. Resolution

We strive to resolve all claims as expeditiously as possible. Claims involving many transactions or occurring over an extended period of time may require a fact intensive investigation.

6. Release and assignment

You may be asked to sign a release & assignment of your claim. This document permits Travelers to pursue recovery from any parties responsible for the loss.

Who will handle my claim?

Your claim will be handled by a Travelers Bond & Financial Products claim professional. The Bond & Financial Products claim department is made up of diverse claim and legal professionals. We employ claim professionals throughout the United States and provide personal, localized claim service. We work directly with insureds, policyholders, agents and brokers and are committed to delivering world class service to all our customers.

Dedicated recovery management services

To enhance potential for recovery of the loss, including your deductible, Travelers Bond and Financial Products has a dedicated recovery management unit. Our staff has expertise and experience with:

- Preservation of recovery opportunities
- Federal and state laws impacting recovery
- Criminal proceedings
- Financial analysis
- Creditors rights
- Third party bank liability
- Attachment of real property
- Online resources to identify assets

This material does not amend, or otherwise affect, the provisions or coverages of any insurance policy or bond issued by Travelers. It is not a representation that coverage does or does not exist for any particular claim or loss under any such policy or bond. Coverage depends on the facts and circumstances involved in the claim or loss, all applicable policy or bond provisions, and any applicable law. Availability of coverage referenced in this document can depend on underwriting qualifications and state regulations.

Exhibit B

THIS DOCUMENT HAS A RED BACKGROUND - BORDER CONTAINS MICRO PRINTING AND AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

TRAVELERS

29-BND-BND0024348-

-02000-00201 AP

BANK OF AMERICA
USA

CHECK NUMBER 0001972231

DATE 11/06/2019

FORMAT 390

FOR PAYMENT INFORMATION PHONE: SEE BELOW

51-44/119

PAY Five hundred thousand six hundred seventy-five dollars and Zero cents*****

\$\$\$500,675.00*****

PAY TO THE ORDER OF
GBR Equipment, Inc.
6300 Petersburg St.
ANCHORAGE AK 99507-2009

Douglas H. Russell

AUTHORIZED SIGNATURE

⑈0001972231⑈ ⑆011900445⑆ 000000061233⑈

GBR Equipment
01136993

2375065623 2019-11-14 FNBAAlaska Dimond

>125200060<
FNBAAlaska
11-14-2019
2375065623
Branch Remote Capture

Exhibit C

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this "Agreement") is made and entered into on this the 4 day of November 2019 by Travelers Casualty and Surety Company of America ("Travelers"), on the one hand, and by GBR Equipment, Inc. ("GBR") on the other hand.

RECITALS

WHEREAS, Travelers issued Wrap+ Policy No. 086-LB-106000100 with an effective Policy Period of October 1, 2018 to October 1, 2019 (the "Policy"), naming GBR as insured;

WHEREAS, on September 4, 2019, GBR submitted a sworn Proof of Loss executed September 4, 2019, to Travelers (collectively, with all documentation and information provided by GBR to Travelers, referred to as the "Proof of Loss") seeking coverage under the Policy and alleging an initial loss in the amount of \$895,220.45 as a result of alleged Employee Theft committed by James J. Wohlers ("Wohlers") from January 1, 2015 through July 23, 2019 (the "Claim");

WHEREAS, Travelers assigned this matter Claim No. T1912555 (the "Claim"), conducted an independent investigation of the Claim;

WHEREAS, on October 23, 2019, Travelers notified GBR of a coverage issue regarding answers Wohlers provided on the August 2017, and earlier Insurance Application Renewal documentation. When asked whether the owners were involved in the day-to-day activities, Wohlers allegedly answered "yes." When interviewing GBR's owner, Billy Reynolds ("Reynolds"), regarding how the theft occurred, Reynolds allegedly stated that while the theft occurred, he was not involved in the day-to-day activities, and left Wohlers in charge of running GBR;

WHEREAS, Travelers and GBR have agreed to settle and compromise any and all claims, causes of action, and disputes whether known or unknown in connection with, related to or arising out of the Claim, under the Policy or otherwise, without acknowledgement of any liability or fault;

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

- 1. Settlement Agreement.** On October 24, 2019, Travelers and GBR agreed to settle and compromise any and all claims, causes of action, and disputes between them, arising out of or related to the Claim in exchange for Five Hundred Thousand Six Hundred Seventy-Five and 00/100 Dollars (\$500,675.00) (the "Settlement Amount") paid by Travelers to GBR Equipment, Inc. (the "Settlement Payment"). In exchange, GBR assigns to Travelers, to the extent of the Settlement Payment only, any claims, rights, or causes of action it may have against Wohlers or any other party potentially responsible for the loss (the "Assigned Portion of the Right of Recovery"), as set forth in Exhibit A attached to this Agreement (the "Partial

Assignment”). The parties agree that Travelers is entitled to reimbursement of the Settlement Payment before GBR is entitled to be reimbursed for any loss it suffered in excess of the Settlement Payment arising from or related to the facts giving rise to the Claim, unless Travelers has agreed in writing to abandon or has otherwise settled, compromised, or disposed of the Assigned Portion of the Right of Recovery. The parties acknowledge and agree that GBR reserves and retains the right to seek recovery of any award, judgment, or order of restitution obtained by or awarded in favor of GBR, and against Wohlers, which relates to the Claim to the extent such recovery exceeds the sum of \$500,675.00 (the “Unassigned Portion of the Right of Recovery”).

2. Recovery Provisions.

- (a) In the event that either party pursues recovery through settlement, litigation, or otherwise, the party initiating such action shall (i) first provide the other with written notice of its intentions; and, (ii) provide the other party with the opportunity to participate in any action(s), proceedings, or efforts brought to recover, pursue, or enforce the Assigned Portion of the Right of Recovery or Unassigned Portion of the Right of Recovery on terms consistent with the provisions of this Agreement or as may be otherwise agreed in writing by the parties.
- (b) If either party elects to pursue recovery through settlement, litigation, or otherwise without the participation of the other, the party so electing will do so at its own costs and expenses and shall have the right to determine for itself whether to pursue, compromise, settle, and/or abandon any portion of the Assigned Portion of the Right of Recovery or Unassigned Portion of Recovery (respectively), provided that it does not, through its actions, compromise, impair, hinder or prejudice in any way the other’s right or ability to seek recovery or obtain a judgment against Wohlers.
- (c) The parties further agree to cooperate in good faith with one another to effect recovery of the Assigned Portion of the Right of Recovery and the Unassigned Portion of the Right of Recovery.

3. **Release.** In exchange for and upon receipt of the Settlement Payment and execution and delivery of the Partial Assignment, GBR (for its own behalf and on behalf of any affiliates, successors, and assigns) hereby releases, acquits, exonerates, and forever discharges Travelers and its agents, servants, employees, insurers, reinsurers, successors, parent organizations, subsidiaries, affiliates, and assigns, from and against any and all actions, causes of action, claims, and demands for any and all damages, loss, and/or injury that GBR may have against Travelers or the Policy which arise out of or relate to the Claim (or any allegations or damages referenced therein), and Travelers’ handling of the Claim, including but not limited to any claim for breach of contract, breach of implied duty of good faith and fair dealing, breach of fiduciary duty, bad faith, unfair claims practices or unfair trade practices. Nothing in this provision operates to release Travelers of its obligations

under this Settlement and Release, or its obligations under the policy unrelated to the Claim.

4. **Stipulation of Claim Dismissal.** After the parties have executed this Agreement, Travelers has issued the Payment to GBR, and GBR has executed and delivered its Partial Assignment to Travelers, Travelers will close the Claim to its Recovery Management Department, in order to pursue its subrogation rights in accordance with this Agreement and the Partial Assignment.
5. **Cooperation of the Parties.** The parties agree to cooperate fully and to execute any and all other documents that may be necessary or appropriate to effectuate the terms and intent of this Agreement.
6. **No Admission of Liability or Coverage.** The parties agree that this is a compromise settlement of a disputed claim and that the settlement of this matter and any actions, statements or representations by Travelers, its agents or attorneys shall not constitute or in any way be deemed an admission of coverage or liability by Travelers and should not be construed as creating precedent under the Policy for this Claim or any future claim, known or unknown.
7. **Severability of Provisions of Agreement.** The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision herein, and the invalidity or unenforceability of any provision of this Agreement as to any person, entity, or circumstance shall not affect the enforceability or validity of such provision as it may apply to other persons, entities or circumstances.
8. **Governing Law.** This Agreement, and any rights, remedies, or obligations provided for hereunder shall be interpreted and enforced in accordance with the laws of the State of Alaska.
9. **Counterparts.** This Agreement may be executed by the parties independently in any number of counterparts, all of which together will constitute but one and the same instrument which is valid and effective as if all parties had executed the same counterpart. Counterparts delivered via email or facsimile shall have the same effect as original signatures.
10. **Headings.** All headings in the numbered paragraphs of this Agreement are for convenience only and shall not be used to interpret the language of the Agreement. This Agreement shall be considered jointly drafted by the parties and shall be interpreted in accordance to its fair meaning, and not strictly for or against any party.
11. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the issues specifically addressed herein and supersedes and replaces any prior communications, written or oral, among the parties with respect to the subject matter.

12. **Review of Agreement:** The parties acknowledge that they have had the opportunity to have this Agreement reviewed by counsel of their choosing and have executed this Agreement only after carefully reviewing the same and giving due consideration to the provisions set forth herein and the consequences of performance or non-performance. Travelers and GBR warrant the individuals signing this Agreement have the authority to bind Travelers and GBR, respectively, to the terms of this Agreement.

GBR EQUIPMENT, INC.

By: *Scott Reynolds*
Its: *President*

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA

By: _____

Its: _____

EXHIBIT A

PARTIAL ASSIGNMENT OF RIGHT OF RECOVERY


IN CONSIDERATION of the payment of the Settlement Amount as provided in the Settlement and Release Agreement (the "Settlement Agreement"), upon full execution of the Settlement Agreement and receipt of the Settlement Payment from the Company as provided in the Settlement Agreement the undersigned does hereby transfer, assign and set over to the Company the right to recover the first Five Hundred Thousand Six Hundred Seventy-Five and 00/100 Dollars (\$500,675.00) from any recovery, award, judgment, or order of restitution obtained by or awarded in favor of GBR, and against Wohlers, which relate to the Claim (the "Assigned Portion of the Right of Recovery"). GBR reserves and retains the right to seek recovery of any award, judgment, or order of restitution obtained by or awarded in favor of GBR, and against Wohlers, which relates to the Claim to the extent such recovery exceeds the sum of \$500,675.00 (the "Unassigned Portion of the Right of Recovery"). The undersigned represents and warrants that it has not assigned any portion of the Assigned Portion of the Right of Recovery to any other party. Either party may pursue recovery in accordance with and as set forth in the Settlement Agreement. The undersigned further represents and warrants that there are no pending civil lawsuits, actions, arbitrations or other legal proceedings initiated by the undersigned against any person, firm, or corporation arising out of or in any way connected with the Assigned Portion of the Right of Recovery, except for the following: Pending FBI (AK) Investigation. The undersigned affirms its understanding and agreement with this Partial Assignment of the Right of Recovery and the Settlement Agreement. The parties further agree to cooperate with one another to effect recovery of the Assigned Portion of the Right

of Recovery and the Unassigned Portion of the Right of Recovery in accordance with the Settlement Agreement.

Unless indicated differently herein, all defined and/or capitalized terms are intended to have the same meaning and effect as ascribed to them in the accompanying Settlement and Release Agreement being executed herewith, which is incorporated by reference. The undersigned additionally agrees to execute any and all further papers, releases and/or assignments that may be necessary to effectuate the purposes of the above partial assignment.

Executed at 6300 Petersburg Street, Anchorage, Alaska, this 11-5-19 day of November, 2019.

GBR EQUIPMENT, INC.

By: 
Its: President