

3-11-2010

Frank v. Bunker Hill Co. Appellant's Reply Brief Dckt. 34696

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THE QUESTION ON REMAND WAS FOR A DETERMINATION OF RESPONSIBLE
PARTIES

For more than 25 years the "Bunker Limited Partnership" denied and misrepresented their responsibility for Paul Frank's injuries to Mr. Frank, the Industrial Commission, and the Idaho Supreme Court. Bunker Limited Partnership, having been caught red handed of deception, fails to address the question in its brief. This brief will review the circumstances because they play a part in the remedy that should be awarded in this case.

Bunker Limited's argument that Mr. Frank has not presented legal authority for his requested relief is without merit. At page 9 of Mr. Frank's opening brief, IC 72-432 is cited and states, in part, about medical care, "If the employer fails to provide for the same, the injured employee may do so at the expense of the employer."

This case presents the factual question of whether the employee may cover his costs of medical care by the purchase of insurance. The industrial commission said no and Mr. Frank disagrees. Why should the employee be discriminated against when the employer is required and should have carried insurance or maintained a bond at all times? The remedy in this case can be limited to the particular facts of this case and based on the misrepresentations committed.

1. APPELLANT'S REPLY BRIEF

THE QUESTION

... Unmentioned in the Court's opinion of May 24, 1988, was that by February of 1984 Bunker Hill Company was off the scene. Paul Frank's opponent in seeking just compensation was not his long-time employer, but its successor-in-interest, Pintlar Corporation." Frank v. Bunker Hill Co. 117 Idaho 790, 792 P.2d 815 (1988) Footnote 2, Justice Bistline.

At the time of that argument before the Supreme Court, counsel for Bunker Hill, now counsel for Bunker Limited, was aware of many more responsible parties and failed to disclose the same. Transcripts of defense counsel's arguments are being requested to supplement the record.

In Frank v. Bunker Hill 142 Idaho 126; 124 P.3d 1002 (2005), footnote one, the Supreme Court stated:

Curiously, Pintlar and Gulf have participated in the action ever since this filing, including full participation in the appeal. It is unknown why Frank sought default against these parties or why the Industrial Commission began including them in the service list. No claims have been asserted against them and no order has made them parties to the proceeding. Nonetheless, the attorney representing Gulf and Pintlar participated in the proceedings before the referee, before the Industrial Commission, and before this Court...."

"These parties" in the above quote refers to Gulf Resources and Pintlar. At the time of the above statement the Supreme Court and Paul Frank were still wondering what Gulf Resources had to do with the case. This is the second occasion the Supreme Court

called upon counsel for the defendant to explain what was going on.

THE FACT - CONTRACTUAL RESPONSIBILITY

The misrepresentations in this case began November 1, 1982 when Gulf Resources and Chemical Corporation sold the Bunker Hill Company to the Bunker Limited Partnership, an Idaho limited partnership. Bunker Limited Partnership assumed certain liabilities including responsibility for outstanding workers compensation claims up to \$6 million.

The evidence now shows that Bunker Limited has been a responsible party for Paul Frank's benefits since the purchase. Bunker Limited should be affirmed as a responsible party for Mr. Frank's damages. The declaration of Bunker Limited as a responsible party should not release Gulf Resources or their successor Pintlar. Their liability for the Bunker Hill Company continues because they have never secured a release of liability and should be held to be jointly and severally liable.

There is no assignment of the Bunker Hill Company's self insured bond to Gulf Resources, Pintlar, or Bunker Limited. Therefore, Bunker Limited had no authority to secure cancellation of the bond that was to act as security for the Bunker Hill Company's self-insured status. The conduct amounts to interference with contract.

THE MISREPRESENTATIONS

THE GULF PINTLAR STORY

It is now apparent that Gulf Resources and Bunker Limited were telling the Commission whatever suited the Gulf or Bunker Limited needs. Gulf Resources was telling everyone they were responsible for Mr. Frank's case. Bunker Limited was trying to cancel the Bunker Hill Company bond and secure self-insured status without posting security. See appendix A, attached hereto and to be included in the supplemental record. The markings on the exhibit are from the Industrial Commission file.

On October 4, 1993, Mr. Frank requested a status conference. Second appellate R Vol. I, p. 82, 83. Before further proceedings were held, Gulf USA Corp. and Pintlar claimed no further proceedings could be held because Gulf and Pintlar were in bankruptcy and there was an automatic stay of the Industrial Commission proceedings. See the letter of Charles L.A. Cox, attorney for Bunker Hill. Second appellate R Vol. I, p. 84. Mr. Cox was with the same law firm as William F. Boyd. Mr. Boyd was Bunker Hill's attorney at the initial Industrial Commission hearing and in the first appeal. Mr. Boyd is Bunker Limited's attorney now.

On January 7, 1994, Bunker Hill substituted Ryan Armbruster, of the law firm of Elam & Burke, "as its attorney of record in the

above-entitled action in the place and stead of Charles L.A. Cox." Second appellate R Vol. I, p. 85-86.

Ryan Armbruster wrote the commission on December 31, 1992.

Mr. Armbruster and stated:

"...As I explained, this law firm represents the interests of Pintlar Corporation and Gulf Resources and Chemical Corporation. As of November, 1982, Pintlar had sold its interest in the Bunker Hill mine to Bunker Limited Partnership, and Pintlar no longer operates the mine. With regard to claims which pertain to operations at the Bunker Hill Mine prior to the sale in 1982, Pintlar intends to honor its obligations. We do not, of course, have any involvement with claims which relate to operations of Bunker Limited Partnership for Bunker Hill Mining Company (U.S.), Inc. (BHMC), after November 1982. (Emphasis added)

See appendix B, attached hereto and to be included in the supplemental record.

The foregoing story was told to the Commission about who was responsible to Mr. Frank. Gulf and Pintlar had been misleading the Industrial Commission for more than ten years at that time.

THE BUNKER LIMITED PARTNERSHIP STORY

Bunker Limited Partnership followed a different tack. They wanted to operate without a surety and fed the Commission a different line.

On August 25, 1983, the Bunker Limited Partnership represented to the Commission that Bunker Limited Partnership had assumed workers compensation liabilities from the Bunker Hill Company. See Appendix A. On November 2, 1984, Bunker Limited unilaterally

withdrew \$75,000 that was placed in trust for payment of workers compensation benefits. See appendix C, attached hereto and to be included in the supplemental record, letter of Vincent Bovino.

On January 23, 1991, Mr. Breidt from Bunker Limited assured the Commission that the bankruptcy of Bunker Limited did not place in jeopardy the worker's compensation benefits for Bunker Limited or the old Bunker Hill Company. See appendix D, attached hereto and to be included in the supplemental record, Commission memorandum dated January 23, 1991.

On July 27, 1999, Bunker Limited Partnership disavowed its responsibilities for the Bunker Hill Company worker's compensation claims and claimed protection under the Bankruptcy Act. See appendix E, attached hereto and to be included in the supplemental record, letter from Norma Nelson representing Bunker Limited.

Bunker Limited is responsible for the cancellation of bonds intended to secure the payment of workers compensation benefits. In Vincent Bovino's letter of August 25, 1993, appendix A, he states:

On November 1, 1982, Bunker Limited Partnership, (a group of prominent Idaho investors: J.R. Simplot of Boise, H.F. Magnuson of Wallace, D.B. Hagadone of Coeur d'Alene, and J.W. Kendrick of Kellogg, purchased certain assets and assumed specific liabilities of the Bunker Hill Company...

Bunker Limited Partnership assumed certain liabilities from the Bunker Hill Company. One of the liabilities was Worker's Compensation as it related to former Bunker Hill employees in

terms of settled, open and potentially open claims. Since November 1, 1982, Worker's Compensation has been administered and funded by Bunker Limited Partnership on a self-insured and self-administered bases in a responsible manner....

It is recognized that the Industrial Commission evaluates the professional integrity of each organization that submits an application for self-insurance. The issue of professional integrity and organizational responsibilities of the owners of Bunker Limited Partnership is clearly one of the key factors supporting this application. All of the owners are longtime Idaho businessmen and have clearly demonstrated their professionalism, integrity, commitment to the people of Idaho and to the employees of their respective businesses.

The affidavit of Jack Kendrick, dated April 28, 2008, is the first indication in Mr. Frank's workman's compensation claim that a party other than the Bunker Hill Company, Gulf or Pintlar may be responsible for Mr. Frank's benefits. See appendix F, attached hereto and to be included in the supplemental record. In Mr. Kendrick's affidavit dated April 28, 2008, paragraph 6, he states that Bunker Limited Partnership purchased the Bunker Hill Company and Gulf Resources and Chemical Corp. Mr. Kendrick states the transaction was documented with a written contract. He states Bunker Limited purchased the name "the Bunker Hill Company." The affidavit admits Bunker Limited Partnership assumed Worker's Compensation liabilities.

ARGUMENT

This matter is before the Court after the Industrial Commission order clarifying parties. Why someone other than the

Bunker Hill Company was allowed to contest Mr. Frank's claims has been a mystery to Paul Frank and the Supreme Court since this matter was heard in the initial appeal.

The explanations have always been that Pintlar was the successor to Gulf Resources who had previously purchased the Bunker Hill Company. Bunker Limited Partnership has always claimed they were the administrators for Pintlar and its predecessors. Bunker Limited Partnership was the party seeking to avoid responsibility for the Bunker Hill Company.

Bunker Limited, Pintlar, and Gulf Resources have all challenged the integrity of the system. Paul Frank has limited ability to make the corporations and prominent businessmen honor their commitments. This Court should rule, the prominent businessmen who requested the Commission's trust are responsible for the care of Mr. Frank's industrial injuries based upon a concealed contract.

CONSPIRACY TO DEPRIVE MR. FRANK OF HIS RIGHTS

For more than 25 years the "Bunker Limited Partnership" has misrepresented their responsibility for Paul Frank's injuries to the Industrial Commission, the Idaho Supreme Court, and Mr. Frank. The deceptions deprived Mr. Frank of impeaching evidence that would have been of constitutional magnitude had this been a criminal proceeding. More probably than not, the deceptions lead to Mr.

Frank's loss of his award of total and permanent disability. Justice Bistline thoroughly reviewed the unconscionable conduct of Bunker Limited that led to the reduction of Mr. Frank's award.

ATTORNEYS FEES

With the facts now before the Commission it should be declared that:

BUNKER LIMITED COMPANY IS A PARTY CONTRACTUALLY RESPONSIBLE FOR MR. FRANK'S WORKERS COMPENSATION BENEFITS.

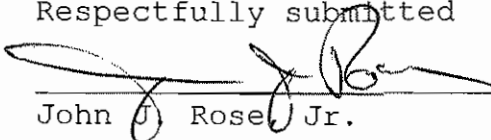
BUNKER LIMITED COMPANY, GULF RESOURCES, PINTLAR CORPORATION, THEIR AGENTS, ATTORNEYS, AND INVESTORS: J.R. SIMPLOT OF BOISE, H.F. MAGNUSON OF WALLACE, D.B. HAGADONE OF COEUR D'ALENE, AND J.W. KENDRICK HAVE ENGAGED IN A COURSE OF CONDUCT DESIGNED TO DECEIVE AND ACTUALLY DECEIVING MR. FRANK, THE IDAHO INDUSTRIAL COMMISSION, AND THE IDAHO SUPREME COURT AS TO THE RESPONSIBILITY OF THE BUNKER LIMITED PARTNERSHIP.

THAT PAUL FRANK SHOULD BE AWARDED ATTORNEYS FEES FOR ALL AMOUNTS INCURRED IN PURSUIT OF HIS CLAIM SINCE NOVEMBER 1, 1982.

Justice Bistline's mystery is solved. Gulf Resources, Pintlar, and Bunker Limited said what suited their needs and greed. They should now be made to pay.

DATED this 9 day of March 2010.

Respectfully submitted



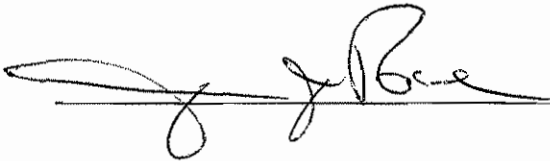
John J. Rose Jr.

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing were served by the method indicated below, and addressed to the following this 9 day of March 2010.

William F. Boyd
Ramsden & Lyons, LLP
P.O. Box 1336
Coeur d'Alene, ID 83816-1336

U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 FACSIMILE



APPENDIX A

APPENDIX A

BUNKER LIMITED PARTNERSHIP
XX
XX
POST OFFICE BOX 29 o KELLOGG, IDAHO 83837 o (208) 784-1261

AUG 25 11 55 AM '83

8

INDUSTRIAL COMMISSION
RECEIVED



Frank B. Britt

August 25, 1983

Mr. Will Defenbach, Chairman
Mr. Gerald Geddes
Mr. Larry Sirhall
Industrial Commission
State of Idaho
Statehouse Mail
Boise, Idaho 83720

Gentlemen:

Attached is the application for Bunker Limited Partnership to become self insured for the purposes of Worker's Compensation in the State of Idaho. The following summary will provide you with supplemental data necessary to completely evaluate this application.

BACKGROUND INFORMATION

The Bunker Hill Company was a large mining and smelting company with a 1980 net income of \$20 million and sales of \$327 million. Bunker Hill employed approximately 2,200 employees and was considered a major economic factor in the north Idaho area. Bunker Hill's parent company, Gulf Resources, announced the decision to close the Idaho facilities in August of 1981 due to declining metal prices and high operating costs.

On November 1, 1982, Bunker Limited Partnership, (a group of prominent Idaho investors: J. R. Simplot of Boise, H. F. Magnuson of Wallace, D. B. Hagadone of Coeur d' Alene, and J. W. Kendrick of Kellogg), pur-
chased certain assets and assumed specific liabilities of the Bunker Hill
Company. These assets consisted primarily of the Bunker Hill Mine, Crescent
Mine, Zinc Plant, Lead Smelter, timberlands and a local ski resort.

With the exception of the ski resort, all operating facilities have been
closed or in the process of closing since August 1, 1981. On October 29, 1982, all remaining Bunker Hill employees were terminated. On November 1, 1982, approximately 35 former Bunker Hill employees were hired by Bunker Limited Partnership to continue with the administrative close-down phase and provide for the necessary care and maintenance of the facilities.

Bunker Hill was self insured for purposes of Worker's Compensation, however, a \$250,000 per employee "stop loss" reinsurance was provided by a reinsurer. Bunker Hill self administered Worker's Compensation insurance with assistance from the Brown, Peacock, Keane and Boyd law firm of Kellogg, Idaho.

ASSUMPTION OF WORKER'S COMPENSATION LIABILITY

Bunker Limited Partnership assumed certain liabilities from the Bunker Hill Company. One of the liabilities was Worker's Compensation as it related to former Bunker Hill employees in terms of settled, open and potentially open claims. Since November 1, 1982, Worker's Compensation has been administered and funded by Bunker Limited Partnership on a self insured and self administered basis in a responsible manner. The Brown law firm assists Bunker Limited Partnership in the administration and settlement of Worker's Compensation claims. Bunker Limited Partnership will continue to self administer and self insure these liabilities.

MANAGEMENT CONTINUITY

The key managers of the Bunker Limited Partnership, with the exception of the Vice President of Human Resources, have remained intact and are all former Bunker Hill employees. It is suggested that the philosophy and methodology of dealing with Worker's Compensation issues by Bunker Limited Partnership personnel will remain essentially unchanged. Management continuity represents a strong factor for approving this application. In addition, the Brown law firm will continue to represent Bunker Limited Partnership in Worker's Compensation issues.

OWNERSHIP INTEGRITY

It is recognized that the Industrial Commission evaluates the professional integrity of each organization that submits an application for self insurance. The issue of professional integrity and organizational responsibility of the owners of Bunker Limited Partnership is clearly one of the key factors supporting this application. All of the owners are long time Idaho businessmen and have clearly demonstrated their professionalism, integrity, commitment to the people of Idaho and to the employees of their respective businesses.

FUTURE PLANS

The Partnership, in response to a favorable silver market, is aggressively pursuing plans to reopen it's Crescent Mine. It is anticipated that with the reopening of these facilities, the Partnership annual payroll will exceed \$4 million.

Plans to open the Bunker Hill Mine and the metallurgical facilities are incomplete at this time and therefore cannot be meaningfully discussed. It is the intent of the owners to return it's assets to production as soon as economically viable.

It is recognized that a legal change in ownership of the Bunker Hill Company occurred on November 1, 1982. However, for the purposes of Worker's Compensation, maximum consideration should be given to the long standing existence of the Bunker Hill Company and the sincere commitment of the owners to return the Bunker Hill facilities to operation. Clearly, the owners did not purchase the Bunker Hill assets with the intention of not operating those facilities. It is more than reasonable to believe that the Bunker Hill facilities represent a long term financial opportunity for it's owners. This should suggest to the Commission that those facilities will continue to exist for many years in the future. It is requested that in evaluating the payroll for the last three years the Commission consider the payroll of the Bunker Hill Company, Bunker Limited Partnership during the close down year, as well as Bunker Limited Partnership's projected start up plans.

The following is a summary of total payroll since 1978:

<u>Year</u>	<u>Total Payroll</u>
1978	\$33,000,000
1979	\$39,000,000
1980	\$46,000,000
1981	\$50,000,000
1982	\$ 9,000,000
1983	\$ 2,500,000
1984	\$ 5,000,000 (estimate)

FINANCIAL STATEMENT

Bunker Limited Partnership's financial position is very strong. In addition to the asset/liability summary, Bunker Limited Partnership has negotiated an \$8 million line of credit from the First Security Bank of Idaho, N. A.

<u>Total Assets</u>	\$64,038,024
(includes \$13 million in metals inventory and \$17 million in timber and timberland)	
<u>Total Liabilities</u>	\$27,148,066

COST EFFECTIVENESS OF SELF INSURANCE

Because Bunker Hill's Worker's Compensation actual dollar loss was below the manual insurance premium rate, there exists a significant financial advantage for Bunker Limited Partnership to be self insured. These savings are meaningful and weigh heavily in Bunker Limited Partnership's plans, not only to open the Crescent Mine, but to aggressively and quickly pursue opening it's other facilities.

In summary, Bunker Limited Partnership requests the Idaho Industrial Commission's favorable and timely response to this application for self insurance.

Thank you.

Sincerely,



Vincent R. Bovino, Vice President
Human Resources

VRB:jd

Enclosure

APPENDIX B

APPENDIX B

ELAM, BURKE AND BOYD
CHARTERED
ATTORNEYS AND COUNSELORS AT LAW

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
TELECOPIER
208-384-5844

RYAN P. ARMBRUSTER

December 31, 1992

INDUSTRIAL COMMISSION
MANAGEMENT SERVICES

DEC 31 1992

HAND DELIVERY

Ms. Janet Justice
IDAHO INDUSTRIAL COMMISSION
317 West Main Street
Boise, Idaho 83720

RE: Idaho Self-Insured's Compensation
Bond #2617802
Bunker Hill Company-Pintlar Corporation

Dear Janet:

Thank you for speaking with me last week concerning the above referenced matter. The letter dated December 15, 1992 from William D. Robbins, Fiscal Officer, to Safeco Insurance Company of America, has been forwarded by Safeco to Pintlar for its response. As I explained, this law firm represents the interests of Pintlar Corporation and Gulf Resources and Chemical Corporation. As of November, 1982, Pintlar had sold its interest in the Bunker Hill mine to Bunker Limited Partnership, and Pintlar no longer operates the mine. With regard to claims which pertain to operations at the Bunker Hill Mine prior to the sale in 1982, Pintlar intends to honor its obligations. We do not, of course, have any involvement with claims which relate to operations of Bunker Limited Partnership or Bunker Hill Mining Company (U.S.), Inc. (BHMC), after November 1982.

Based upon the information I obtained during our telephone conversation, I contacted the attorney for BHMC, Ford Elsaesser, to determine whether BHMC is in possession of files pertaining to pre-1982 claims and to address the transfer of the worker's compensation files. Mr. Elsaesser indicated BHMC would cooperate with the orderly transfer of the worker's compensation files involving pre-November 1982 claims. In order to assist Mr. Elsaesser and me in the transfer, I hereby formally request from the Industrial Commission a list of all open time-loss claims bearing an accident date or occupational disease date prior to November, 1982.

Ms. Janet Justice
December 31, 1992
Page 2

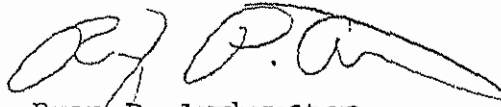
At the present time, Pintlar will attempt to cause the files be transferred to the offices of Pintlar Corporation in Kellogg, Idaho. Pintlar maintains its office at 1005 West McKinley, P.O. Box 480, Kellogg, Idaho 83837; telephone no. 784-1321; fax no. 783-6621. Pintlar would intend to retain custody of those files and to administer the handling of those files through those offices.

By copy hereof, I am formally advising Safeco Insurance Company of America of this proposed action and request that Safeco verify its approval of this action in writing by letter to the Industrial Commission.

You may contact me or Mr. William J. Russell, vice president and general counsel of Pintlar, should you have any questions or need any additional information at this time.

Very truly yours,

ELAM, BURKE AND BOYD, Chartered



Ryan P. Armbruster

RPA:jm

cc: William J. Russell, Esquire
Ford Elsaesser, Esquire
Bruce Echlgoshima

APPENDIX C

APPENDIX C

BUNKER LIMITED PARTNERSHIP

P.O. Box 29
Kellogg, Idaho 83837

NOV 7 9:15

INDUSTRIAL COMMISSION
RECEIVED

Handwritten initials/signature

November 2, 1984

Mr. Will Defenbach, Chairman
Mr. Gerald Geddes
Mr. Larry Sirhall
Industrial Commission
State of Idaho
Statehouse Mail
Boise, Idaho 83720

Gentlemen:

On October 7, 1983, Bunker Limited Partnership and the Idaho State Industrial Commission entered into a Declaration Of Trust agreement. This agreement required Bunker Limited to establish a \$75,000 trust for the purposes of paying Worker's Compensation claims that were not paid by Bunker Limited as a self insured employer.

In accordance with the terms of paragraph 7 of the agreement,

"At the end of said one-year period, or if permission is given by the Idaho Industrial Commission, this trust shall terminate and the corpus, or any portion remaining, shall revert to Bunker Limited as its property",

we will be withdrawing the \$75,000 from the trust account.

If the Commission has any concerns about the withdrawal, or would like to discuss this action, please call me at your convenience.

I want to personally thank you for approving our application for self insurance. I believe we have demonstrated our financial and managerial worthiness as a self insured employer.

Sincerely,
B. H. Properties, Inc.

Vincent R. Bovino
Vincent R. Bovino
Vice President - Human Resources

VRB:jd

APPENDIX D

APPENDIX D

State of Idaho
Industrial Commission

M E M O R A N D U M

DATE: January 23, 1991
TO: Commissioners
FROM: Fiscal - Janet Justice
SUBJECT: Chapter 11 Bankruptcy-Bunker Hill Company USA, Inc.

Prior to corresponding with the representatives of The Bunker Hill Company, Bunker Hill Limited Partnership, and carriers holding the old cancelled self-insurer's bonds, I called Mr. Frank Breidt who has been submitting the IC Form 36 Outstanding Awards Reports for both the old Bunker Hill Company and Bunker Hill Limited Partnership.

Mr. Breidt states that the worker's compensation liabilities of Bunker Hill Limited Partnership and the old Bunker Hill Company that are residual from their respective periods of self-insurance are not in jeopardy.

The company that filed bankruptcy is a separate entity. The company that actually filed bankruptcy is Bunker Hill Company USA, Inc.

Mr. Breidt indicated that he will direct a letter to the Industrial Commission clarifying what is going on to reassure this agency that there is no problem.

APPENDIX E

APPENDIX E

**BUNKER
LIMITED
PARTNERSHIP**

135 E. Cameron Avenue, Kellogg, Idaho 83837-2353

(208) 783-1200
FAX: (208) 783-2301

RECEIVED

JUL 29 1999

Industrial Commission
Boise, Idaho

July 27, 1999

Ms. Mary Quarles
Financial Specialist
IDAHO INDUSTRIAL COMMISSION
P. O. Box 83720
Boise, ID 83720-0041

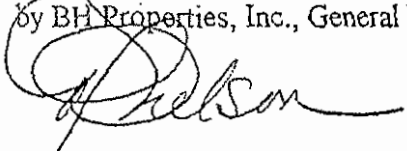
Re: The Bunker Hill Company
Self-Insurance Additional Security Requirement Request

Dear Ms. Quarles:

Bunker Limited Partnership is unable to comply with your request for additional security in the amount of \$103,251.20 on behalf of The Bunker Hill Company. Bunker Limited Partnership's responsibility for Bunker Hill Company worker's compensation claims is limited to certain established claims as covered in Bunker Limited's Plan of Reorganization approved by the U.S. Bankruptcy Court on July 13, 1992.

Very truly yours,

BUNKER LIMITED PARTNERSHIP
by BH Properties, Inc., General Partner



Norma J. Nelson
Administrative Assistant

Bunker 770,995 *has*
820,689. (86)

Partnership 300,000
231,142 *OK*

Needs
870,689,
add = 99,694

APPENDIX F

APPENDIX F

William F. Boyd
Attorney at Law
601 Sherman Avenue, Suite 1
Coeur d'Alene, ID 83814
phone: 208-665-0666
fax: 208-665-0864
Idaho State Bar No. 1070

Attorney for Bunker Limited Partnership

IN THE SUPREME COURT OF THE STATE OF IDAHO

PAUL E. FRANK,)	
)	NO. 34696
Claimant-Appellant)	
)	AFFIDAVIT OF
v.)	J. W. KENDRICK
)	ON BEHALF OF BUNKER
)	LIMITED PARTNERSHIP
THE BUNKER HILL COMPANY,)	
Self-insured Employer,)	
)	
Defendant-Respondents.)	
<hr/>		

J. W. Kendrick, being duly sworn on his oath, deposes and says:

1. I am President of BH Properties, Inc., the general partner of Bunker Limited Partnership, an Idaho limited partnership. I am making this affidavit for Bunker Limited Partnership for the purpose of responding to that certain letter from the Deputy Clerk dated April 8, 2008, addressed to "Bunker Hill Company, P.O. Box 53, Cataldo, Idaho". Bunker Limited Partnership is not The Bunker Hill Company, but Bunker Limited Partnership's address is P.O.

Box 53, Cataldo. I will explain further, below, who Bunker Limited Partnership is, and how confusion may result between the entities Bunker Limited Partnership and The Bunker Hill Company. The facts stated below I know of my own knowledge, unless otherwise indicated.

2. The Deputy Clerk's letter of April 8, 2008 is attached hereto as Exhibit 1. Her letter caused me to consider making the explanation set forth in this affidavit.

3. Paul E. Frank was injured in a work-related accident that occurred on November 12, 1980. When Mr. Frank was injured, he was an employee of /The Bunker Hill Company, a Delaware corporation authorized to do business in the State of Idaho. /

4. The Bunker Hill Company was a corporation that did business in and near Kellogg, Idaho since the early 1900s. During the year 1968, all of the issued and outstanding shares of The Bunker Hill Company were acquired by Gulf Resources and Chemical Corporation in a hostile takeover. Thereafter, The Bunker Hill Company became a wholly owned subsidiary of Gulf Resources and Chemical Corporation. The parent's main office was in Houston, Texas.

5. The Bunker Hill Company shut down its Kellogg operations for economic reasons in the late summer and fall of 1981.

6. Effective November 1, 1982, Bunker Limited Partnership as the buyer, and The Bunker Hill Company and Gulf Resources and Chemical Corporation as sellers, purchased substantially all of the assets of The Bunker Hill Company. The transaction was documented with a written contract; an Asset Purchase Agreement dated November 1, 1982. One of the assets purchased was the name, "The Bunker Hill Company".

7. Part of the consideration to the sellers in the Asset Purchase Agreement was the assumption of certain liabilities, including workmen's compensation claims made by employees of The Bunker Hill Company prior to November 1, 1982. However, such assumption of liabilities was limited by terms of the Asset Purchase Agreement to certain dollar amounts. Furthermore, the matter of assumption is complicated by the subsequent bankruptcy of Gulf Resources and Chemical Corporation, The Bunker Hill Company, and Bunker Limited Partnership, explained below.

8. Because of the contractual assumption of certain liabilities and Bunker Limited Partnership's contractual right to defend them, Bunker Limited Partnership's

management took a role in the defense of Paul Frank's workmen's compensation claim. This involvement may have lead to confusion in the case about who the parties are and who the employer was. I believe that from the outset of Mr. Frank's claim, the parties were Paul Frank as claimant and The Bunker Hill Company as employer, and I do not think that alignment of parties has ever changed, so far as I know.

9. Confusion about the company names may be due to a provision in the Asset Purchase Agreement. As mentioned above it was agreed that the name "The Bunker Hill Company" would be sold to Bunker Limited Partnership, as a part of the purchase and sale transaction of November 1, 1982. Therefore, the name of The Bunker Hill Company was changed to "Pintlar Corporation". It was Pintlar Corporation (The Bunker Hill Company with a new name) that continued to manage certain assets and liabilities that were not part of the assets and liabilities sold to Bunker Limited Partnership on November 1, 1982.

10. I am aware that Gulf Resources and Chemical Corporation and Pintlar Corporation filed petitions in bankruptcy during the 1990s, as mentioned in paragraph 7 above. I am not aware of details that may be relevant to the above entitled Frank case.

11. During June, 1991 Bunker Limited Partnership filed a petition in bankruptcy in the Eastern District of Washington. A Plan Of Reorganization was approved by the court. Gulf Resources and Chemical Corporation and Pintlar Corporation made certain bankruptcy claims related to the Asset Purchase Agreement of November 1, 1982. Those claims were dealt with in the Plan Of Reorganization of Bunker Limited Partnership, and resolved.

12. The Plan Of Reorganization of Bunker Limited Partnership establishes a \$40,000 "reversionary trust", with the income from the corpus of the trust available to fund medical claims made by workmen's compensation claimants who were employees of The Bunker Hill Company. The corpus reverts to the U.S. Government when ongoing medical payments are no longer required.

13. To the best of my knowledge, Paul Frank did not present a claim in the Bunker Limited Partnership bankruptcy proceeding, although Paul Frank was aware of the proceeding. This makes common sense to me because it is my understanding that, as a factual matter, it is The Bunker Hill Company that is liable to Mr. Frank, if any liability there be, not Bunker Limited Partnership. And, it would be The Bunker Hill Company (name changed to Pintlar Corporation), that might pursue Bunker Limited Partnership

under the contract (Asset Purchase Agreement) to enforce assumption of liabilities, if any assumption is due under all of the terms of the Asset Purchase Agreement of November 1, 1982. However, I believe the matter of The Bunker Hill Company's (Pintlar Corporation) claims against Bunker Limited Partnership was dealt with in the bankruptcy proceedings of Bunker Limited Partnership.

14. In conclusion, and more to the point, my understanding of the facts is that Paul E. Frank has not named Bunker Limited Partnership of P. O. Box 53, Cataldo, as a defendant in his workmen's compensation claim that is the subject of the above entitled case. Mr. Frank can, of course, speak to this point through his counsel.

Further affiant sayeth not.

Dated this 28th day of April, 2008.



J. W. Kendrick

