THE PROMISE
To Do Or Not To Do

Keith Langley
Partner
Langley LLP
Dallas, TX

John Rindt
Senior Vice President Surety
Hub International
El Paso, TX

Mike Pipkin
Partner
Sedgwick LLP
Dallas, TX

David R Hombach Jr AFSB
Regional Underwriting Officer
Travelers Bond & Financial Products –
Construction Services
Federal Way, WA

Rick Levesque
Director
Hartford Bond
Gig Harbor, WA

2014 Annual Meeting & Expo
MENTORING is the FUTURE
April 27-30, 2014
Pearlman
THE PROMISE
“WE ARE JUST FIVE GUYS”
Routine Payment Bond Claims

• What is the promise?
• To whom is it Made?
• By whom is it Made?
• What are the reasonable expectations of
  • The Claimant
  • The Principal
  • The Producer
Financially Strong Principal Insisting Surety
“Stay Out Of It”

• Legal Regulatory Requirements vs. Account Retention
• Who and/or What conduct creates the mindset/attitude
• Importance of Communicating Consistent Industry Expectations
• What Housekeeping Could be Employed to Avoid
Performance Bond Claims
- No Dispute by Principal

- Opportunities for “Pre Default” mitigation and backlog management
- No “Propriety of the Default” Issue
- Remedy Selection/Mitigation is Key
- Bankruptcy – Pre and Post
- Ability to “Prepackage” Certain Reprocurement tasks
Requests for Financing
- Pre Default and Post Default

- Examples from Across the Spectrum
- Pre-Default
  - The Surety’s Perspective
  - Challenges of Financing
  - Conditions that Influence the Financing Decision
- The Principal’s Perspective
- Advantages and Disadvantages
- Is financing in any form a viable option to mitigate potential losses
- Post-Default
  - Same perspectives and questions as with pre-default, but now with additional players and pressures
Performance Bond Claims
- Disputed by Solvent Principal
- Disputed by Insolvent Principal

- The indemnity agreement as a tool in the handling of surety claims
  - If solvent, the principal and indemnitors must still be in compliance with the indemnity agreement
    - Examples and tips to ensure success
  - If insolvent, then multiple doors open
- Access to principal’s and indemnitors’ books and records
- Right to information
- Access to information from third parties
- Insistence on maintaining books and records
- Access to bonded project sites
- **Right to settle claims against bonds, as well as affirmative claims**
  - Obligations to notify of claims
  - Surety’s right/duty to investigate
  - Indemnitors’ option to post collateral
  - Surety’s duty of good faith
  - Principal and Indemnitors’ duty to cooperate
Indemnitors
- Differences of Opinion
- Competing Demands

• Examples, e.g., specialty contractor or subcontractor with key, very solvent product supplier as indemnitor
• Dovetails for previous discussion regarding surety’s rights and duties and indemnitor obligations
Co-Surety

- Differences of Opinion

• Differences of opinion
• Who drives the bus?

• Guiding Principles
One Project, One Broker, 
One Surety, Two Bonds 
(Priceless)

• Highly valued carefully underwritten account is the GC
• Highly valued carefully underwritten account is the major sub
• Highly valued broker loves GC and loves sub
• China really does have a large, high wall
• Educate, explain, care deeply
• When will the beatings stop????
THE PROMISE
THE PROMISE
(EURECA)

We promise that we are fully committed to staffing claim situations with surety professionals who are

• Experienced, act with
• Urgency,
• Responsive,
• Enterprising/Innovative,
• Collaborative, and who
• Act with integrity

and that we will objectively, quickly and fairly make and implement decisions giving due regard to the balancing of interests between each of the participants to the process along with the circumstances of the project or transaction.