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GREENSKIES RENEWABLE ENERGY,  
LLC, MICHAEL SILVESTRINI, ANDREW  
CHESTER, ARTHUR S. LINARES and  
LUIS A. LINARES,

Plaintiffs,

v.

ARCH INSURANCE COMPANY,

Defendant.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Civ. A. No. 2:16-cv-05243-SDW-LDW

Civil Action

**AMENDED COMPLAINT**

Plaintiffs, Greenskies Renewable Energy, LLC (“Greenskies”), Michael Silvestrini (“Silvestrini”), Andrew Chester (“Chester”), Arthur S. Linares (“A. Linares”) and Luis A. Linares (“L. Linares”), by way of Complaint against Defendant, Arch Insurance Company (“Arch”), allege and state as follows:

**INTRODUCTION**

1. This is an action for declaratory judgment and damages arising out of a General Indemnity Agreement (“GIA”) entered into by and between Plaintiffs and Arch, pursuant to which Arch issued certain surety bonds to Greenskies, the Principal under the GIA, in the aggregate amount of approximately \$50,000.00. Relying on an outrageous interpretation of the GIA, Arch contends that these Plaintiffs are additionally obligated for nearly \$20 million in potential losses for bonds Arch issued to a co-indemnitor on totally unrelated construction

projects. Arch has now made a substantial demand of the Plaintiffs for cash collateral relating to those potential losses that will have a serious impact on its own business.

2. Beginning in or around 2012, Greenskies began bidding on several small construction projects that required Greenskies to obtain surety bonds. Thus, Greenskies, as principal, and each of its individual members, as indemnitors, sought a limited number of surety bonds from Arch (each in the amount of \$5,000), to support specific projects on which Greenskies was bidding. Plaintiffs signed a GIA that specifically denotes “Greenskies” as the only bond “Principal” for whom bonds would issue from Arch (the “Greenskies GIA”). Centerplan Construction Company (“Centerplan”), an entity owned by one of Greenskies’ members, but otherwise unrelated to Greenskies, also signed the Greenskies GIA as an “Indemnitor” only. All of the bonds issued by Arch to Greenskies under the Greenskies GIA were discharged with no claims made against any bond.

3. Unbeknownst to Plaintiffs, in 2010 and again in 2016, Centerplan, as principal, entered into one or more GIAs with Arch for the issuance of surety bonds to support several of its own multi-million dollar construction projects (the “Centerplan Bonds”). Neither Greenskies nor any of the individual Plaintiffs have (or had) any interest in those construction projects or the issuance of any bonds to Centerplan in connection therewith. Furthermore, none of the Plaintiffs are parties to any GIA naming Centerplan as a “Principal.”

4. Upon information and belief, claims have been asserted against Arch based on the Centerplan Bonds, all of which are unrelated to Plaintiffs and their business.

5. On August 19, 2016, in response to those claims, and based on a strained interpretation of the Greenskies GIA, Arch served Plaintiffs with a Demand for Cash Collateral in the amount of \$18,807,737.47 (the “Demand”), 400 times the amount of the bonds sought by

Plaintiffs and issued to Greenskies. Arch claims that each of the Plaintiffs is obligated to Arch for any losses it incurs by reason of having issued surety bonds to Centerplan, despite the fact that it was never contemplated that any bonds would be issued to Centerplan under the Greenskies GIA.

6. Arch contends that the Definitions section of the Greenskies GIA provides that the term “Principal” includes: “... any Indemnitor on behalf of which the Surety has executed a Bond.” However, Arch ignored the requisite context of the Greenskies GIA which unequivocally denotes Greenskies as the only Principal whose bonds Plaintiffs agreed to indemnify.

7. The Plaintiffs responded to Arch’s Demand and denied that they had any liability to Arch for any such losses, and demanded a retraction of the Demand based on the terms of the Greenskies GIA. In response, Arch refused to retract the Demand, which exposes Plaintiffs to significant damages as a result of claims made against Arch on the Centerplan Bonds.

### **THE PARTIES**

8. Plaintiff, Greenskies, is a limited liability company organized and existing pursuant to the laws of the State of Connecticut, with a principal place of business in Middletown, Connecticut. Greenskies is identified as the “Principal/Indemnitor” under the July 24, 2012 Greenskies GIA. The members of Greenskies are: Silvestrini, Chester, A. Linares, L. Linares (together, the “Individual Indemnitors”) and Robert Landino (“Landino”).

9. All of the members of Greenskies, including each of the Individual Indemnitors, are residents of the State of Connecticut. The Individual Indemnitors are each members of Greenskies and are identified only as “Indemnitors” under the Greenskies GIA.

10. Upon information and belief, Defendant Arch is an insurance company organized and existing pursuant to the laws of the State of Missouri, with its principal place of business in Jersey City, New Jersey.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(1) because the amount in controversy exceeds \$75,000.00 exclusive of costs and interest, and because there is complete diversity between the Plaintiffs and Arch.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in this judicial district. Arch maintains its principal place of business within this judicial district, negotiated and drafted the Greenskies GIA in New Jersey and issued the surety bonds at issue from New Jersey. Venue is also proper in this Court because Arch agreed in the Greenskies GIA that it would submit to the jurisdiction of this Court.

### **FACTUAL ALLEGATIONS**

13. Greenskies is a solar energy company that is engaged in the installation of solar panels and related energy systems for commercial, industrial and municipal entities.

14. In or around 2012, Greenskies was presented with the opportunity to bid on a series of small projects that required surety bonds.

15. Greenskies contacted its insurance broker, Cardiello Insurance (“Cardiello”), to assist it in locating a surety company to write the bonds needed to bid on these projects.

16. Cardiello arranged for Arch to issue the necessary surety bonds to Greenskies and, in connection with this issuance, Plaintiffs entered into the Greenskies GIA on or about July 24, 2012.

17. The sole purpose of Plaintiffs' entering into the Greenskies GIA was to support Arch's issuance of bonds to Greenskies.

18. Arch modified and prepared its standard form GIA for Greenskies and the Individual Indemnitors to sign.

19. The Greenskies GIA provides, in its Recitals, that:

Principal, as hereafter defined, in the performance of contracts and the fulfillment of obligations generally, whether in their own names or with others, may desire or be required to give or procure Bonds, and to renew, continue or substitute from time to time the same or new Bonds, or the Indemnitors may have an interest in inducing the Surety to refrain from canceling said Bonds...

The Indemnitors have a substantial, material and beneficial interest in the Principal's obtaining of Bonds from the Surety or in the Surety's refraining from cancelling such Bonds.

20. The Greenskies GIA provides the following definitions used in the agreement:

DEFINITIONS- In addition to the capitalized terms defined elsewhere in this Agreement, the following terms when used in this Agreement, **unless the context otherwise requires**, shall have the meanings indicated in this paragraph, which meanings shall be equally applicable to both the singular and plural forms of such terms:

Principal: Any Indemnitor on behalf of which Surety may execute a Bond and/or any Person whose name is or has been furnished to Surety by any of the Indemnitors or on behalf of which Surety has issued any Bond at the request of any Indemnitor, including, but not limited to, any of the Indemnitors named or referred to as "Principal" in any bond, undertaking or recognizance. The term "Principal" also includes any present or future direct or indirect subsidiary, successor, affiliate or parent or any Indemnitor and any partnerships, LLCs, LLPs or other entities owned in whole or in part by any named Indemnitor.

Indemnitors: All Persons who sign this Agreement or whose representatives sign this Agreement or any other agreement that incorporates by reference the terms of this Agreement. The Indemnitors warrant and represent that they have a material and beneficial interest in Surety's issuance of Bonds on behalf of **the** Principal, and acknowledge that Surety would not issue such Bonds without each Indemnitor's agreement to reimburse Surety for all losses arising under the Bonds.

(Emphasis added.)

21. As the drafter of the Greenskies GIA, Arch additionally prepared the signature page for each of the parties to sign. Arch chose the designations under which each of the parties to the Greenskies GIA was to sign.

22. Consequently, Arch included a signature line for Greenskies' President, Silvestrini, to execute the Greenskies GIA on behalf of Greenskies under the designation "Principal/Indemnitor." Greenskies is the only party to the Greenskies GIA that Arch chose to identify as a "Principal."

23. At the time they entered into the Greenskies GIA, neither Greenskies nor the Individual Indemnitors had the financial wherewithal to support requests for surety bonds. Accordingly, Landino, a part-owner of Greenskies, agreed to sign the GIA as an Indemnitor along with the other Individual Indemnitors. In addition to being a member of Greenskies, Landino was also the President of Centerplan, a construction company unrelated to Greenskies. Centerplan offered its indemnity to Arch to support its issuance of bonds to Greenskies. Neither Greenskies nor the Individual Indemnitors have (or had) any ownership interest in Centerplan. Landino signed the Greenskies GIA personally, and on behalf of Centerplan, both under the Arch-selected designation of "Indemnitor."

24. Critically, Arch did not designate Centerplan as a "Principal" or "Principal/Indemnitor" on the signature page of the Greenskies GIA, as it did with Greenskies. Of course, this is because none of the parties to the Greenskies GIA contemplated indemnifying Arch for bonds it might later issue to Centerplan.

25. Based on the above, Greenskies and each of the Individual Indemnitors reasonably relied upon the terms of the Greenskies GIA and signed it where designated by Arch. Plaintiffs entered into the Greenskies GIA with the express understanding that the one and only

“Principal” for which they agreed to indemnify Arch was Greenskies, in connection with any bond Arch issued to Greenskies, and in accordance with the express terms and definitions of the Greenskies GIA.

26. Upon information and belief, and unbeknownst to any of the Plaintiffs, Centerplan, as a principal, entered into one or more GIAs with Arch for the issuance of surety bonds to support several of Centerplan’s own multi-million dollar construction projects. Neither Greenskies nor any of the Individual Indemnitors have (or had) any interest in Centerplan or its affiliated entities or any interest in Arch issuing bonds to Centerplan in connection with any of Centerplan’s construction projects.

27. Upon information and belief, claims have been asserted against Arch based on the bonds it issued to Centerplan in connection with its various construction projects.

28. Rather than pursue the indemnitors under Centerplan’s GIA, on or about August 5, 2016, Arch transmitted to each of the plaintiffs a letter demanding that they immediately procure Arch’s discharge from any and all liability under two (2) of the Centerplan Bonds: Bond No. SU 1127633 and Bond No. SU 1127594. Arch further demanded that each of the Plaintiffs hold harmless and indemnify Arch for all losses incurred and to be incurred by Arch as a result of having issued the Centerplan Bonds.

29. Notably, Arch’s August 5, 2016 letter (and subsequent correspondence) identifies Centerplan as the principal under both the Centerplan Bonds at issue, without reference to any GIA naming Centerplan as “Principal.” Arch, however, is well-aware that none of the Plaintiffs are parties to any GIA specifically naming Centerplan as a “Principal,” or had any interest in Arch’s issuance of the Centerplan Bonds to Centerplan, or the construction projects secured by those bonds.

30. Thereafter, on or about August 19, 2016, Arch issued to Plaintiffs a Demand for Cash Collateral in the amount of \$18,807,737.47 to secure Arch's pending exposure on the Centerplan Bonds. Arch further demanded that Plaintiffs make this payment "no later than the close of business on Monday, August 29, 2016."

31. By correspondence dated August 23, 2016, Plaintiffs responded to Arch's Demand and denied any obligation to indemnify Arch or post any cash collateral in connection with the Centerplan Bonds, or any other bonds not issued to Greenskies. Plaintiffs' August 23, 2016 correspondence also informed Arch that its Demand was likely to have an immediate and negative impact on Plaintiffs' current and pending financing relationships and cause irreparable damage to their business interests. As such, Plaintiffs demanded that Arch immediately issue a formal written retraction of its Demand. Arch refused to do so.

32. Instead, Arch responded by correspondence dated August 26, 2016, in which Arch "rejected in all respects" Plaintiffs' demand for a retraction. Arch also refused to provide Plaintiffs with any explanation as to the basis for its position that, by entering into the Greenskies GIA for the issuance of the small Greenskies bonds, Plaintiffs somehow agreed to indemnify Arch for more than \$18,500,000 of bonds issued to Centerplan under a separate agreement. Arch concluded its letter by making clear that "the time set ... for meeting the Surety's collateral deposit demand[] has not been extended."

33. Accordingly, there exists an actual case or controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, regarding the scope of Plaintiffs' indemnification obligations to Arch under the Greenskies GIA.

**FIRST COUNT**  
**(Declaratory Judgment)**

34. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if stated fully herein.

35. Taken in context, as required by the express language of the Greenskies GIA, it is clear that Plaintiffs agreed only to indemnify Arch in connection with the several small bonds issued to Greenskies, as Principal, to support the projects Greenskies was bidding on.

36. The Individual Indemnitors were not seeking to obtain bonds on behalf of Centerplan; had no intention of indemnifying Arch for bonds issued to Centeplan; and, certainly, had no interest in Centerplan's business or whether it was able to obtain surety bonds on its unrelated construction projects.

37. As such, Arch specifically drafted the Greenskies GIA identifying Greenskies as the only "Principal" to whom bonds would issue and for which the Individual Indemnitors agreed to indemnify Arch.

38. Notwithstanding the express language of the Greenskies GIA, and the context in which it was entered, Arch has demanded the Individual Indemnitors post cash collateral in the amount of \$18,807,737.47 and indemnify and hold Arch harmless from any and all claims arising out of the Centerplan Bonds.

39. Arch's Demand is likely to have an immediate and negative impact on certain of Greenskies financial relationships and is likely to cause it to experience significant damage.

40. Plaintiffs are entitled to a declaration from this Court that Plaintiffs have no obligation or duty to Arch under the Greenskies GIA for any losses Arch incurred or will incur under the Centerplan Bonds and/or any other bonds not issued to Greenskies.

WHEREFORE, Plaintiffs demands judgment against Defendant as follows:

(a) A declaration that, in accordance with the Greenskies GIA, Plaintiffs have no duty or obligation to indemnify Arch for any losses Arch has incurred or may incur under the Centerplan Bonds and/or any other bonds not issued to Greenskies as Principal; and

(b) Attorneys' fees;

(c) Costs of suit; and

(d) Such other relief as the Court deems appropriate.

**SECOND COUNT**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

41. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if stated fully herein.

42. Arch had an obligation to act fairly and in good faith in its contractual dealings with Plaintiffs.

43. By its strained interpretation of the Greenskies GIA and by reason of issuing the Demand to Plaintiffs seeking to hold them liable for losses Arch incurs in connection with the Centerplan Bonds, which liability far exceeds the scope and intent of the Greenskies GIA, Arch has breached the implied covenant of good faith and fair dealing in connection with the Greenskies GIA.

44. Arch's breach of the implied covenant of good faith and fair dealing has caused (and will continue to cause) Plaintiffs to suffer injury and harm, for which Arch should be held liable in damages.

WHEREFORE, Plaintiffs demands judgment against Defendant as follows:

(a) Damages;

(b) Interest;

(c) Attorneys' fees;

- (d) Costs of suit; and
- (e) Such other relief as the Court deems appropriate.

**THIRD COUNT**  
**(Fraudulent Inducement)**

45. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if stated fully herein.

46. To induce Plaintiffs to enter into the Greenskies GIA, Arch represented to the Plaintiffs that the only bond “Principal” for whom bonds would issue from Arch for which they would be obligated as an Indemnitor was Greenskies.

47. As such, and to further induce Plaintiffs to enter into the Greenskies GIA, Arch specifically drafted the Greenskies GIA specifically denoting Greenskies as the only “Principal/Indemnitor” thereunder.

48. Arch intentionally misrepresented and/or concealed from Plaintiffs material facts known to Arch with the intention of inducing Plaintiffs to enter into the Greenskies GIA; to wit, the scope of Plaintiffs’ potential purported liability under the Greenskies GIA and purported obligation to Arch for losses incurred on bonds not issued to Greenskies.

49. Plaintiffs, in good faith, reasonably relied upon Arch’s representations that Plaintiffs would be liable only for bonds issued to Greenskies.

50. Arch’s representations, as aforesaid, were false.

51. As a direct and proximate result of Arch’s fraud, Plaintiffs have been forced to expend money and resources in, among other way, bringing this action for relief, and are likely to face immediate and negative consequences with respect to their financing relationships and damage to their business interests.

WHEREFORE, Plaintiffs demands judgment against Defendant as follows:

- (a) Damages;
- (b) Interest;
- (c) Attorneys' fees;
- (d) Costs of suit; and
- (e) Such other relief as the Court deems appropriate.

**FOURTH COUNT**  
**(Violation of New Jersey Consumer Fraud Act)**

52. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if stated fully herein.

53. Plaintiffs are "persons" within the meaning of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1, et. seq.* (the "CFA").

54. Arch is a "person" within the meaning of the CFA.

55. The conduct of Arch, as set forth in the preceding paragraphs, constitutes unlawful and unconscionable commercial practices within the meaning of the CFA.

56. Arch knowingly engaged in one or more deceptive act or practice described above, with the intent that Plaintiffs rely on same.

57. As a direct and proximate result of Arch's aforesaid conduct, Plaintiffs have been damaged, and suffered an ascertainable loss.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Compensatory damages;
- (b) Consequential damages;
- (c) Interest and costs of suit;
- (d) Treble damages, pursuant to *N.J.S.A. 56:8-19*;

(e) Attorney's fees and costs of suit in the prosecution of this matter, pursuant to *N.J.S.A.* 56:8-19; and

(f) Such other relief as the Court deems appropriate.

**FIFTH COUNT**

**(In the Alternative, Violation of the Connecticut Unfair Trade Practices Act)**

58. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if stated fully herein.

59. Arch is engaged in the conduct of trade or commerce as defined in Connecticut General Statutes § 42-110a.

60. The acts, omissions, and misrepresentations of Arch, as aforesaid, were and are deceptive acts or practices in the conduct of trade or commerce, in violation of the Connecticut Unfair Trade Practice Act, Connecticut General Statutes § 42-110b et seq., and violate the public interest.

61. Further, Arch's acts, omissions and misrepresentations, as aforesaid, were and are unfair and deceptive acts or practices in the business of insurance under Connecticut General Statutes § 38a-816, et seq., and Arch has made it a business practice and patten to act in said fashion.

62. As a direct and proximate result of Arch's unfair and deceptive acts or practices, Plaintiffs have suffered, and will continue to suffer, substantial damages.

WHEREFORE, Plaintiffs demands judgment against Defendant as follows:

- (a) Compensatory damages;
- (b) Consequential damages;
- (c) Punitive damages;
- (d) Interest and costs of suit;

- (e) Attorney's fees and costs of suit in the prosecution of this matter; and
- (f) Such other relief as the Court deems appropriate.

Respectfully submitted,

By: /s/ Michael D. Sirota  
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