

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

PINNACLE SURETY SERVICES, INC.)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:15-CV-364-DJH
)	
MANION STIGGER, LLP,)	Judge David J. Hale
COOPER & ELLIOTT, LLC,)	
G. BRUCE STIGGER and)	
REX E. ELLIOTT)	
)	
Defendants.)	
)	
_____)	

**PINNACLE SURETY SERVICES, INC.’S MOTION AND SUPPORTING
MEMORANDUM FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

Plaintiff, Pinnacle Surety Services, Inc. (“Pinnacle”), by and through counsel, pursuant to Fed. R. Civ. P. 15, and for the reasons set forth herein, moves the Court for leave to file its First Amended Complaint against Defendants, Manion Stigger, LLP (“Manion Stigger”), Cooper & Elliott, LLC (“Cooper Elliott”), Rex H. Elliott (“Elliott”), and G. Bruce Stigger (“Stigger”) (collectively, “Defendants”), in the form attached hereto and made a part hereof as Exhibit A.

Fed. R. Civ. P. 15(a)(2) reiterates the federal rules’ liberal policy in favor of allowing cases to be tried on the merits, and provides that leave to amend should be freely given when justice so requires. And, Fed. R. Civ. P. 15(c)(1)(B) provides that an amendment to a pleading relates back to the date of the original pleading when, as we have here, “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading”. *See also Hall v. Spencer County*, 583 F.3d 930, 934-35 (6th Cir. 2009).

The suit against Defendants was filed on May 15, 2015, and after the planning meeting and report and exchange of initial disclosures, the Court stayed the action on December 16, 2015, pending the resolution of another matter which was resolved on March 3, 2016. The parties recently attended a settlement conference on June 6, 2016, but were unable to resolve the matter. There are no current deadlines, including any deadline to amend pleadings, and no scheduling order in place. In fact, Pinnacle understands that the Court will soon issue an Order asking the parties to confer and agree to a scheduling order. Therefore, there is no prejudice to Defendants in granting this relief, especially at this early stage of the matter.

The First Amended Complaint, which contains new claims against Defendants for fraudulent concealment/deceit, intentional interference with a contractual relationship and civil conspiracy, along with facts and relief supporting same as well as the prior claims, all arise out of the exact same conduct, transaction or occurrence of Defendants' prior representation of Pinnacle set out, or attempted to be set out, in Pinnacle's original Complaint. These new claims are based on the same nexus of facts and actions as the original Complaint and should come as no surprise to Defendants, especially since Defendants have acknowledged the possibility of an intentional interference with a contractual relationship claim, and noted that the claims asserted in the original complaint are akin to fraud and civil conspiracy. *See* DN 33-1 at 130 and 132-33. The Amended Complaint simply conforms to the evidence and complete relief cannot be accorded among the parties without leave to add the additional claims, and supporting facts and relief for same as well as the prior claims, against Defendants.

Therefore, Pinnacle respectfully requests that the Court determine that interests of justice are served by allowing Pinnacle's requested amendment to be filed and made a part of the record in this matter. A proposed Order setting forth this relief has been simultaneously filed.

Respectfully submitted,

/s/ P. Blaine Grant

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COUNSEL FOR PLAINTIFF
PINNACLE SURETY SERVICES, INC.

CERTIFICATE OF SERVICE

It is hereby certified that on the 20th day of June 2016, I electronically filed this document through the ECF System which should send a notice of electronic filing to all counsel of record.

/s/ P. Blaine Grant

P. Blaine Grant

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

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Plaintiff,)	
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MANION STIGGER, LLP)	
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COOPER & ELLIOTT, LLC)	
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G. BRUCE STIGGER)	
)	
-and-)	
)	
REX H. ELLIOTT)	
)	
)	
Defendants.)	
)	

FIRST AMENDED COMPLAINT

Plaintiff, Pinnacle Surety Services, Inc. (“Pinnacle” or “Plaintiff”), by and through its counsel, for its First Amended Complaint (“Complaint”) against Defendants, Manion Stigger, LLP (“Manion Stigger”), Cooper & Elliott, LLC (“Cooper Elliott”), Rex H. Elliott (“Elliott”), and G. Bruce Stigger (“Stigger”) (collectively, “Defendants”), seeking damages as a result of Defendants’ fraudulent concealment/deceit, breaches of fiduciary duties, legal malpractice/negligence, intentional interference with an employment agreement, civil conspiracy, aiding and abetting breaches of fiduciary duties and other claims, states as follows:

THE PARTIES

1. Pinnacle is a for-profit corporation organized and existing under the laws of the State of California, with its principal office at 151 Kalmus Drive A-201, Costa Mesa, California 92626.

2. Defendant Manion Stigger is a limited liability partnership organized and existing under the laws of the State of Indiana, with its principal office in Indiana and its registered agent located in, and the entity conducting business in, Louisville, Kentucky.

3. Defendant Stigger is an individual residing in Kentucky and at all times relevant herein was licensed to practice law in the Commonwealth of Kentucky, conducted business in Louisville, Kentucky, and acted and was authorized to act on behalf of Manion Stigger.

4. Defendant Cooper Elliott is a limited liability corporation organized and existing under the laws of the State of Ohio with its principal place of business in Columbus, Ohio, and conducted business in Louisville, Kentucky.

5. Defendant Elliott is an individual residing in Ohio and at all times relevant herein was licensed to practice law in the State of Ohio, conducted business in Louisville, Kentucky, and acted and was authorized to act on behalf of Cooper Elliott.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, in that it is a civil action between parties of different states in which the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. This Court has personal jurisdiction over Defendants arising out of their conduct and contacts in the Commonwealth of Kentucky.

8. Venue of this action lies in the United States District Court for the Western District of Kentucky, pursuant to 28 U.S.C. § 1391(a)(2), in that the substantial majority of events, acts and/or omissions giving rise to the claims set forth herein occurred in Jefferson County, Kentucky, which lies within the Western District of Kentucky.

FACTS GIVING RISE TO THE CLAIMS

9. Pinnacle is a surety bond company in California, and expended considerable resources in 2013 in opening an office in Louisville, Kentucky.

10. In furtherance of opening the office, in or around April 13, 2013, Pinnacle entered into a contractual agreement which was later reformed due to a printing error (“Agreement”) with Todd Loehnert (“Loehnert”) and Brian Ayres (“Ayres”) to open Pinnacle’s office in Louisville, Kentucky. *See* attached Exhibits 1A and 1B. Loehnert and Ayres ended their employment at Wells Fargo Insurance Services USA, Inc. (“Wells Fargo”) prior to entering into the Agreement with Pinnacle.

11. Among other terms and conditions, the Agreement required Loehnert and Ayres to work for Pinnacle for a minimum of three years and not engage in any other insurance or surety business, or any business competitive to that of Pinnacle, while employed by Pinnacle. *See* Exhibit 1A at ¶¶ 1 and 3 and 1B at ¶ 13.

12. On or about April 25, 2013, Wells Fargo filed Civil Action Case No. 13-CI-002150 in Jefferson Circuit Court (“Wells Litigation”) against Loehnert and Ayres for, among other things, breaching their employment agreement with Wells Fargo. Wells Fargo also sued Pinnacle for hiring Loehnert and Ayres.

13. Regardless of their prior relationship, and rather than suggest that Pinnacle obtain separate counsel, Defendants jointly represented Loehnert, Ayres, and Pinnacle in the Wells

Litigation, and Pinnacle paid Defendants \$32,650.00 for their legal representation. In doing so, Defendants also consented to the jurisdiction and the rules of the Kentucky Supreme Court governing professional misconduct.

14. Importantly, however, Defendants never obtained the necessary informed consent waiver from Pinnacle to jointly represent Pinnacle, Loehnert and Ayres during the course of the representation, nor did Defendants send any written correspondence to Pinnacle indicating that their legal representation had ceased.

15. During their representation of Pinnacle, Loehnert, and Ayres, Defendants undertook numerous acts of representation on behalf of Pinnacle, which included: asserting affirmative defenses for Pinnacle, answering the complaint on behalf of Pinnacle, responding to discovery on Pinnacle's behalf, negotiating a protective order and gathering extensive responsive documents from Pinnacle, addressing the request for the deposition of a corporate representative of Pinnacle, communicating with Pinnacle regarding strategy and facts of the case, settling the Wells Litigation on behalf of Pinnacle, and ultimately, the preparation and obtaining execution of the confidential settlement agreement between Loehnert, Ayres, Pinnacle and Wells Fargo which made Loehnert, Ayres and Pinnacle jointly and severally financially responsible to Wells Fargo through at least June 4, 2014, when the final settlement payment was due.

16. Defendants acted not only as legal counsel, but fiduciaries, to Pinnacle from the time the Wells Litigation was initiated against Pinnacle, Loehnert and Ayres on April 25, 2013 through at least the Wells Fargo final settlement payment on June 4, 2014.¹

17. Defendants owed to Pinnacle at least throughout this time period undivided duties of reasonable care, utmost integrity, fidelity, good faith, allegiance, trust, loyalty, and to act, at

¹ In addition to their concurrent conflict of interest, Defendants also owed additional duties to Pinnacle as a former client. *See, e.g.*, SCR 3.130(1.7) and (1.9).

all times, in the best interests of and to the benefit of Pinnacle with full and informed disclosure, and not to acquire or take on interests in conflict or in competition with Pinnacle.

18. Yet, and clearly during their representation of Pinnacle, Defendants acted directly and materially adverse to Pinnacle by encouraging and assisting Pinnacle's employees (Loehnert and Ayres) to prematurely breach their three year employment Agreement with Pinnacle.

19. Pinnacle alleges, on information and belief, that Elliott even planted this seed and encouraged as early as August 6, 2013, only months after the Agreement was signed, that Loehnert and Ayres should improperly leave Pinnacle prematurely given how well they could do financially on their own, while also acknowledging that Loehnert and Ayres would have a financial obligation to Pinnacle if they did leave prematurely.²

20. These adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle's legal interests and owed it the highest fiduciary duties, at Defendants' direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle and owed contractual, fiduciary and other legal duties to Pinnacle.

21. In addition, as early as April 24, 2014, and clearly during their representation of Pinnacle, Stigger directly assisted Loehnert and Ayres, while employed by Pinnacle, in preparing for, forming, organizing, starting and even acting as the registered agent for a competing

² Defendants contend that this email correspondence is protected by privilege. Pinnacle, therefore, has not attached this email as an Exhibit to the Complaint. Pinnacle, however, disagrees with the privilege objection for a variety of reasons and asserts that Loehnert and Ayres waived the privilege because any communications from or to Loehnert or Ayres on the communication systems of Pinnacle are the property of Pinnacle, and Loehnert and Ayres were aware they had no expectation of privacy on Pinnacle's communication systems, that personal use was not allowed, that Pinnacle had access to all their communications, and their communications could be strictly monitored by Pinnacle. In addition, this email correspondence was made in order to commit fraud on Pinnacle, fraudulently conceal information from Pinnacle, or in breach of fiduciary duty to Pinnacle, and the crime/fraud exception excludes the email from any privilege protection. Pinnacle understands that Defendants intend to move to dismiss this Complaint. Pinnacle will submit this email in opposition to any such motion and for *in camera* review by the Court.

business directly against Pinnacle named L.A. Surety LLC (“L.A. Surety”). *See* attached Exhibit 1L.

22. Indeed, and in addition to obtaining a taxpayer identification number, Stigger signed and filed with the Kentucky Secretary of State L.A. Surety’s Articles of Organization and is even listed as a registered agent for L.A. Surety. *Id.*

23. Importantly, and according to Elliott, 100% of the carriers Pinnacle served in Kentucky are now with L.A. Surety – the organization Stigger helped prepare, form, organize, start and even act on behalf of – all to the great detriment of Pinnacle. *See* attached Exhibit 1N.

24. Again, all of these adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle’s legal interests and owed it the highest fiduciary duties, at Defendants’ direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle and owed contractual, fiduciary and other legal duties to Pinnacle.

25. Despite a successful financial relationship between the parties, Loehnert and Ayres made a proposal, on or about May 5, 2014, suggesting that Pinnacle and Loehnert and Ayres separate their relationship outlined in the Agreement, with Loehnert and Ayres paying Pinnacle at a minimum \$250,000, among other things, which Pinnacle respectfully declined. *See* attached Exhibits 1H and 1I. This separation proposal was submitted by Loehnert and Ayres after only one year of working under the Agreement and, on information and belief, was submitted at the direction and with the knowledge of Defendants.

26. Then, on information and belief, Pinnacle alleges that Elliott, on May 16, 2014, about one year after the three year agreement was signed, affirmatively told Loehnert and Ayres to just leave and breach their Agreement with Pinnacle, which they did, while recognizing that

there could be a conflict in representing Loehnert and Ayres against Pinnacle.³

27. Additionally, Pinnacle incorporates and adopts herein by reference as if set forth at length the various improper conduct of Loehnert and Ayres against Pinnacle at this time which, on information and belief, was at Defendants' direction and with their knowledge. *See* attached Exhibit 1 at ¶¶ 34 – 41 as well as referenced Exhibits.

28. Incredibly, and as noted above, all of these adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle's legal interests and owed it the highest fiduciary duties, on information and belief, at Defendants' direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle and owed contractual, fiduciary and other legal duties to Pinnacle.

29. Defendants then made clear to Pinnacle their intention of being directly and materially adverse to Pinnacle. Specifically, on May 23, 2014, Defendants, on behalf of Loehnert and Ayres, sent a letter to Pinnacle demanding that Pinnacle pay Loehnert and Ayres an unspecified amount of money. Pinnacle disputed that any money was owed. *See* attached Exhibit 1J.

30. Loehnert and Ayres then, in further breach of the Agreement and their fiduciary duties to Pinnacle, and with Defendants' counsel and assistance, attempted to resign from Pinnacle effective May 30, 2014 (if one assumed the premature resignation was proper, which it

³ Defendants also contend that this email correspondence is protected by privilege. Pinnacle, therefore, has not attached this email as an Exhibit to the Complaint. Pinnacle, however, disagrees with the privilege objection for a variety of reasons and asserts that Loehnert and Ayres waived the privilege because any communications from or to Loehnert or Ayres on the communication systems of Pinnacle are the property of Pinnacle, and Loehnert and Ayres were aware they had no expectation of privacy on Pinnacle's communication systems, that personal use was not allowed, that Pinnacle had access to all their communications, and their communications could be strictly monitored by Pinnacle. In addition, this email correspondence was made in order to commit fraud on Pinnacle, fraudulently conceal information from Pinnacle, or in breach of fiduciary duty to Pinnacle, and the crime/fraud exception excludes the email from any privilege protection. Pinnacle understands that Defendants intend to move to dismiss this Complaint. Pinnacle will submit this email in opposition to any such motion and for *in camera* review by the Court.

was not, it was actually effective June 8, 2014 per the Agreement), with one of them agreeing but failing to continue his employment obligations with Pinnacle up to and including June 9, 2014, which was well before the three year employment commitment was fulfilled, and continued to improperly prepare for, form, and start, while employed at Pinnacle, a competing business against Pinnacle. *See* attached Exhibit 1F.

31. Again, incredibly, and as noted above, all of these adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, or without full and proper disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle's legal interests and owed it the highest fiduciary duties, at Defendants' direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle and owed contractual, fiduciary and other legal duties to Pinnacle.

32. In addition to concealing and failing to disclose their own improper conduct, as well as Loehnert and Ayres' improper conduct, Defendants were aware of the Agreement and the duties Loehnert and Ayres owed to Pinnacle, and intentionally, improperly or maliciously interfered with same while Loehnert and Ayres were still subject to the Agreement with Pinnacle and still owed duties to Pinnacle. Moreover, Defendants, Loehnert and Ayres improperly conspired with and aided and abetted each other in their improper conduct described fully above.

33. Pinnacle informed Defendants that by continuing representation of Loehnert and Ayres against Pinnacle, Defendants were in breach of their fiduciary and other duties to Pinnacle, were engaging in actionable conduct, and had a direct conflict of interest. *See* attached Exhibit 2.

34. Defendants defiantly disputed any conflict, sent multiple correspondence improperly acting on behalf of Loehnert and Ayres and adverse to Pinnacle, and continued their reckless conduct towards their client, Pinnacle, by filing suit against Pinnacle on behalf of

Loehnert and Ayres on June 9, 2014, in Jefferson Circuit Court, Case No. 14-CI-03017. In doing so, Defendants again consented to the jurisdiction and the rules of the Kentucky Supreme Court governing professional misconduct.

35. That same day, Pinnacle sued Loehnert and Ayres in the United States District Court, Western District of Kentucky, Civil Action No. 3:14-CV-425-H, and after removing the state court action and seeking to consolidate it with the federal court action (which was granted), filed a Motion to have Defendants disqualified as counsel for Loehnert and Ayres.

36. On November 18, 2014, the late John G. Heyburn II, Senior U.S. District Court Judge, granted Pinnacle's Motion to disqualify Defendants, finding that: (1) an attorney-client relationship existed between Pinnacle and Defendants, (2) Defendants were directly and materially adverse to Pinnacle, and (3) the subject matter of Defendants' representation of Pinnacle in the Wells Litigation was substantially related and relevantly interconnected to the matter between Pinnacle, Loehnert and Ayres and revealed Pinnacle's pattern of conduct. *See* attached Exhibit 3.

37. After moving for reconsideration of the disqualification Order above, Judge Heyburn, on March 12, 2015, ruled again that Defendants "must be disqualified" from representing Loehnert and Ayres against Pinnacle, while not even considering or being presented with the majority of the various actionable conduct of Defendants against Pinnacle set forth herein.⁴ This suit followed.

38. As a direct cause and result of Defendants' own improper and independent actions, which are not compromised, barred, precluded, or affected in any way by the Agreement the Defendants are not even a party to, or Pinnacle's lawsuit and settlement with Loehnert and

⁴ On June 1, 2015, the Sixth Circuit Court of Appeals denied Defendants' request for appeal of the disqualification ruling.

Ayres, and as actual (not liquidated) damages, Pinnacle lost, among other things, the remaining two years of business, profits and opportunities under its Agreement given Loehnert and Ayres' premature departure which at a minimum totals \$744,000, the business start-up costs and expenses, its office, goodwill, and business reputation in the community. Pinnacle was also forced to pay to pursue Defendants, pay to pursue and defend an action against Loehnert and Ayres, and engage in a the costly endeavor of disqualifying Defendants from representing Loehnert and Ayres given their inherent conflicts of interests.

39. Defendants choose to ignore that they owed fiduciary duties to Pinnacle, but at the same time consistently acted directly adverse to Pinnacle and its interests and damaged Pinnacle.

40. All conditions precedent to bringing this action have been satisfied, and Pinnacle reserves its right to amend this Complaint with additional factual allegations, causes of action and requested relief.

CAUSES OF ACTION

COUNT I

LEGAL MALPRACTICE/NEGLIGENCE – ALL DEFENDANTS

41. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

42. Defendants, and each of them, owed Pinnacle an undivided duty of loyalty and care, including the duty to exercise the ordinary care of a reasonably competent attorney in the same or similar circumstances, and to at all times act in Pinnacle's best interests and to the benefit of Pinnacle, and also to carry out legal representation of Pinnacle in an ethical manner, and to avoid conflicts of interest in conformance with their legal obligations to Pinnacle, as well as all of the rules governing the conduct of attorneys, including, but not limited to, SCR 3.130(1.6)(a), 3.130(1.7), and 3.130(1.9)(a).

43. Defendants, and each of them, acted negligently and committed legal malpractice because they breached their duties to Pinnacle by failing to meet their duties of care and loyalty to Pinnacle, to exercise the ordinary care of a reasonably competent attorney in the same or similar circumstances, and to at all times act in Pinnacle's best interests and to the benefit of Pinnacle, and also failed to carry out their legal representation of Pinnacle in an ethical manner and to avoid conflicts of interest by acting directly and materially adverse to Pinnacle and in conscious disregard of their obligations to Pinnacle.

44. As fully set forth in the facts section above, the acts and omissions of Defendants, and each of them, constituting negligence and legal malpractice, all which should have been evident to a reasonably competent attorney in the same or similar circumstances, include, but are not limited to, the following:

- a. Owing fiduciary and other duties to Pinnacle as its counsel, while at the same time acting directly and materially adverse to Pinnacle;
- b. Planting the seed, planning, directing, encouraging and counseling Loehnert and Ayres to breach the Agreement with Pinnacle, which they did;
- c. Assisting, directing, engaging, preparing, encouraging, planning, facilitating, implementing, aiding, and having knowledge of Loehnert and Ayres prematurely proposing a separation from Pinnacle, breaching the Agreement and their fiduciary duties owed to Pinnacle, starting a competing surety company against Pinnacle, and prematurely resigning from Pinnacle;
- d. Preparing for, forming, organizing, starting and even acting as the registered agent for a competing surety company against Pinnacle, L.A. Surety;
- e. Concealing and failing to disclose to Pinnacle their actions and own improper

conduct, as well as Loehnert and Ayres' actions and improper conduct;

- f. Having knowledge of and improperly interfering with Pinnacle's Agreement with Loehnert and Ayres, including the terms, conditions and requirements of the Agreement, the length of the Agreement, and the fact that Loehnert and Ayres were not to engage in any other insurance or surety business, or any business competitive to that of Pinnacle, while employed by Pinnacle;
- g. Conspiring and aiding and abetting each other, and Loehnert and Ayres, in their improper conduct;
- h. Assuming a direct and material adverse position against Pinnacle, including sending the May 23, 2014 demand letter and subsequent correspondence;
- i. Not obtaining the necessary informed consent waiver from Pinnacle at any time during their representation of Pinnacle, nor sending any correspondence indicating that their legal representation of Pinnacle had ceased;
- j. Proceeding in their representation of Loehnert and Ayres against Pinnacle despite their concurrent conflict of interest in continuing to represent Pinnacle in the Wells Litigation, and eventually their former client obligations owed to Pinnacle;
- k. Filing Jefferson Circuit Court Case No. 14-CI-03017 against Pinnacle, and forcing it to expend substantial sums of money in defense of the suit;
- l. Forcing Pinnacle to file a Motion for Disqualification in the United States District Court Case No. 3:14-CV-425-H, and expend substantial sums of money to disqualify Defendants;
- m. Forcing Pinnacle to file this action against Defendants; and
- n. Failing to recognize and resolve the conflict of interest inherent in Defendants'

representation of Loehnert and Ayres against Pinnacle, accepting representation of Loehnert and Ayres against Pinnacle, and continuing to represent Loehnert and Ayres against Pinnacle despite the inherent conflict and their fiduciary duties owed to Pinnacle.

45. All of these adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, or without full and proper disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle's legal interests and owed it the highest fiduciary duties, at Defendants' direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle or owed contractual, fiduciary and other legal duties to Pinnacle.

46. As a direct and proximate result of Defendants' acts and omissions, as alleged herein, Pinnacle has incurred significant economic injury, detriment and damage, all in an amount to be proven at the time of trial, and Defendants are jointly and severally liable for same.

47. The foregoing conduct by Defendants, and each of them, was willful, oppressive, fraudulent, malicious, or with a conscious disregard for Pinnacle's rights, therefore justifying a substantial award of punitive damages representing a multiple of Pinnacle's damages.

COUNT II
BREACH OF FIDUCIARY DUTY – ALL DEFENDANTS

48. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

49. Defendants owed to Pinnacle undivided duties of reasonable care, utmost integrity, fidelity, good faith, allegiance, trust, loyalty, and to act, at all times, in the best interests of and to the benefit of Pinnacle with full and informed disclosure, and not to acquire or take on interests in conflict or in competition with Pinnacle.

50. As fully set forth in the facts section above, the acts and omissions of Defendants,

and each of them, constituting breach of fiduciary duty, include, but are not limited to, the following:

- a. Owing fiduciary and other duties to Pinnacle as its counsel, while at the same time acting directly and materially adverse to Pinnacle;
- b. Planting the seed, planning, directing, encouraging and counseling Loehnert and Ayres to breach the Agreement with Pinnacle, which they did;
- c. Assisting, directing, engaging, preparing, encouraging, planning, facilitating, implementing, aiding, and having knowledge of Loehnert and Ayres prematurely proposing a separation from Pinnacle, breaching the Agreement and their fiduciary duties owed to Pinnacle, starting a competing surety company against Pinnacle, and prematurely resigning from Pinnacle;
- d. Preparing for, forming, organizing, starting and even acting as the registered agent for a competing surety company against Pinnacle, L.A. Surety;
- e. Concealing and failing to disclose to Pinnacle their actions and own improper conduct, as well as Loehnert and Ayres' actions and improper conduct;
- f. Having knowledge of and improperly interfering with Pinnacle's Agreement with Loehnert and Ayres, including the terms, conditions and requirements of the Agreement, the length of the Agreement, and the fact that Loehnert and Ayres were not to engage in any other insurance or surety business, or any business competitive to that of Pinnacle, while employed by Pinnacle;
- g. Conspiring and aiding and abetting each other, and Loehnert and Ayres, in their improper conduct;
- h. Assuming a direct and material adverse position against Pinnacle, including sending

the May 23, 2014 demand letter and subsequent correspondence;

- i. Not obtaining the necessary informed consent waiver from Pinnacle at any time during their representation of Pinnacle, nor sending any correspondence indicating that their legal representation of Pinnacle had ceased;
- j. Proceeding in their representation of Loehnert and Ayres against Pinnacle despite their concurrent conflict of interest in continuing to represent Pinnacle in the Wells Litigation, and eventually their former client obligations owed to Pinnacle;
- k. Filing Jefferson Circuit Court Case No. 14-CI-03017 against Pinnacle, and forcing it to expend substantial sums of money in defense of the suit;
- l. Forcing Pinnacle to file a Motion for Disqualification in the United States District Court Case No. 3:14-CV-425-H, and expend substantial sums of money to disqualify Defendants;
- m. Forcing Pinnacle to file this action against Defendants; and
- n. Failing to recognize and resolve the conflict of interest inherent in Defendants' representation of Loehnert and Ayres against Pinnacle, accepting representation of Loehnert and Ayres against Pinnacle, and continuing to represent Loehnert and Ayres against Pinnacle despite the inherent conflict and their fiduciary duties owed to Pinnacle.

51. All of these adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, or without full and proper disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle's legal interests and owed it the highest fiduciary duties, at Defendants' direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle or owed contractual, fiduciary and other legal duties to Pinnacle.

52. As a direct and proximate result of the Defendants' acts and omissions, as alleged herein, Pinnacle has incurred significant economic injury, detriment and damage in an amount to be proven at trial, and Defendants are jointly and severally liable for same.

53. The foregoing conduct by Defendants, and each of them, was willful, oppressive, fraudulent, malicious, or with a conscious disregard for Pinnacle's rights, therefore justifying a substantial award of punitive damages representing a multiple of Pinnacle's damages.

COUNT III
FRAUDULENT CONCEALMENT/DECEIT – ALL DEFENDANTS

54. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

55. Despite having a duty to disclose to Pinnacle, Defendants knowingly, or with reckless disregard of the true facts, concealed, failed to disclose, or omitted facts from Pinnacle.

56. As fully set forth in the facts section above, the acts and omissions of Defendants, and each of them, constituting fraudulent concealment/deceit, include, but are not limited to, the following:

- a. Owing fiduciary and other duties to Pinnacle as its counsel, while at the same time acting directly and materially adverse to Pinnacle;
- b. Planting the seed, planning, directing, encouraging and counseling Loehnert and Ayres to breach the Agreement with Pinnacle, which they did;
- c. Assisting, directing, engaging, preparing, encouraging, planning, facilitating, implementing, aiding, and having knowledge of Loehnert and Ayres prematurely proposing a separation from Pinnacle, breaching the Agreement and their fiduciary duties owed to Pinnacle, starting a competing surety company against Pinnacle, and

prematurely resigning from Pinnacle;

- d. Preparing for, forming, organizing, starting and even acting as the registered agent for a competing surety company against Pinnacle, L.A. Surety;
- e. Concealing and failing to disclose to Pinnacle their actions and own improper conduct, as well as Loehnert and Ayres' actions and improper conduct;
- f. Having knowledge of and improperly interfering with Pinnacle's Agreement with Loehnert and Ayres, including the terms, conditions and requirements of the Agreement, the length of the Agreement, and the fact that Loehnert and Ayres were not to engage in any other insurance or surety business, or any business competitive to that of Pinnacle, while employed by Pinnacle;
- g. Conspiring and aiding and abetting each other, and Loehnert and Ayres, in their improper conduct;
- h. Assuming a direct and material adverse position against Pinnacle, including sending the May 23, 2014 demand letter and subsequent correspondence;
- i. Not obtaining the necessary informed consent waiver from Pinnacle at any time during their representation of Pinnacle, nor sending any correspondence indicating that their legal representation of Pinnacle had ceased;
- j. Proceeding in their representation of Loehnert and Ayres against Pinnacle despite their concurrent conflict of interest in continuing to represent Pinnacle in the Wells Litigation, and eventually their former client obligations owed to Pinnacle;
- k. Filing Jefferson Circuit Court Case No. 14-CI-03017 against Pinnacle, and forcing it to expend substantial sums of money in defense of the suit;
- l. Forcing Pinnacle to file a Motion for Disqualification in the United States District

Court Case No. 3:14-CV-425-H, and expend substantial sums of money to disqualify Defendants;

- m. Forcing Pinnacle to file this action against Defendants; and
- n. Failing to recognize and resolve the conflict of interest inherent in Defendants' representation of Loehnert and Ayres against Pinnacle, accepting representation of Loehnert and Ayres against Pinnacle, and continuing to represent Loehnert and Ayres against Pinnacle despite the inherent conflict and their fiduciary duties owed to Pinnacle.

57. All of these adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, or without full and proper disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle's legal interests and owed it the highest fiduciary duties, at Defendants' direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle or owed contractual, fiduciary and other legal duties to Pinnacle.

58. Defendants made the aforementioned material acts and omissions in an effort to conceal their own improper conduct from Pinnacle, and to conceal Loehnert and Ayres' improper conduct from Pinnacle.

59. Pinnacle relied to its detriment on Defendants not breaching their obligations to Pinnacle, not acting directly and materially adverse to Pinnacle and against Pinnacle's interests, not harming Pinnacle, and not concealing, failing to disclose and omitting material facts from Pinnacle, as set forth in the aforementioned acts and omissions.

60. As a direct and proximate result of the Defendants' acts and omissions, as alleged herein, Pinnacle has incurred significant economic injury, detriment and damage in an amount to be proven at trial, and Defendants are jointly and severally liable for same.

61. The foregoing conduct by Defendants, and each of them, was willful, oppressive, fraudulent, malicious, or with a conscious disregard for Pinnacle's rights, therefore justifying a substantial award of punitive damages representing a multiple of Pinnacle's damages.

COUNT IV
INTENTIONAL INTERFERENCE WITH CONTRACTUAL
RELATIONSHIP – ALL DEFENDANTS

62. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

63. Defendants were aware of the Agreement, its terms, conditions and requirements, the business relationship Loehnert and Ayres had with Pinnacle and the duties Loehnert and Ayres owed to Pinnacle.

64. Despite that, Defendants intentionally, improperly or maliciously interfered with the Agreement while Loehnert and Ayres were still subject to the Agreement with Pinnacle and still owed duties to Pinnacle.

65. As fully set forth in the facts section above, the acts and omissions of Defendants, and each of them, constituting intentional interference with a contractual relationship, include, but are not limited to, the following:

- a. Owing fiduciary and other duties to Pinnacle as its counsel, while at the same time acting directly and materially adverse to Pinnacle;
- b. Planting the seed, planning, directing, encouraging and counseling Loehnert and Ayres to breach the Agreement with Pinnacle, which they did;
- c. Assisting, directing, engaging, preparing, encouraging, planning, facilitating, implementing, aiding, and having knowledge of Loehnert and Ayres prematurely proposing a separation from Pinnacle, breaching the Agreement and their fiduciary

duties owed to Pinnacle, starting a competing surety company against Pinnacle, and prematurely resigning from Pinnacle;

- d. Preparing for, forming, organizing, starting and even acting as the registered agent for a competing surety company against Pinnacle, L.A. Surety;
- e. Concealing and failing to disclose to Pinnacle their actions and own improper conduct, as well as Loehnert and Ayres' actions and improper conduct;
- f. Having knowledge of and improperly interfering with Pinnacle's Agreement with Loehnert and Ayres, including the terms, conditions and requirements of the Agreement, the length of the Agreement, and the fact that Loehnert and Ayres were not to engage in any other insurance or surety business, or any business competitive to that of Pinnacle, while employed by Pinnacle;
- g. Conspiring and aiding and abetting each other, and Loehnert and Ayres, in their improper conduct;
- h. Assuming a direct and material adverse position against Pinnacle, including sending the May 23, 2014 demand letter and subsequent correspondence;
- i. Not obtaining the necessary informed consent waiver from Pinnacle at any time during their representation of Pinnacle, nor sending any correspondence indicating that their legal representation of Pinnacle had ceased;
- j. Proceeding in their representation of Loehnert and Ayres against Pinnacle despite their concurrent conflict of interest in continuing to represent Pinnacle in the Wells Litigation, and eventually their former client obligations owed to Pinnacle;
- k. Filing Jefferson Circuit Court Case No. 14-CI-03017 against Pinnacle, and forcing it to expend substantial sums of money in defense of the suit;

- l. Forcing Pinnacle to file a Motion for Disqualification in the United States District Court Case No. 3:14-CV-425-H, and expend substantial sums of money to disqualify Defendants;
- m. Forcing Pinnacle to file this action against Defendants; and
- n. Failing to recognize and resolve the conflict of interest inherent in Defendants' representation of Loehnert and Ayres against Pinnacle, accepting representation of Loehnert and Ayres against Pinnacle, and continuing to represent Loehnert and Ayres against Pinnacle despite the inherent conflict and their fiduciary duties owed to Pinnacle.

66. All of these adverse actions against Pinnacle occurred without disclosure to Pinnacle by Defendants, or without full and proper disclosure to Pinnacle by Defendants, while Defendants represented Pinnacle's legal interests and owed it the highest fiduciary duties, at Defendants' direction and with their knowledge, and while Loehnert and Ayres were still employed by Pinnacle or owed contractual, fiduciary and other legal duties to Pinnacle.

67. As a direct and proximate result of the Defendants' acts and omissions, as alleged herein, Pinnacle has incurred significant economic detriment and damage in an amount to be proven at trial, and Defendants are jointly and severally liable for same.

68. The foregoing conduct by Defendants, and each of them, was willful, oppressive, fraudulent, malicious, or with a conscious disregard for Pinnacle's rights, therefore justifying a substantial award of punitive damages representing a multiple of Pinnacle's damages.

COUNT V
CIVIL CONSPIRACY – ALL DEFENDANTS

69. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

70. By engaging, assisting or encouraging, as set forth in detail above, fraudulent concealment/deceit, breach of fiduciary duty, legal malpractice/negligence and intentional interference with a contractual relationship, Defendants made an unlawful combination or agreement between themselves, as well as and Loehnert and Ayres, to engage in, substantially assist or encourage concerted action with a common design, and engaged in tortious and improper conduct in violation of Pinnacle's rights, and Defendants are, therefore, jointly and severally liable for the resulting tortious injury to Pinnacle.

71. As a direct and proximate result of the Defendants' acts and omissions, as alleged herein, Pinnacle has incurred significant economic injury, detriment and damage in an amount to be proven at trial, and Defendants are jointly and severally liable for same.

72. The foregoing conduct by Defendants, and each of them, was willful, oppressive, fraudulent, malicious, or with a conscious disregard for Pinnacle's rights, therefore justifying a substantial award of punitive damages representing a multiple of Pinnacle's damages.

COUNT VI
AIDING AND ABETTING THE BREACH OF
FIDUCIARY DUTY – ALL DEFENDANTS

73. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

74. Defendants, and each of them, knew that Loehnert and Ayres owed fiduciary and other duties to Pinnacle.

75. Notwithstanding their knowledge of Loehnert's and Ayres' fiduciary and other duties to Pinnacle, Defendants knowingly and substantially assisted and aided and abetted each other, as well as Loehnert and Ayres, in planning, facilitating and implementing their improper tortious conduct, including, as set forth above, fraudulent concealment/deceit, breach of fiduciary

duty, legal malpractice/negligence, civil conspiracy and intentional interference with a contractual relationship

76. As a direct and proximate result of the Defendants' acts and omissions, as alleged herein, Pinnacle has incurred significant economic injury, detriment and damage in an amount to be proven at trial, and Defendants are jointly and severally liable for same.

77. The foregoing conduct by Defendants, and each of them, was willful, oppressive, fraudulent, malicious, or with a conscious disregard for Pinnacle's rights, therefore justifying a substantial award of punitive damages representing a multiple of Pinnacle's damages.

COUNT VII
CONSTRUCTIVE TRUST/ACCOUNTING – ALL DEFENDANTS

78. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

79. As a consequence of the foregoing, Pinnacle is entitled to a full accounting and constructive trust to be imposed against Defendants on all assets, profits, gains and advantages derived from Defendants' wrongful activities, as well as all damages sustained by Pinnacle as a result thereof.

PRAYER FOR RELIEF

WHEREFORE, Pinnacle respectfully demands the following relief from Defendants, Manion Stigger, Cooper Elliott, Stigger, and Elliott:

1. For judgment in favor of Pinnacle and against Defendants, jointly and severally;
2. For actual damages, including, but not limited to, lost business, profits, and opportunities, business expenses and costs, loss of its office, loss of goodwill and great damage to its business reputation within the business community, and consequential and incidental damages in an amount to be proven at trial, together with pre-judgment and post-judgment

interest at the maximum rate allowed by law;

3. For punitive damages against Defendants in an amount to be determined at trial;
4. For a constructive trust and full accounting from Defendants to Pinnacle on all assets, profits, gains and advantages Defendants have derived from their wrongful activities;
5. For the costs, expenses and attorney fees of Pinnacle;
6. For a jury trial on all triable issues; and
7. For such other and further relief as the Court may deem proper and just, or which Pinnacle may be entitled.

Respectfully submitted,

/s/ P. Blaine Grant

P. Blaine Grant

HAYDEN GRANT PLLC

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COUNSEL FOR PLAINTIFF

PINNACLE SURETY SERVICES, INC.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

PINNACLE SURETY SERVICES, INC.)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:14-CV-425-JHM
)	
TODD P. LOEHNERT)	
)	
-and-)	
)	
JOHN B. AYRES)	
)	
-and-)	
)	
L.A. SURETY SOLUTIONS LLC)	
SERVE: George Bruce Stigger)	
2301 River Road)	
Suite 101)	
Louisville, Kentucky 40206)	
)	
Defendants.)	
)	
)	

VERIFIED FIRST AMENDED COMPLAINT

Plaintiff, Pinnacle Surety Services, Inc. (“Pinnacle”), by and through counsel, for its Verified First Amended Complaint against Defendants, Todd P. Loehnert (“Loehnert”), John B. Ayres (“Ayres”) and L.A. Surety Solutions LLC (“L.A. Surety”) (collectively, “Defendants”), states as follows:

PARTIES

1. Pinnacle is a for profit corporation organized and existing under the laws of the State of California, with its principal office at 151 Kalmus Drive A-201, Costa Mesa, California 92626.

2. Loehnert is an individual residing at 3926 Druid Hills Road, Louisville, Kentucky 40207.

3. Ayres is an individual residing at 9216 Felsmere Circle, Louisville, Kentucky 40241.

4. L.A. Surety is a Kentucky limited liability company whose registered agent is George Bruce Stigger located at 2301 River Road, Suite 101, Louisville, Kentucky 40206.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, in that it is a civil action between citizens of different states in which the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

6. This Court has personal jurisdiction over Defendants as they reside in Kentucky.

7. Venue of this action lies in the United States District Court for the Western District of Kentucky pursuant to 28 U.S.C. § 1391(a)(2), in that the substantial majority of events, acts and/or omissions giving rise to the claims set forth herein occurred in Jefferson County, Kentucky, which lies within the Western District of Kentucky.

NATURE OF THE CASE

8. This is a civil action seeking damages as a result of the breach of an Employment Agreement which exists between Pinnacle, Loehnert and Ayres, fraudulent concealment/deceit, breach of fiduciary duty and other related and independent claims.

FACTS GIVING RISE TO THE CLAIMS

A. Pinnacle Employs Loehnert and Ayres.

9. Pinnacle is in the surety bond business, and devoted considerable resources and risk in 2013 in opening a Louisville, Kentucky office to be referred to as Pinnacle of Kentucky.

10. In furtherance of that plan, on or about April 13, 2013, the parties entered into an Employment Agreement in which Pinnacle employed Loehnert and Ayres to work in its Kentucky office and grow its Kentucky business. The Employment Agreement is attached as Exhibit A.

11. On or about December 9, 2013, after realizing that, due to a printing error, the Employment Agreement failed to include certain language that had been agreed between the parties, the parties entered into a Reformation of Employment Agreement (“Reformation”), which is attached at Exhibit B.

12. As expressly agreed between the parties, the Reformation reflected the intention of the parties as of April 13, 2013, the date of the Employment Agreement, and was not meant to reflect new terms. *Id.* at ¶ D.

13. The Employment Agreement and Reformation are referred to collectively as the “Employment Agreement”.

14. In accordance with the Employment Agreement, and given their years of experience in the surety bond business, Loehnert was named the Managing Director of the Kentucky office, and Ayres was named the Executive Vice President of the Kentucky office. *See* attached Exhibit A, at ¶¶ 2 and 4.

15. Given their positions at, and relationships with, Pinnacle, they both owed and owe fiduciary duties to Pinnacle, including undivided duties of reasonable care, utmost integrity, fidelity, good faith, allegiance, trust, loyalty, and to act, at all times, in the best interests of and to the benefit of Pinnacle with full and informed disclosure, and not to acquire interests in conflict or competition with Pinnacle.

16. The parties agreed that Loehnert and Ayres’ employment with Pinnacle would begin on April 13, 2013, and would last for a minimum of three years. *Id.* at ¶ 1.

17. Loehnert and Ayres had previously been employed at Wells Fargo and, soon thereafter, on or about April 25, 2013, Wells Fargo initiated suit against Loehnert, Ayres and Pinnacle regarding Pinnacle's employment of Loehnert and Ayres (the "Wells Fargo matter").

18. Because significant resources and risk were devoted by Pinnacle to establishing the Kentucky office, and Pinnacle would only receive appropriate return on its investment in the Kentucky office if the office remained open and profitable for a period of time, the parties agreed that Pinnacle would suffer significant injury and damage, the actual amount of which would be extremely difficult to determine, if Loehnert and Ayres prematurely terminated their employment with Pinnacle. *See* attached Exhibit B, at ¶ 13. In addition to the above, significant resources were also devoted by Pinnacle to addressing, and expended defending, the Wells Fargo matter.

19. Specifically, Pinnacle devoted significant resources and risk as to the office lease, information technology, office equipment and furniture, human resources, payroll, expenses, Pinnacle employee and owner time and attention, addressing and defending the Wells Fargo matter, and the like, totaling a minimum of \$100,000. And at the time of the Employment Agreement, the potential for lost profits if Loehnert and Ayres prematurely terminated their employment with Pinnacle was conservatively estimated at \$250,000 – \$300,000 annually, or \$750,000 – \$900,000 over the life of the Employment Agreement.

20. And now given Loehnert and Ayres' premature resignation, as set forth below, these are, at a minimum, the actual damages Pinnacle has incurred and expects to incur, which will exceed \$250,000. In fact, in Loehnert and Ayres' Response to Pinnacle's Memorandum in Support of its Motion for Judgment on the Pleadings to Recover the Contractually Agreed \$250,000 and its Attorney Fees, Expenses and Costs from Defendants [DN 45], Loehnert and

Ayres judicially admitted that the lost annual profits to Pinnacle were at least \$1,000,000 per year, or at least \$3,000,000 over the life of the Employment Agreement. *Id.* at 11 – 12.

21. Pinnacle is entitled to seek its actual damages given Defendants' below improper conduct which it does through this Complaint.

22. Alternatively, and as expressly agreed by Loehnert and Ayres in the provision entitled "Reimbursement by Executives in the Event of Termination", and given the factors referenced above, including the Wells Fargo matter, if within three years of the date of the Employment Agreement either Loehnert or Ayres resigned from Pinnacle, as ultimately done here, Pinnacle would be entitled to obtain liquidated damages, in its sole discretion, of \$125,000 from each for a total of \$250,000. *See* attached Exhibit B, at ¶ 13.

23. Given the factors set forth above, this amount was in no way disproportionate to the injury which would result to Pinnacle if Loehnert and Ayres resigned their employment early. In fact, it is well less than Pinnacle's actual damages.

B. Loehnert and Ayres Prematurely and Improperly Resign from Pinnacle.

24. Unfortunately, and despite a very successful financial relationship between the parties, Loehnert and Ayres made a proposal, on or about May 5, 2014, suggesting that Pinnacle and Loehnert and Ayres separate their relationship outlined in the Employment Agreement, while conceding their obligations of \$250,000 to Pinnacle. This separation proposal was submitted by Loehnert and Ayres after only one year of working under the Employment Agreement. *See* attached Exhibit H.

25. On May 15, 2014, Pinnacle respectfully declined Loehnert and Ayres' separation proposal, and instead chose to continue operating under the Employment Agreement. *See* attached Exhibit I.

26. On May 23, 2014, Loehnert and Ayres' counsel, who previously represented Pinnacle and Loehnert and Ayres in the substantially related Wells Fargo matter and have since been disqualified from representing Loehnert and Ayres in this matter, sent a demand letter contending that Pinnacle purportedly owed Loehnert and Ayres some unspecified amount. *See* attached Exhibit J. Pinnacle's former legal counsel were disqualified by this Court because they, on behalf of Loehnert and Ayres and while still representing Pinnacle's interests, among other improper acts, acted directly adverse to Pinnacle, sued Pinnacle, and even encouraged and assisted Loehnert and Ayres to breach the Employment Agreement at issue here with Pinnacle and prepare, form, organize and start a competing business directly against Pinnacle. Given this conduct, Pinnacle filed a separate civil action (3:15-CV-364-DJH) against its former counsel seeking damages as a result of their breaches of fiduciary duties, legal malpractice, and aiding and abetting breaches of fiduciary duties.

27. Regarding the demand letter, Pinnacle responded on or about May 26, 2014, indicating that it was unaware of any outstanding amount owed to or on behalf of Loehnert and Ayres, but was more than willing to consider any additional information/documentation to support such an allegation. *See* attached Exhibit C.

28. In correspondence dated on or about May 27, 2014, May 28, 2014, May 29, 2014, and May 30, 2014, the parties exchanged their calculations and Pinnacle explained that Loehnert and Ayres were not entitled to any additional compensation given the advances to or on behalf of Loehnert and Ayres, which total \$179,906.40 (\$100,000 on or about June 5, 2013 and \$79,906.40 on or about March 15, 2014), and the fact that even if Loehnert and Ayres were due commissions, which they were not given the advances, such commissions were not even owed in accordance with the Employment Agreement. Pinnacle also explained that Loehnert and Ayres' calculations

were inaccurate because they were confused as to when commissions are actually earned per paragraph 5.B. of the Employment Agreement, which first requires receipt by Pinnacle. Pinnacle further explained that Loehnert and Ayres actually owed Pinnacle a sizeable reimbursement for the advances. Pinnacle, however, again stated that it was willing to consider any additional information/documentation to support Loehnert and Ayres' contention that they were owed money, offered to have a conference call to discuss the figures, the parties' Employment Agreement and any questions Loehnert and Ayres may have regarding the amount they believe they are owed, and reiterated that every effort was being made to be fair and reasonable, and that Pinnacle had every intention of complying, and had and has in fact complied, with the parties' Employment Agreement. In fact, Pinnacle even offered to allow Loehnert and Ayres' CPA to review Pinnacle's calculations and explain how there is some alleged underpayment. *See* attached Exhibit D.

29. Pinnacle's calculations at that time confirmed that Loehnert and Ayres, in fact, owed Pinnacle at least \$60,098, which actually was skewed in Loehnert and Ayres' favor since it assumed payment of commissions to Loehnert and Ayres of \$119,074 which were not even owed until after August 30, 2014. *See* attached Exhibit E.

30. On May 30, 2014, rather than respond to Pinnacle's calculations, explain their position, or provide additional information/documentation supporting their allegations that they were owed money, Loehnert and Ayres instead resigned from Pinnacle stating, with no explanation, that Pinnacle had somehow breached the Employment Agreement. *See* attached Exhibit F. Loehnert and Ayres also confirmed that at least one of them would continue their employment obligations with Pinnacle up to and including June 9, 2014. *Id.*

31. In response, Pinnacle sent correspondence dated on or about May 31, 2014, June 3, 2014, and June 4, 2014, accepting Loehnert and Ayres' flawed resignation effective June 8, 2014, but with no further obligation to Loehnert and Ayres per the Employment Agreement. Pinnacle also again explained in detail that there was no breach by Pinnacle as set forth above, and no basis for Loehnert and Ayres to resign with cause, so Pinnacle was at least entitled to the agreed amount of \$250,000 from Loehnert and Ayres for resigning prematurely. Pinnacle further requested multiple times from Loehnert and Ayres proof of any breach, the identification of the specific provision that purportedly was breached, any additional documentation and information to support Loehnert and Ayres' contention that they are owed money, and Pinnacle even offered again to allow Loehnert and Ayres' CPA to review Pinnacle's calculations and explain how there is some alleged underpayment. Yet, Pinnacle never received any proof of any breach or the courtesy of a response to these issues. And Pinnacle again reiterated that every effort was being made to be fair and reasonable, and that Pinnacle had every intention of complying, and has in fact complied, with the parties' Employment Agreement. Finally, Pinnacle noted that alleging breach was simply a ploy by Loehnert and Ayres to try to avoid their at least \$250,000 obligation for resigning prematurely. *See* attached Exhibit G.

32. Pinnacle received no response to this correspondence other than a vague and non-specific reference to purported correspondence that somehow modified the Employment Agreement. But since the Employment Agreement sets forth the entire agreement between the parties and requires that any modification be in writing and signed by all parties to be effective, such a position is baseless. *See* attached Exhibit A, at ¶¶ 16 – 18. The compensation Loehnert and Ayres contend they are owed is not authorized by the Employment Agreement and there was

no modification to the Employment Agreement as it had to be in writing and signed by all parties to be effective.

33. As further support that Pinnacle has made every effort to be fair and reasonable, and that Pinnacle had every intention of complying, and has in fact complied, with the parties Employment Agreement, on June 16, 2014, given Loehnert and Ayres' resignation effective June 8, 2014, Pinnacle sent final payroll checks to Loehnert and Ayres through June 8, 2014, which they strangely refused to accept and returned. Moreover, on July 2, 2014, in accordance and compliance with paragraph 5.E. of the Employment Agreement entitled "Commissions on Termination", and based upon commissions paid and received by Pinnacle in June 2014 through the resignation date, which exceeded the prior advances to Loehnert and Ayres, Pinnacle sent a commission check made payable to Loehnert and Ayres totaling \$7,694.00, which they again refused to accept and returned. Erring in favor of Loehnert and Ayres, this amount likely exceeded the final commission amount actually owed. The timing of this payment which, in accordance with the Employment Agreement, would be due sometime after August 30, 2014, is accelerated by paragraph 5.E. of the Employment Agreement, and was made given that the substantial advances of \$179,906.40 by Pinnacle to or on behalf of Loehnert and Ayres were only then exhausted by the commissions paid and received by Pinnacle in June 2014 through the resignation date. *See* attached Exhibit K.

C. The Improper Preparation, Forming and Starting of a Competing Business Against Pinnacle.

34. Tellingly, Loehnert and Ayres failed to continue their employment at Pinnacle's Kentucky office through their obligated date of June 8, 2014, and instead improperly vacated the premises well before that date and improperly prepared for, formed, and started, while employed at Pinnacle, a competing business directly against Pinnacle called L.A. Surety.

35. Specifically, on or about April 24, 2014, even before proposing to separate with Pinnacle, Loehnert and Ayres, with the assistance of Pinnacle's counsel, organized L.A. Surety as a new business, including obtaining a taxpayer identification number, which now directly competes with Pinnacle. *See* attached Exhibit L. This information was filed with the Kentucky Secretary of State on April 25, 2014. *Id.* This was clearly while Loehnert and Ayres were employed by Pinnacle, in direct violation of their duties to Pinnacle, and without Pinnacle's knowledge or consent. This was also while Pinnacle's counsel were still ethically obligated to protect Pinnacle's interests and while they faced a conflict of interest that has now been found to disqualify them from representing Loehnert and Ayres against Pinnacle. Indeed, Pinnacle's counsel signed L.A. Surety's Articles of Organization and are listed as a registered agent for L.A. Surety, an entity directly competing against Pinnacle.

36. Moreover, at least as early as May 16, 2014, the day after Pinnacle confirmed in writing its choice to continue to operate under the Employment Agreement and declined Loehnert and Ayres' separation proposal, Loehnert and Ayres, while still employed by Pinnacle and in direct violation of their duties to Pinnacle, began reaching out to the insurance carriers Pinnacle represented (without Pinnacle's knowledge or consent) in order to secure and solidify their relationship with these same carriers both before and after Loehnert and Ayres left Pinnacle and started their own competing business. *See* attached Exhibit M. Loehnert and Ayres informed these carriers that the Pinnacle name and contact information for Loehnert and Ayres would change, but that everything else would remain the same. This way Loehnert and Ayres could carry on Pinnacle's business after they left Pinnacle, as smoothly as possible, and continue their own profits at Pinnacle's expense and detriment. In fact, Loehnert and Ayres' counsel confirmed

that 100% of the carriers Pinnacle served in Kentucky are now with Defendants. *See* attached Exhibit N.

37. At that same time, on or about May 16, 2014, Pinnacle asked Loehnert and Ayres what their intentions were moving forward, and they simply stated that they would continue to do their jobs for Pinnacle, but failed to disclose to Pinnacle their multiple improper acts of preparing, forming and starting a competing business against Pinnacle while still employed by Pinnacle and in direct violation of their duties to Pinnacle. *See* attached Exhibit O.

38. In addition, on or about May 31, 2014, again while still employed by Pinnacle and in direct violation of their duties to Pinnacle, Loehnert and Ayres (without Pinnacle's knowledge or consent) sent an email to the insurance carriers Pinnacle represented and others announcing that they had assumed 100% ownership of Pinnacle, and as a result changed the name to L.A. Surety effective May 31, 2014, and were conducting business in competition with Pinnacle. *See* attached Exhibit P. Loehnert and Ayres, however, had not acquired 100% ownership of Pinnacle, their resignations, per the Employment Agreement, were not effective until June 8, 2014, and Loehnert and Ayres even confirmed that at least one of them would continue their employment obligations with Pinnacle up to and including June 9, 2014. *See* attached Exhibit F.

39. Also, on information and belief, Loehnert and Ayres, without Pinnacle's knowledge or consent, notified industry organizations, whose dues had been paid by Pinnacle at Loehnert and Ayres' direction, that a simple name change and/or acquisition had occurred and that Defendants, rather than Pinnacle, should and did receive the benefits the industry organizations provided going forward.

40. In addition to constituting the basis for numerous causes of action, including fraudulent concealment/deceit and breach of fiduciary duty, the Employment Agreement

specifically precluded such conduct. According to the Employment Agreement, “[d]uring Executives employment with Pinnacle, Executives shall not engage in any other insurance or surety related business, or any business competitive to that of Pinnacle, whatsoever, or directly or indirectly render any service of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of Pinnacle.” See attached Exhibit A, at ¶ 3.B.

41. L.A. Surety was aware of the Employment Agreement and the duties Loehnert and Ayres owed to Pinnacle, and intentionally, improperly or maliciously interfered with same by starting a competing business against Pinnacle and by hiring Loehnert and Ayres while they were still subject to the Employment Agreement with Pinnacle and still owed duties to Pinnacle. Moreover, Loehnert, Ayres and L.A. Surety improperly conspired with and aided and abetted each other in the above improper conduct.

42. Finally, Loehnert and Ayres never returned the iPads Pinnacle provided to them at Pinnacle’s expense during their employment, and should do so immediately.

43. All conditions precedent to bringing this action have been satisfied, and Pinnacle reserves its right to amend this Complaint with additional factual allegations, causes of action and requested relief.

CAUSES OF ACTION

COUNT I – BREACH OF CONTRACT – LOEHNERT AND AYRES

44. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

45. Loehnert and Ayres prematurely vacated the business and its premises, and improperly prepared for, formed and started, while employed at Pinnacle, a competing business

directly against Pinnacle, all in violation of the Employment Agreement, and are contractually obligated to pay Pinnacle its actual damages.

46. Alternatively, by prematurely resigning, Loehnert and Ayres became contractually obligated to pay Pinnacle \$125,000 a piece, for a total of \$250,000, per the Employment Agreement.

47. Loehnert and Ayres have each failed to pay Pinnacle's actual damages or make the required payment under the terms of the Employment Agreement with Pinnacle, and are therefore in breach of the Employment Agreement.

48. In addition, Loehnert and Ayres have failed to return to Pinnacle property provided to them by Pinnacle during their employment, and improperly utilized the benefit of industry organizations paid for by Pinnacle.

49. Pinnacle has been damaged as a direct and proximate result of said breaches in an amount to be determined by the evidence.

**COUNT II – BREACH OF IMPLIED DUTY OF GOOD
FAITH AND FAIR DEALING – LOEHNERT AND AYRES**

50. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

51. At all times, the business relationship between Pinnacle, Loehnert and Ayres required that each party deal with the other in good faith, with honesty, and with due consideration for the interests of the other.

52. The acts and omissions of Loehnert and Ayres, including those set forth above in Count I, have been taken with disregard of the rights and interests of Pinnacle and with the intent to escape and ignore Loehnert and Ayres' responsibilities and obligations in accordance with the parties' business relationship and Employment Agreement.

53. Loehnert and Ayres' acts and omissions constitute a breach of their implied duty of good faith and fair dealing to the detriment of Pinnacle.

54. As a direct and proximate result of Loehnert and Ayres' breach, Pinnacle has suffered monetary and other damages in an amount to be determined by the evidence.

**COUNT III – UNJUST ENRICHMENT/QUANTUM MERUIT/QUASI-
CONTRACT/CONTRACT IMPLIED IN FACT/CONTRACT IMPLIED
IN LAW/RESTITUTION – LOEHNERT AND AYRES**

55. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

56. Pleading strictly in the alternative, in addition to the above, and as set forth in paragraphs 18 – 22, 36, 38 – 40 and 42, Loehnert and Ayres have been unjustly enriched to the detriment of Pinnacle, for which Pinnacle is entitled to relief, including restitution.

57. Loehnert and Ayres are in possession of property and/or money of Pinnacle, or are otherwise using or have used property and/or money of Pinnacle which, in good conscience, should immediately be returned or paid to Pinnacle.

58. Pinnacle is therefore entitled to receive the property and/or compensation from Loehnert and Ayres in an amount necessary to promote justice and to restore Pinnacle so that there is not an unjust result and/or enrichment in favor of Loehnert and Ayres.

COUNT IV – MISAPPROPRIATION/CONVERSION – LOEHNERT AND AYRES

59. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

60. In addition to the above, and as set forth in paragraphs 18 – 22, 36, 38 – 40 and 42, Loehnert and Ayres have received and improperly converted money and property from Pinnacle, which Pinnacle is entitled.

61. This constitutes an unlawful and improper conversion of Pinnacle's valuable monetary and property rights and is inconsistent, and in direct conflict with, the monetary and property rights of Pinnacle.

62. As a direct and proximate result of Loehnert and Ayres's conversion of Pinnacle's monetary and property rights, Pinnacle has suffered, and will continue to suffer, financial harm and monetary damages and Loehnert and Ayres are jointly and severally liable for same.

COUNT V – FRAUDULENT CONCEALMENT/DECEIT – LOEHNERT AND AYRES

63. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

64. As set forth above, Loehnert and Ayres knowingly, or with reckless disregard of the true facts, concealed, failed to disclose, or omitted the fact that they improperly vacated the Pinnacle premises well before their obligated final date of employment, and improperly prepared for, formed, and started, all while employed by Pinnacle and while they owed duties to Pinnacle, a competing business directly against Pinnacle.

65. Specifically, Loehnert and Ayres concealed, failed to disclose and/or omitted the facts set forth in paragraphs 34 – 39.

66. Loehnert and Ayres made the aforementioned material omissions in an effort to induce Pinnacle to continue to employ them, pay them and cover their expenses until they could operate their competing business, and to profit at Pinnacle's expense after they left Pinnacle.

67. Pinnacle relied to its detriment on the aforementioned concealed, undisclosed and omitted facts.

68. Pinnacle suffered and continues to suffer damages as a direct consequence of Loehnert and Ayres' improper conduct in an amount to be determined at trial, and Loehnert and

Ayres are jointly and severally liable for same.

COUNT VI – BREACH OF FIDUCIARY DUTY – LOEHNERT AND AYRES

69. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

70. The acts of Loehnert and Ayres in improperly vacating the Pinnacle premises well before their obligated final date of employment, and improperly preparing for, forming and starting a competing business directly against Pinnacle, while still employed by Pinnacle, constitute a breach of their undivided fiduciary duties and duties of reasonable care, utmost integrity, fidelity, good faith, allegiance, trust and loyalty to Pinnacle, and to act, at all times, in the best interests of and to the benefit of Pinnacle with full and informed disclosure, and not to acquire interests in conflict or competition with Pinnacle.

71. By reason of Loehnert and Ayres' breach of their fiduciary duties and duties of reasonable care, utmost integrity, fidelity, good faith, allegiance, trust and loyalty to Pinnacle, and to act, at all times, in the best interests of and to the benefit of Pinnacle with full and informed disclosure, and not to acquire interests in conflict or competition with Pinnacle, Pinnacle has suffered damages in an amount to be determined at trial, and Loehnert and Ayres are jointly and severally liable for same.

**COUNT VII – INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONSHIP – L.A. SURETY**

72. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

73. L.A. Surety was aware of the Employment Agreement and the business relationship Loehnert and Ayres had with Pinnacle and the duties Loehnert and Ayres owed to Pinnacle.

74. Despite that, L.A. Surety intentionally, improperly or maliciously interfered with the Employment Agreement by starting a competing business against Pinnacle and hiring Loehnert and Ayres to work for L.A. Surety while they were still subject to the Employment Agreement with Pinnacle and still owed duties to Pinnacle.

75. As a direct and proximate result of L.A. Surety's conduct, Pinnacle is entitled to recover from L.A. Surety its damages proximately caused by the interference with contractual relations in an amount to be determined at trial.

COUNT VIII – CIVIL CONSPIRACY – ALL DEFENDANTS

76. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

77. By improperly vacating the Pinnacle premises well before their obligated final date of employment, by preparing for, forming and starting a competing business directly against Pinnacle, all while Loehnert and Ayres were still employed by Pinnacle and owed duties to Pinnacle, and by engaging, assisting or encouraging fraudulent concealment/deceit, breach of fiduciary duty and intentional interference with a contractual relationship, Defendants made an unlawful combination or agreement between them to engage in, substantially assist or encourage concerted action with a common design, and engaged in tortious conduct in violation of Pinnacle's rights, and Defendants are, therefore, jointly and severally liable for the resulting tortious injury to Pinnacle.

78. As a proximate result of Defendants' acts in furtherance of their civil conspiracy, Pinnacle has suffered injury and damages in an amount to be determined at trial, and Defendants are therefore jointly and severally liable for same.

COUNT IX – AIDING AND ABETTING IMPROPER CONDUCT – ALL DEFENDANTS

79. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

80. Defendants aided and abetted each other in planning, facilitating and implementing their improper tortious conduct of fraudulent concealment/deceit, breach of fiduciary duty and intentional interference with a contractual relationship by Loehnert and Ayres improperly vacating the Pinnacle premises well before their obligated final date of employment and by Defendants preparing for, forming and starting a competing business directly against Pinnacle, all while Loehnert and Ayres were still employed by Pinnacle and owed duties to Pinnacle.

81. As a proximate result of Defendants' actions to aid and abet each other's tortious conduct, Pinnacle has suffered injury and damages in an amount to be determined at trial, and Defendants are jointly and severally liable for same.

COUNT X – CONSTRUCTIVE TRUST/ACCOUNTING – ALL DEFENDANTS

82. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

83. As a consequence of the foregoing, Pinnacle is entitled to a full accounting and constructive trust to be imposed against Defendants on all assets, profits, gains and advantages derived from Defendants' wrongful activities, as well as all damages sustained by Pinnacle as a result thereof.

COUNT XI – PUNITIVE DAMAGES – ALL DEFENDANTS

84. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

85. By reason of the Defendants' inappropriate tortious conduct, as set forth above, Pinnacle is entitled to recover punitive damages from the Defendants in an amount to be determined at trial.

COUNT XII – DECLARATORY JUDGMENT AND RELIEF – ALL DEFENDANTS

86. Pinnacle restates and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

87. Justiciable and actual controversies exist between Pinnacle and Defendants as contemplated by Fed. R. Civ. P. 57 and 28 U.S.C. § 2201. In order to resolve these controversies, Pinnacle requests that the Court declare the rights, duties, obligations and other legal relations between the parties, and declare that Pinnacle is entitled to all relief for which it prays.

PRAYER FOR RELIEF

WHEREFORE, Pinnacle respectfully demands the following relief from Defendants, Todd P. Loehnert, John B. Ayres and L.A. Surety:

- A. For a judgment in favor of Pinnacle and against Defendants, jointly and severally;
- B. For actual damages, including but not limited to, lost business opportunities, business and profits, business expenses, loss of its office, loss of goodwill and great damage to its business reputation within the business community, and consequential and incidental damages in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowed by law;
- C. Alternatively, for liquidated damages in the amount of \$250,000, in Pinnacle's sole discretion, together with pre-judgment and post-judgment interest at the maximum rate allowed by law;
- D. For the equitable relief requested;

- E. For a constructive trust and full accounting from Defendants to Pinnacle on all assets, profits, gains and advantages Defendants have derived from their wrongful activities;
- F. For punitive damages against Defendants in an amount to be determined at trial;
- G. For a Declaration from this Court of the respective rights, duties and obligations of the parties;
- H. For its costs and expenses expended herein, and its reasonable attorneys' fees;
- I. For a jury trial on all issues so triable; and
- J. For any and all other relief to which Pinnacle may be entitled.

Respectfully submitted,

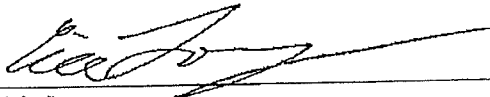
/s/ P. Blaine Grant

P. Blaine Grant
HAYDEN GRANT PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
Phone: 502.638.2817
Fax: 502.849.0707
Email: Blaine@hayden-grant.com

COUNSEL FOR PLAINTIFF
PINNACLE SURETY SERVICES, INC.

VERIFICATION

Eric Lowey, after being duly sworn, states that he is the President of Pinnacle Surety Services, Inc., that he has read the foregoing Verified First Amended Complaint, and that the factual statements set forth therein are true and correct to the best of his knowledge, information and belief, and that he would and could testify under oath to such statements.


Eric Lowey

STATE OF CALIFORNIA

COUNTY OF ORANGE

)
)SS: *See Attached*
)

Subscribed and sworn to me by _____, this ____ day of _____
_____ 2015.

My commission expires: _____.

NOTARY PUBLIC, STATE AT LARGE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

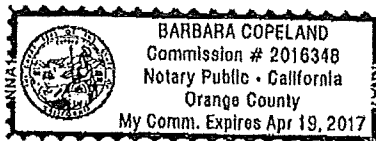
CIVIL CODE 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

On 11/10/15 before me, Barbara Copeland, Notary Public,
personally appeared Eric Lowey
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Barbara Copeland
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent and reattachment of this form to another document.

Description of Attached Document

Type or Title of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Eric Lowey

- ☒ Individual
☐ Corporate Officer - Title(s): _____
☐ Partner: ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer - Title(s): _____
☐ Partner: ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into to be effective on the 13th day of April 2013, by and between Pinnacle Surety Services, Inc., on the one hand, ("Pinnacle") and Todd Loehnert and Brian Ayres ("Executives"), on the other hand.

WHEREAS, Pinnacle desires to retain in its employment the Executives who can help grow Pinnacle's business in geographic regions not previously covered by Pinnacle's business and who possesses those qualities and the experience necessary to fulfill Pinnacle's long-term objectives, and;

WHEREAS, Pinnacle plans to open an office in Kentucky, operating under the name "Pinnacle of Kentucky," which will conduct the surety bond business in the East Coast region;

WHEREAS, Pinnacle is planning to expend considerable resources on opening the Kentucky office, including office lease, information technology, office equipment, human resources, payroll etc;

WHEREAS, Pinnacle has determined that Executives possess the qualities and experience which will enable it to meet its goals with regard to the Kentucky office, and that it is advisable to enter into this Employment Agreement with Executives.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, it is hereby agreed by and between Pinnacle and Executives as follows:

1. Term of Employment. Pinnacle hereby employs Executives and Executives hereby accept employment with Pinnacle beginning on or before April 13th, 2013. Executives' employment will continue unless Executives or Pinnacle terminate this Agreement, and

employment will continue unless Executives or Pinnacle terminate this Agreement, and Executives' employment, as provided for herein. Executives and Pinnacle agree that after three years of employment, and assuming that the parties have found the relationship to be mutually beneficial, the parties will meet to discuss a possible ownership interest by Executives in Pinnacle, the form and terms to be agreed upon by the parties at that time.

2. General Duties and Obligations. Todd Loehnert shall serve as the Managing Director and Brian Ayres shall serve as Executive Vice President with the title of Sr. Partner, and report directly to Todd Loehnert of Pinnacle of Kentucky, a dba of Pinnacle Surety Services, Inc. In this capacity, Executives shall perform, as exempt employees, each and every duty prescribed by Pinnacle and all services, acts, or things necessary or advisable to manage, direct and conduct the business and affairs of Pinnacle of Kentucky, subject at all times to the budget and policies set by Pinnacle. Todd Loehnert shall manage all of the day-to-day functions of the Kentucky office, including but not limited to hiring and supervising up to two support staff, and producing and maintaining business. Executives shall conduct themselves at all times in accordance with industry standards as to professional practices. Executives employment shall be governed by the policies and procedures established by Pinnacle from time to time. Additionally, Executives agrees to be bound by the provisions of the Confidentiality Agreement attached hereto as Exhibit A and incorporated herein by this reference.

3. Devotion to Pinnacle's Business.

A. Executives shall devote Executives' entire productive time, ability and attention to the business of Pinnacle during the term of this Employment Agreement.

B. During Executives employment with Pinnacle, Executives shall not engage in any other insurance or surety related business, or any business competitive to that of

Pinnacle, whatsoever, or directly or indirectly render any service of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of Pinnacle. However, the expenditure of reasonable amounts of time for educational, charitable, or professional activities shall not be deemed a breach of this Agreement, and shall not require the prior written consent of Pinnacle, if those activities do not materially interfere with the services Executives are required to render under this Agreement.

C. This Employment Agreement shall not be interpreted to prohibit Executives from making passive personal investments or conducting private business affairs, if those activities are not a conflict of interest under applicable law or regulations, and as long as such activities do not materially interfere with the services Executives are required to render under this Agreement.

4. Uniqueness of Executives' Services. Executives have many years of experience devoted to the surety bond business. Additionally, Executives possess many years of involvement in the National Association of Surety Bond Producers. These unique qualifications and experience provide valuable benefits to Pinnacle that cannot be readily replaced.

5. Annual Salary and Commission

A. Base Salary. As compensation for the services to be performed hereunder, Todd Loehnert shall be paid a base salary at the annual rate of One Hundred Fifty Thousand Dollars (\$150,000.00) and Brian Ayres shall be paid base salary at the annual rate of One Hundred Thousand dollars (\$100,000) ("Base Salary"), payable not less often than bi-monthly, as adjusted according to the Commission Schedule described below.

B. Commission Schedule. Commissions shall be applied against the Base Salary, with Executives receiving the greater of the Base Salary or the total Commission amount.

Commissions shall be earned by Executives upon receipt by Pinnacle of the gross commissions and/or fees from Pinnacle's client. Executives shall receive Commissions according to the following schedule: The following calculations are aggregate calculations and shall apply to both Executives, collectively.

1. Forty percent (40%) of the first \$800,000.00 of Annual (based on a calendar year) Gross Commissions and Fees, less \$250,000.00, produced by the Kentucky office and booked and actually received by Pinnacle, less any adjustments;
2. Forty-five percent (45%) of the next \$400,000.00 of Annual Gross Commissions and Fees produced by the Kentucky office and booked and actually received by Pinnacle, less any adjustments;
3. Fifty percent (50%) of the next \$400,000.00 of Annual Gross Commissions and Fees produced by the Kentucky office and booked and actually received by Pinnacle, less any adjustments;
4. Fifty-five percent (55%) of Annual Gross Commissions and Fees exceeding \$1,600,000.00 Gross Commissions produced by the Kentucky office and booked and actually received by Pinnacle, less any adjustments.
5. Example: By way of illustration only, the following is an example of the Commission payment structure:

Assuming that in 2013, the Kentucky office generates \$1,000,000 in Gross Commissions and Fees, after adjustments. The commission of \$410,000 for that year due to Executives is calculated as follows:

$\$800,000 \times .40 (40\%) = \$320,000$ and $\$200,000 \times .45 (45\%) = \$90,000$

for a total of 410,000.

The split of aggregate commissions between Todd Loehnart and Brian Ayers shall be decided by Todd Loehnart and Brian Ayers and mutually agreed upon by each party with Todd Loehnart having the final and binding say. If for some reason Todd Loehnart and Brian Ayres come to an impasse on this matter, Eric Lowey, President of Pinnacle Surety Services, Inc., will make the decision, in his sole discretion.

C. Contingency Commission. Executives shall be paid Contingent Commissions based on the schedule set forth in Paragraph 5(B), above, other than with regard to Contingent Commissions received as a result of Executive Todd Loehnart's work as Traveler's Insurance Program Manager, which shall be paid on a seventy/thirty split schedule, with Executive Todd Loehnart receiving seventy percent (70%) and Pinnacle receiving thirty percent (30%) of such Contingent Commissions.

D. Commission Payment. On or after August 30 of each year, Executives may request, and, by the following September 15, Pinnacle shall pay, seventy percent (70%) of all Commissions Executives have earned to that date, less amounts paid in Base Salary for the months for which Commission is paid. On or before January 15 of each year, beginning on January 15, 2014, Pinnacle shall pay Executive ninety percent (90%) of all Commissions Executive earned in the preceding calendar year, less Commissions previously paid and less Base Salary not yet deducted. On or before April 15 of each year, beginning on April 15, 2014, the remaining balance of Commissions due to Executives shall be paid.

E. Commissions on Termination. In the event of an Executive's termination of employment, Executive shall receive Commissions on Gross Commissions and Fees actually booked and received as of the date of Executive's termination, according to the schedule set forth in Paragraph 5(B) above. The Commissions due shall be paid as soon as practical, but in no event later than thirty days of Executive's termination.

6. Car Allowance. Each Executive shall receive a car allowance of \$600.00 per month during the term of this Agreement. Executive's car allowance is designed to reimburse Executives for all costs associated with the use of their personal vehicles on Pinnacle-related business. As such, Pinnacle shall not separately reimburse Executives for any automobile-related expenses, such as insurance, repairs, tolls, parking, mileage or gasoline. Each Executive agrees to maintain liability insurance on any vehicle he drives on Pinnacle-related business, and further agrees to add Pinnacle as an additional insured party on the vehicle insurance policy.

7. Vacation. Each Executive shall accrue four weeks of vacation per year beginning as of the effective date of this Agreement, not to exceed four vacation weeks per year.

8. Membership in Professional Associations. It is in Pinnacle's best interests for Executives to maintain membership in various professional associations. Pinnacle shall pay the costs of Executives' approved memberships and shall pay the costs in attending local, state, national and international meetings of such professional groups. If Executives receive a stipend from any professional association, that stipend shall be used to offset the costs and expenses associated with Executives' membership, that Pinnacle would otherwise reimburse.

9. Business Expenses. During the Term of this Agreement, Pinnacle shall promptly reimburse Executives for reasonable business expenditures made and substantiated in accordance with policies, practices and procedures established from time to time by Pinnacle with respect to

senior employees. Executives' business expenditures shall be reviewed by the President of Pinnacle Surety Services, Inc. The cost for Executives' Business Expenses and Professional Association Memberships, as described in Paragraph 8 above, shall not exceed \$30,000.00 annually, unless approved in writing by the President of Pinnacle. In addition to the above expenses, Pinnacle shall pay Executive Todd Loehner's golf membership at Big Springs Country Club in the amount of \$425.00 per month.

10. Other Employee Benefits. Executives shall receive five days of paid sick leave annually, to be used in accordance with Pinnacle's sick pay policy provided for in Pinnacle employee manual. Additionally, Pinnacle shall provide Executives with all other benefits to the same extent as is provided to management employees, as set forth in Pinnacle's employee manual, including, but not limited to, 401K participation, and health and dental benefits.

11. Tax Withholding. Pinnacle shall have the obligation to deduct or withhold from the compensation due to Executives hereunder any and all sums required for federal income and other payroll taxes and all state or local taxes now applicable or that may be enacted and become applicable in the future.

12. Termination of Employment.

A. Pinnacle may immediately terminate an Executive's employment under this Agreement for Cause.

B. For purpose of this Agreement, "Cause" shall mean any of the following, as determined by Pinnacle:

1. Executive's dishonesty or conviction of criminal conduct;
2. Failure of the Executive to observe or perform any of his duties, if that failure continues for a period of thirty days from Pinnacle's

notice to Executive specifying the acts or omissions deemed to amount to that failure; or

3. Gross negligence in the performance of his duties under this Agreement.

C. Pinnacle may terminate an Executive's employment under this Agreement for any reason other than Cause upon thirty (30) days written notice to Executive(s).

D. An Executive may resign his employment obligations under this Agreement by giving Pinnacle ten (10) days prior written notice. Upon receipt of 10 days written notice, Pinnacle shall have the option of retaining Executive in active employment for all or any of that thirty-day period, or accepting his resignation from employment at any time within the ten day period. If Pinnacle should decide to retain Executive(s) for less than the ten day period, it may do so with no further obligation to Executive(s).

13. Reimbursement by Executives in the Event of Termination. Executives recognize that Pinnacle is expending significant resources on establishing the Kentucky office, and that those resources are being expended based on Executive's promises and representations with regard to their expertise in the industry and their devotion to Pinnacle's business. Executives further recognizes that Pinnacle will only receive appropriate return on its investment in the Kentucky office if the office remains open and profitable for a period of time, and that Executive(s') termination of employment from Pinnacle will cause Pinnacle to incur injury and damage, the actual amount of which would be extremely difficult to determine. Therefore, if, within three years of the date of this Agreement, either Executive's employment is terminated by Pinnacle for cause or if either Executive resigns, without cause, ("cause" is defined for purposes of this paragraph as breach by Pinnacle of the provisions of this Employment Agreement, or

14. Representations, Warranties and Indemnity by Executives.

Executives represents and warrants to Pinnacle that the execution of this Agreement and the performance by Executives of their obligations under this Agreement will not: (a) violate any judgment, writ injunction, or order of any court, arbitrator, or governmental agency applicable to Executives; or (b) conflict with, result in the breach of any provisions of, or the termination of, or constitute a default under, any agreement to which Executives are a party or by which Executives are or may be bound. Executives further represent and warrant that the performance of their obligations under this Agreement will not require them to use any confidential, proprietary or trade secret information of any prior employer, and that they are not in possession of any such information. Executives agree to indemnify and hold Pinnacle harmless from any and all expenses (including attorney's fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by Pinnacle in connection with any threatened, pending or completed action, claim, suit or proceeding, whether civil, criminal, administrative or investigative to which Pinnacle is a party, or is threatened to be a party, by reason of the act(s) or omission(s) of Executives before April 13th, 2013 or Executive's breach of their representations made in this Agreement. Executives have no obligation to indemnify or hold Pinnacle harmless for the act(s) or omission(s) of Pinnacle. Should Pinnacle become aware of such situation whereby this indemnification may be invoked, Pinnacle shall notify Executives in writing of the situation and provide Executives with a reasonable opportunity to resolve same before Pinnacle starts incurring indemnifiable costs and expenses. Executives will "take the lead" and assume the defense of Pinnacle in any litigation naming Pinnacle (and pay the costs to defend Pinnacle, including attorney fees) until such time as a conflict in interest arises between Executives and

including attorney fees) until such time as a conflict in interest arises between Executives and Pinnacle or Pinnacle reasonable believes Executives are not adequately representing their interests in the litigation.

15. Notices. Any notices to be given hereunder by either party to the other shall be in writing and may be transmitted by personal delivery or by mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the parties at the addresses maintained in the personnel records of Pinnacle, but each party may change that address by written notice in accordance with this section. Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of the date of mailing.

16. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Executives by Pinnacle and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representation, inducement, promise, or agreement, oral or otherwise, has been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding on either party.

17. Modifications. Any modifications of this Agreement will be effective only if in a writing and signed by the parties.

18. Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of

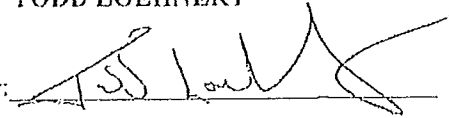
any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

19. Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky, in force and effect as of the date of execution.


TODD LOEHNER

DATED: 4-13-13

By: 

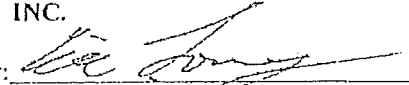
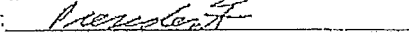
BRIAN AYRES

DATED: 4-13-13

By: 

PINNACLE SURETY SERVICES,
INC.

DATED: 4/13/13

By: 
Its: 

REFORMATION OF EMPLOYMENT AGREEMENT

THIS REFORMATION OF EMPLOYMENT AGREEMENT ("Agreement") is made by and between Pinnacle Surety Services, Inc., on the one hand, ("Pinnacle") and Todd Loehnert and Brian Ayres ("Executives"), on the other hand.

WHEREAS, Pinnacle and Executives entered into an Employment Agreement dated April 13, 2013 (the "Agreement") pursuant to which Executives began employment with Pinnacle; and

WHEREAS, the Employment Agreement was revised several times before it was signed by the parties; and

WHEREAS, Pinnacle and Executives have recently determined that, due to a printing error, the final signed draft erroneously failed to include certain language that had been agreed upon by the parties; and

WHEREAS, Pinnacle and Executives desire to clarify the language which should have been included in the Agreement;

THEREFORE, it is hereby agreed as follows:

A. Paragraph 13 of the Agreement is as follows, in its entirety:

13. Reimbursement by Executives in the Event of Termination. Executives recognize that Pinnacle is expending significant resources on establishing the Kentucky office, and that those resources are being expended based on Executive's promises and representations with regard to their expertise in the industry and their devotion to Pinnacle's business. Executives further recognizes that Pinnacle will only receive appropriate return on its investment in the Kentucky office if the office remains open and profitable for a period of time, and that

P425-012

EXHIBIT B

Executive(s') termination of employment from Pinnacle will cause Pinnacle to incur injury and damage, the actual amount of which would be extremely difficult to determine. Therefore, if, within three years of the date of this Agreement, either Executive's employment is terminated by Pinnacle for cause or if either Executive resigns, without cause, ("cause" is defined for purposes of this paragraph as breach by Pinnacle of the provisions of this Employment Agreement, or unethical or criminal conduct by Pinnacle) Pinnacle, in its sole discretion, may obtain \$125,000, as liquidated damages from the terminated or resigning executive.

B. The second line at the top of page 10 of the Agreement should read "Pinnacle reasonably believes," rather than "Pinnacle reasonable believes."

C. The 3rd line on page 7 should read \$40,000 instead of \$30,000.

D. The parties agree that this Reformation of Agreement reflects the intention of the Parties as of April 13, 2013, the date the Employment Agreement was signed, and is not meant to reflect new terms.

DATED: 12/9/13

TODD LOEHNERT

By: [Signature]

BRIAN AYRES

DATED: 12/9/13

By: [Signature]

PINNACLE SURETY SERVICES, INC.

DATED: 12/9/13

By: [Signature]
Its: President

Blaine Grant

From: Blaine Grant
Sent: Monday, May 26, 2014 7:23 PM
To: Rex Elliott
Subject: Pinnacle

Rex - I am in the process of being retained by Pinnacle Surety Services, Inc. I understand you sent a letter to Pinnacle on May 23, 2014 threatening legal action. Please be advised that I plan to respond to you after I have been retained, but I need some clarification first regarding your letter.

According to your letter, you contend your clients are owed additional compensation/wages, but you do not identify in your letter the amount of or any specifics regarding the wages allegedly owed, or any support that certain wages have not been paid. My client is unaware of any outstanding wages owed your clients in accordance with the parties' Employment Agreement, but is more than willing to consider any additional information/documentation you have to support your allegations.

After I have been retained, and receive a response to the above, I look forward to addressing this with you.

Regards,

P. Blaine Grant
Member
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
Tel: 502-638-2817
Cell: 502-314-0488
blaine@hayden-grant.com
www.hayden-grant.com

Rex - I understand that your clients contend that Pinnacle somehow breached the parties' Employment Agreement. What is the basis for that contention, especially given the \$100,000 advancement to your clients (as well as your clients misunderstanding of "earned" commissions as defined in the Employment Agreement), and what provision of the Employment Agreement do your clients contend Pinnacle breached?

Regards,

P. Blaine Grant
Member
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
Tel: 502-638-2817
Cell: 502-314-0488
blaine@hayden-grant.com
www.hayden-grant.com

On May 31, 2014, at 5:46 AM, Rex Elliott <rexe@cooperelliott.com> wrote:

Blaine: Our clients have resigned their positions. We will be in touch, Rex.

Rex H. Elliott, Esq
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus Ohio 43221
(614) 481-6000
(614) 481-6001 (Facsimile)
www.cooperelliott.com



We help those who have been harmed and aggressively pursue the ones who hurt them.

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From: Blaine Grant [<mailto:blaine@hayden-grant.com>]
Sent: Friday, May 30, 2014 5:13 PM
To: Rex Elliott
Subject: RE: Demand for Money Owed under Contractual Agreement

Rex – Attached is the revised calculation from my client, Pinnacle Surety Services, Inc. (“Pinnacle”), which I understand was previously provided to your clients on May 28, 2014. I assume you received a copy, but I send this to you in case you did not.

As you will see, your clients actually owe Pinnacle a substantial sum. In comparing the calculation submitted by your clients on May 27, 2014 (which I received on May 28, 2014) to my client’s attached calculation, it appears that, in addition to confusion on your clients’ part as to when commissions are actually earned per the Employment Agreement, your clients do not take into account the substantial advance made by my client to yours.

As set forth in my May 26, 2014 email to you, my client is unaware of any breach of the parties’ Employment Agreement for outstanding wages/compensation owed your clients. We are making every effort to be fair and reasonable, and have every intention to comply, and have in fact complied, with the parties’ Employment Agreement. We, in turn, simply ask that your clients do the same.

Again, we are more than willing to consider any additional information/documentation you have to support your allegation, and look forward to hearing from you.

Regards,

P. Blaine Grant
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
blaine@hayden-grant.com
tel: 502.638.2817
cell: 502.314.0488
fax: 502.849.0707
www.Hayden-Grant.com

From: Rex Elliott [mailto:rexe@cooperelliott.com]
Sent: Wednesday, May 28, 2014 9:49 AM
To: Blaine Grant
Cc: Lori Smurr; Tammy McKinney
Subject: FW: Demand for Money Owed under Contractual Agreement
Importance: High

Blaine: I am sure your client provided the calculation to you but am sending it on in case my assumption is wrong. Your client also has all the supporting documentation, Rex.

Rex H. Elliott Esq.
Cooper & Elliott LLC
2175 Riverside Drive
Columbus, Ohio 43221
(614) 481-6000
(614) 481-6001 (Facsimile)
www.cooperelliott.com

Pinnacle Surety of Kentucky True Up Per Agreement Gross Received Commissions & True Up	2013 4.15.13 to 12.31.13	2013 Legal Surplus	2014 1.1.14-5.23.14	2014 Legal Surplus	Total Legal Surplus
Gross Received Commissions (report #20)	\$787,031		\$438,785		
Less Broker payments					
Less Legal Extra Commission:					
NAS	\$36,853				
Travelers	\$5,785				
GNASur	\$1,212				
Applied Legal Extra Commission to:					
Pinnacle CA Legal	\$32,650				
Bruce Legal & Interest	\$5,677				
Cash advance Aruba	\$4,000				
Add back excess \$43850-\$42,327	\$42,327	\$1,523		\$10,687	\$12,210
Total Adjusted Gross Received Commission	\$739,026		\$425,264		
40% on the first \$800,000			\$170,106		
70% of 40% for 2014 pd commissions per agreement		\$295,610	\$119,074		
Less Salaries for 2013					
JBA(2013 includes Dec bonus)		\$78,718	\$43,750		
TPL(2013 includes Dec bonus)		\$116,827	\$56,250		
Less Marketing Costs Over \$40,000		\$423			
Less Wells Fargo Advance		\$100,000			
Less Back Charges:					
Weber Lien Payment	\$1,214				
Time Warner Penalty	\$2,600				
Total 2013 True Up Based on Paid Premium		(\$3,172)	\$19,074		
Advanced True Up Paid March 2014	\$	76,000			
Balance Due Pinnacle CA 2013		\$79,172			
Balance Due Pinnacle CA at 5.23.14			\$60,098		

P425-017

EXHIBIT E

May 30, 2014

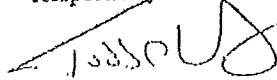
Eric Lowey & Mark Richardson
Pinnacle Surety Services, Inc.
151 Kalmus Drive, Ste A201
Costa Mesa, CA 92626

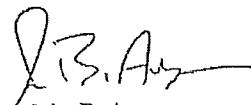
RE: Todd P. Loehnert & John B Ayres

Mr. Lowey & Mr. Richardson:

Due to a breach of the Employment Agreement by Pinnacle Surety Services, Inc., we hereby terminate for cause our employment obligations with Pinnacle Surety Services effective immediately. Notwithstanding and due to our respect and appreciation for Pinnacle Surety Services, one of us will continue our employment obligations with Pinnacle Surety Services up to and including June 9, 2014 if requested.

Respectfully Submitted,


Todd P. Loehnert


John B. Ayres

P425-018

EXHIBIT **F**

Blaine Grant

From: Blaine Grant
Sent: Wednesday, June 04, 2014 9:53 AM
To: Rex Elliott (rexe@cooperelliott.com)
Subject: FW: Demand for Money Owed under Contractual Agreement
Attachments: True Up per Agreement.xlsx

Rex -- One other point regarding your clients' incorrect contention that Pinnacle has somehow breached the Employment Agreement and your clients are entitled to resign with cause due to alleged unpaid commissions. Paragraph 5.D. of the Employment Agreement provides that earned commissions are not even eligible for payment until after August 30th. Again, there is no legitimate basis that Pinnacle has somehow breached the Employment Agreement for alleged unpaid wages/compensation, and that your clients are entitled to resign with cause for that reason.

Regards,

P. Blaine Grant
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
blaine@hayden-grant.com
tel: 502.638.2817
cell: 502.314.0488
fax: 502.849.0707
www.Hayden-Grant.com

From: Blaine Grant [mailto:blaine@hayden-grant.com]
Sent: Tuesday, June 03, 2014 3:52 PM
To: 'Rex Elliott'
Subject: RE: Demand for Money Owed under Contractual Agreement

Rex -- This is in response to the May 30, 2014 resignation letter of Todd P. Loehnert and John B. Ayres ("your clients"), in which they both unilaterally resign and incorrectly suggest that one of them, in accordance with the parties' Employment Agreement, will continue their employment obligations up to and including June 9, 2014 (the end of the ten (10) day notice period). Your clients' resignation letter, however, does not comply with paragraph 12.D. of the parties' Employment Agreement, which specifically grants Pinnacle Surety Services, Inc. ("Pinnacle" or "my client") the option of retaining both your clients for a period of thirty (30) days, or accepting the resignations within or less than the ten (10) day notice period. That paragraph provides that if Pinnacle decides to retain your clients for less than the ten day notice period, it does so "with no further obligation" to your clients. In accordance with paragraph 12.D., Pinnacle hereby accepts your clients' resignation effective June 8, 2014, which is less than the ten day notice period, and therefore has no further obligation to your clients.

As for your clients' contention that Pinnacle has somehow breached the Employment Agreement and your clients are entitled to resign with cause, that issue has been addressed, denied and refuted multiple times, as set forth in the attached and below. In addition to confusion on your clients' part as to when commissions are actually earned per paragraph 5.B. of the Employment Agreement, your clients do not take into account the substantial advance to your clients in 2013 of \$100,000, as well as another substantial advance to your clients of \$76,000 in 2014. Simply put, your clients actually owe Pinnacle a sizeable sum. Moreover, given Pinnacle's acceptance of your clients' resignation prior to the expiration of the ten day notice period, Pinnacle has no further obligation to your clients.

As set forth below and in the attached, my client is unaware of any breach of the parties' Employment Agreement for outstanding wages/compensation owed your clients. We have made every effort to be fair and reasonable, and have every intention of complying, and have in fact complied, with the parties' Employment Agreement. We, in turn, simply ask that your clients do the same.

We have explained multiple times that Pinnacle does not owe your clients additional wages/compensation, and is in no way in breach of the Employment Agreement for alleged unpaid amounts. We even invited you to present additional information/documentation explaining your clients' contention that they are owed additional money in accordance with the parties' Employment Agreement, as set forth below, and asked you to explain the basis for that contention and identify the specific provision in the Employment Agreement your clients' contend has been breached. We also even offered, on May 30, 2014, to have your clients' CPA review our calculations and explain how there is some alleged underpayment to your clients. Despite this, we received no additional information/documentation from your clients explaining why they contend they are owed the amount they allege, what provision of the Employment Agreement they contend was breached, and no response to having your client's CPA review our calculations and establish that there is some alleged underpayment to your clients.

Instead, your clients resigned and contend that there is some purported breach. There is no breach. This is simply a ploy by your clients to attempt to avoid paragraph 13 of the Employment Agreement, which allows Pinnacle to recover \$250,000 from your clients in the event they terminate, as they have, the Employment Agreement before its term expires.

In sum, and in accordance with paragraph 12.D. of the Employment Agreement, Pinnacle hereby accepts your clients' resignation effective June 8, 2014, which is less than the ten day notice period, and has no further obligation to your clients. In addition, and as noted above and in the attached, there is no legitimate basis that Pinnacle has somehow breached the Employment Agreement for alleged unpaid wages/compensation, and that your clients are entitled to resign with cause for that reason.

Your clients are to leave safely in the leased premises all assets purchased or provided by Pinnacle including, but not limited to, all laptops, Ipads, office equipment, office furniture, office supplies, and the like.

Regards,

P. Blaine Grant
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
blaine@hayden-grant.com
tel: 502.638.2817
cell: 502.314.0488
fax: 502.849.0707
www.Hayden-Grant.com

From: Blaine Grant [<mailto:blaine@hayden-grant.com>]
Sent: Saturday, May 31, 2014 9:08 AM
To: Rex Elliott
Subject: Re: Demand for Money Owed under Contractual Agreement

Rex - I understand that your clients contend that Pinnacle somehow breached the parties' Employment Agreement. What is the basis for that contention, especially given the \$100,000 advancement to your clients (as well as your clients misunderstanding of "earned" commissions as defined in the Employment Agreement), and what provision of the Employment Agreement do your clients contend Pinnacle breached?

Regards,

P. Blaine Grant
Member
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
Tel: 502-638-2817
Cell: 502-314-0488
blaine@hayden-grant.com
www.hayden-grant.com

On May 31, 2014, at 5:46 AM, Rex Elliott <rexe@cooperelliott.com> wrote:

Blaine: Our clients have resigned their positions. We will be in touch. Rex.

Rex H. Elliott, Esq.
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, Ohio 43221
(614) 481-6000
(614) 481-6001 (Facsimile)
www.cooperelliott.com



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From: Blaine Grant [<mailto:blaine@hayden-grant.com>]
Sent: Friday, May 30, 2014 5:13 PM
To: Rex Elliott
Subject: RE: Demand for Money Owed under Contractual Agreement

From: Todd Loehnert <Todd@pinnaclesurety.com>
Date: May 5, 2014 at 2:27:11 PM PDT
To: Eric Lowey <Eric@pinnaclesurety.com>, Mark Richardson <Mark@pinnaclesurety.com>
Cc: Brian Ayres <Brian@pinnaclesurety.com>
Subject: Kentucky Proposal:

Eric & Mark:

First of all, I wanted to thank you for sitting down with Brian & I in San Antonio. I have attached Bullet Point Proposal for your review. Once you have had time to digest and talk, I would like to set up a conference call to see where we go from here.

Thanks, and let me know if you have any questions and/or comments.

Todd

Todd P. Loehnert/ Managing Director/Pinnacle Surety of Kentucky
119 S. Sherrin Ave, Ste 150 | Louisville, KY 40207
phone 502-259-9908 x204 | fax 502-895-9334 | Cell: (502) 216-1454 | email
todd@pinnaclesurety.com


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P425-162

<https://mail.google.com/mail/u/0/?ui=2&ik=0e413ae137&view=pt&cat=INBOX/Client%20e...> 9/2/2015

EXHIBIT **H**

2 attachments

 **Pinnacle Surety Of Kentucky Proposal.doc**
49K

 **ATT00001.htm**
1K

P425-163

<https://mail.google.com/mail/u/0/?ui=2&ik=0e4f3acf37&view=pt&cat=INBOX/Client%20e...> 9/2/2015

Pinnacle Surety Of Kentucky Proposal

As a follow up to our meeting on Tuesday morning, April 29th, 2014 at the NASBP Annual meeting in San Antonio, TX, I am proposing the following separation agreement between Pinnacle Surety Services, Inc. and Pinnacle Surety of Kentucky. This decision/proposal has not been taken lightly and we hope that it provides a platform for the two operations to be associated with each other for many years to come.

Effective July 1, 2014, Pinnacle Surety of Kentucky would terminate its relationship with Pinnacle Surety Services, Inc. as it exists under the current contract. We are proposing that the following steps take place:

- Pinnacle Surety of Kentucky would pay a "Franchise Fee" (for lack of a better term) of \$100,000 to Pinnacle Surety Services, Inc and \$25,000 for each additional year in business to Pinnacle Surety Services, Inc. with a minimum guarantee of \$250,000. This fee would be for use of the Pinnacle Surety of Kentucky name and the ability to state that our two firms are associated with each other. This would be extremely beneficial to both parties' at NASBP and SFAA functions moving forward. I also see this association as a Peer Review relationship. We would like to propose a annual meeting between the two firms (even years at a location hosted by Kentucky and odd years hosted by California) to review market conditions, results, prospecting, marketing trends, carrier relations, etc.
- Pinnacle Surety of Kentucky will assume all leases, carrier appointments/contracts, SurePath, office supplies, office equipment, information technology, human resources, etc. (We would request a letter to SurePath giving the approval to transfer client data and information to Pinnacle Surety of Kentucky) effective July 1, 2014. Pinnacle Surety of Kentucky would also reimburse Pinnacle Surety Services, Inc. for any deposits and/or damages for transferring contractual agreements
- As a result of earned premium being collected in the months following the July 1st date, we would propose that our initial payment of \$100,000 be settled by October 1st due to reconciling accounts receivable and commission due. In essence, we would true up based upon our January 1, 2014 to June 30th, 2014 numbers by October 1st, 2014.
- The second and final payment to Wells Fargo of \$100,000 would be paid on May 30th, 2014. We have escrowed the following for this payment:
 - \$50,000 from our 2013 True UP
 - \$ 8,935 from the Great American Profit Sharing
 - \$13,756 from the Hanover Profit Sharing
 - \$ 4,905 split from 03-12-14 email attached
 - We are currently \$40,789 ahead of our pay (True up calculation) through 04/30/14 (obviously, this number will change by 06/30/14)

This balance of funds more than covers our final payment to Wells Fargo Insurance Services.

- Pinnacle Surety of Kentucky will provide a hold harmless to Pinnacle Surety Services, Inc. for any and all liability resulting from actions occurring during the time of employment of the two executives of Pinnacle Surety of Kentucky.
- Profit Sharing for 2014 will be split in March/April of 2015 when received Pinnacle Surety of Kentucky will provide all documentation from the various carries that it receives a profit sharing check. These profit sharing checks/contingents will be pro-rated the first six months of 2014 and will be split 60% to Pinnacle Surety of Kentucky and 40% to Pinnacle Surety Services, Inc. The exception to this is the Travelers Program. Travelers Program Manager has a loss participation provision which is totally the risk of the Executives of Pinnacle Surety of Kentucky. If any profit sharing is received out of the Travelers Program Manager for results in 2014, 100% will be retained by Pinnacle Surety of Kentucky.
- Pinnacle Surety of Kentucky would continue to identify potential satellite producers for Pinnacle Surety of Kentucky. We have and will continue to identify potential producers for Pinnacle Surety Services, Inc.

Obviously, if both parties agree to fundamental concept of the above, we would have our attorney draft a formal separation agreement for you and your counsel to review.

Once you have had time to review the attached proposal, please let me know if you would like to set a time to discuss.

From: Eric Lowey <Eric@pinnaclesurety.com>
Date: May 15, 2014 at 11:08:14 AM PDT
To: Todd Loehnert <Todd@pinnaclesurety.com>, Brian Ayres
<Brian@pinnaclesurety.com>
Cc: Mark Richardson <Mark@pinnaclesurety.com>
Subject: Kentucky Proposal:

Hi Todd & Brian,

In response to your separation proposal dated May 5th, 2014, we respectfully decline.

Mark and I have met regarding this and have decided we will stick to the agreement we all signed and dated April 13th, 2013 and reformation agreement signed and dated December 9th 2013.

We look forward to a continued successful relationship.

Let me know what questions you have.

Thank you,

Eric



2175 Riverside Drive
Columbus, Ohio 43221
tel 614-481-6000
fax 614-481-6001

May 23, 2014

BY EMAIL TRANSMISSION

Mr. Eric Lowey, President
Pinnacle Surety & Insurance Services
151 Kalmus Drive
Suite A-201
Costa Mesa, California 92626

For discussion purposes only. Under Evidence Rule 408
and other applicable standards, this correspondence is
not to be considered as evidence, admissions or for
any purposes other than discussion of resolution of
this matter.

Re: **Todd Loehnert and Brian Ayres v. Pinnacle Surety, Inc.**

Dear Eric:

REDACTED

In the event the money is not released immediately, Mr. Loehnert and Mr. Ayres will promptly file suit against Pinnacle seeking all of the money owed, double damages and attorney fees authorized under Kentucky law (KRS §337.385), and any damages sustained by Mr. Loehnert or Mr. Ayres due to the inability make the second installment payment on June 1st in accordance with the Wells Fargo Settlement Agreement, including Wells Fargo's legal fees to enforce the obligation and the 10% interest obligation set forth in the Note.

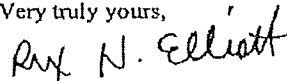
P425-030

EXHIBIT J

Mr. Eric Lowey, President
May 23, 2014
Page 2

REDACTED

Very truly yours,

A handwritten signature in black ink, appearing to read "Rex H. Elliott". The signature is written in a cursive, slightly slanted style.

Rex H. Elliott

RHE/lis

cc: G. Bruce Stigger, Esq.
Mr. Todd Loehnert
Mr. Brian Ayres

P425-031

HAYDEN GRANT PLLC

ATTORNEYS AT LAW

July 2, 2014

Bruce Stigger
Manion Stigger LLP
2301 River Road, Suite 101
Louisville, Kentucky 40206

Re: *Pinnacle Surety Services, Inc. v. Todd P. Loehnert, et al.*, United States District Court, Western District of Kentucky, Louisville, Kentucky, Civil Action No. 3:14-CV-425-H and *Todd P. Loehnert, et al. v. Pinnacle Surety Services, Inc.*, United States District Court, Western District of Kentucky, Louisville, Kentucky, Civil Action No. 3:14-CV-480-H

Dear Bruce:

This is in response to your June 18, 2014 letter where you returned the final payroll checks for Mr. Loehnert and Mr. Ayres. This position is particularly curious and inconsistent given that their own resignation letter specifically envisioned at least one of them continuing their employment with Pinnacle through the ten (10) day notice period of June 9, 2014.

In any event, and as set forth in my correspondence dated June 3, 2014, which is attached as Exhibit G to Pinnacle's Verified Complaint, the May 30, 2014 resignation letter of Mr. Loehnert and Mr. Ayres was invalid and defective for a number of reasons as it failed to comply with the parties' Employment Agreement. Specifically, in accordance with paragraph 12.D. of the Employment Agreement, Mr. Loehnert and Mr. Ayres had no right to unilaterally resign, as they attempted to do, as Pinnacle had the express option of retaining them both for a period of thirty (30) days, or accepting their resignations within or less than the ten (10) day notice period. That paragraph provides that if Pinnacle decides to retain them for less than the ten day notice period, it does so "with no further obligation". In accordance with paragraph 12.D., Pinnacle accepted their resignations effective June 8, 2014, which is less than the ten day notice period, and although Pinnacle has no further obligation to them, it chose to send them payroll checks through the June 8, 2014 effective date. This was not a mistake, as you suggest in your letter and, as you noted in your letter, this is in no way a concession of liability as to the allegations made by Mr. Loehnert and Mr. Ayres against Pinnacle. You obviously have the right to refuse to accept these payroll checks on behalf of Mr. Loehnert and Mr. Ayres, but that does not change the fact that their resignations were effective June 8, 2014.

It is unfortunate that you and Jean M. Terry no longer plan to screen yourselves from this matter(s) despite your clear conflict of interest. I will not address the details of that conflict

P425-152

210 WEST MAIN STREET, SUITE 2023, LOUISVILLE, KY 40202 PHONE 502.638.2547 FAX 502.510.0707 WWW.HAYDENGRANT.COM

EXHIBIT K

as it has been relayed to you in numerous correspondence. We will address that issue with the Court at the appropriate time.

Finally, in accordance and compliance with paragraph 5.E. of the Employment Agreement entitled "Commissions on Termination", and based upon commissions paid and received by Pinnacle in June, 2014 through the resignation date, which exceeded the prior advances to or on behalf of Mr. Loehnert and Mr. Ayres, enclosed is a commission check made payable to both of them totaling \$7,694.00. The timing of this payment which, in accordance with the Employment Agreement, would be due sometime after August 30, 2014, is accelerated by paragraph 5.E., and is made given that the substantial advances of \$179,906.40 by Pinnacle to or on behalf of Mr. Loehnert and Mr. Ayres have now only recently been exhausted by the commissions paid and received by Pinnacle in June, 2014 through the resignation date.

Truly yours,



P. Blaine Grant

PBG/jp
Enclosure

Welcome to Fasttrack Organization Search

Page 1 of 1

L.A. Surety Solutions LLC

General Information

Organization Number	0885641
Name	L.A. Surety Solutions LLC
Profit or Non-Profit	P - Profit
Company Type	KLC - Kentucky Limited Liability Company
Status	A - Active
Standing	G - Good
State	KY
File Date	4/25/2014 8:14:51 AM
Organization Date	4/25/2014 8:14:51 AM
Last Annual Report	N/A
Principal Office	2301 River Road Suite 101 Louisville, KY 40206
Managed By	Members
Registered Agent	George Bruce Stigger 2301 River Road Suite 101 Louisville, KY 40206

Current Officers

Individuals / Entities listed at time of formation

Organizer Fred P. Loehner

Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

Articles of Organization 4/24/2014 4:58:11 PM 1 page PDF

Assumed Names

Activity History

Filing	File Date	Effective Date	Org. Referenced
Add	4/25/2014 8:14:51 AM	4/25/2014 8:14:51 AM	

Microfilmed Images

P425-041

[https://app.sos.ky.gov/fishow/\(S\(wgudlfw2eyv23acnltwapmkn\)\)/default.aspx?path=ftsearc...](https://app.sos.ky.gov/fishow/(S(wgudlfw2eyv23acnltwapmkn))/default.aspx?path=ftsearc...) 7/25/2014

EXHIBIT **L**



COMMONWEALTH OF KENTUCKY
ALISON LUNDERGAN GRIMES, SECRETARY OF STATE

0885641.06 mstratton
LAOO
Allison Lundergan Grimes
Kentucky Secretary of State
Received and Filed
4/25/2014 8:14 AM
Fee Receipt: \$40.00

Division of Business Filings
Business Filings
PO Box 718
Frankfort, KY 40602
(502) 564-3490
www.sos.ky.gov

Articles of Organization
Limited Liability Company

KLC

Pursuant to KRS 14A and KRS 275, the undersigned applies to qualify and for that purpose submits the following statements:

Article I: The name of the limited liability company is
L.A. Surety Solutions, LLC

Article II: The street address of the limited liability company's initial registered office in Kentucky is
2301 River Road, Suite 101 Louisville KY 40206
Street Address Only (No Post Office Box Numbers) City State Zip Code

and the name of the initial registered agent at that office is George Bruce Stigger

Article III: The mailing address of the limited liability company's initial principal office is
2301 River Road, Suite 101 Louisville KY 40207
Street Address or Post Office Box Number City State Zip Code

Article IV: The limited liability company is to be managed by (must check one):

- ☐ A. a manager(s).
☒ B. its member(s).

Article V: This application will be effective upon filing, unless a delayed effective date and/or time is provided. The effective date or the delayed effective date cannot be prior to the date the application is filed. The date and/or time is (Delayed effective date and/or time)

I/We declare under penalty of perjury under the laws of the state of Kentucky that the foregoing is true and correct.

Todd P. Loehnert Todd P. Loehnert, Managing Member 04/25/2014
Signature of Organizer Printed Name & Title Date

George Bruce Stigger George Bruce Stigger 04/25/2014
Signature of Organizer Printed Name & Title Date

George Bruce Stigger George Bruce Stigger 04/25/2014
Print Name of Registered Agent Printed Name Date
Signature of Registered Agent

(01/12)

P425-042

Page 1 of 2

Eric Lowey

From: Walla,David [DWAL.LA@travelers.com]
Sent: Friday, May 16, 2014 6:42 AM
To: Todd Loehnert
Subject: FW: Pinnacle Surety of Kentucky

Todd,

Here you go.

Dave


From: Soucek,Rae
Sent: Friday, May 16, 2014 9:40 AM
To: Walla,David
Cc: Nebraska,Paul W; Bender,Douglas E.
Subject: RE: Pinnacle Surety of Kentucky

Dave, as soon as Todd has the following information, please have him send it to me, and I can get the on line paperwork started. We use an on line system now for appointment paperwork so Todd or maybe Monica could complete that once we have the following information from Todd.

- Copy of agency license
- New Tax ID
- Agency financials or balance sheet (or business plan – something to show assets and liabilities)

Please keep me posted. Thanks Dave!

Rae Soucek | Sr Administrative Assistant | Bond & Financial Products
Travelers
6150 Oak Tree Blvd., South, #500 | Park Center Plaza II
Independence, OH 44131
rsoucek@travelers.com
W: 216.643.2394 F: 216.643.2429

 TRAVELERS

From: Walla,David
Sent: Friday, May 16, 2014 9:35 AM
To: Soucek,Rae
Cc: Nebraska,Paul W; Bender,Douglas E.
Subject: Pinnacle Surety of Kentucky

Rae,

Todd Loehnert has informed that they will be making another change, most likely on July 1. They will be changing the name of the agency as well as address and e-mails, etc. Todd and Brian Ayers will be the sole owners now. Everything else remains the same. Todd needs to know what must be done to accomplish this from our standpoint as far as licensing, POA, accounting, etc. I was hoping that you could let him know what is

P425-169

5/16/2014

EXHIBIT M


Page 2 of 2

needed so he can get working on it.

Of course this is confidential information at this point. He also wants to make sure that no broker of Record letters will be needed with this change. He has checked with his attorney and they advise that their agreement with Pinnacle should allow Todd and Brian to have ownership of their accounts. If necessary, he would share that agreement with our legal folks to make sure of this.

Thanks. I know he is in "good hands".

David Walla (AEO) Bond Construction Services
Travelers
625 Eden Park Dr. | Suite 500
Cincinnati, OH 45202
W: 513-639-5342 F: 866-269-4001

TRAVELERS 

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5/16/2014

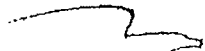
P425-170

Page 1 of 2

From: Martin, Tim (mailto:tdmartin@GAIC.COM)
Sent: Friday, May 16, 2014 7:27 AM
To: Todd Loehnert
Subject: Refreshments

I've reviewed and can discuss whenever you want. I am in Louisville today at 426-4688. Also, if you're available today or next Friday maybe we could meet for an afternoon refreshment.

Timothy D. Martin
Timothy D. Martin, Divisional Assistant Vice President | 513.579.6309 | tdmartin@galc.com



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As of February 21, 2014

From: Todd Loehnert (mailto:Todd@pinnaclesurety.com)
Sent: Thursday, May 15, 2014 5:24 PM
To: Martin, Tim
Subject:

P425-174

5/19/2014

Page 2 of 2

Todd

Todd P. Loehnert/ Managing Director/Pinnacle Surety of Kentucky
119 S. Sherrin Ave, Ste 150 | Louisville, KY 40207

phone 502-259-9908 x204 | fax 502-895-9334 | Cell: (502) 216-1454 | email todd@pinnaclesurety.com

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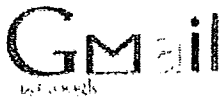
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P425-175

5/19/2014

Hayden Grant PLLC Mail - RE: Todd Loehnert, et al. v. Pinnacle Surety Services, Inc.

Page 1 of 4



Blaine Grant <blaine@hayden-grant.com>

RE: Todd Loehnert, et al. v. Pinnacle Surety Services, Inc.

1 message

Rex Elliott <rexe@cooperelliott.com>
To: Blaine Grant <blaine@hayden-grant.com>
Cc: "G. Bruce Stigger" <bruce@manionstigger.com>

Thu, Aug 7, 2014 at 5:00 PM

P Blaine: None of the "clients" have any current business relationship with Pinnacle and have made this clear. Our clients absolutely had every right to immediately resign due to your client's failure to pay them amounts owed under the agreement. Where I come from this is called a material breach. The only reason we have not amended to sue for defamation and tortious interference is that 100% of the clients remain firmly behind our clients. But by all means continue to push the envelope with false and misleading communications to entities for which your clients have no business relationship and they will end up paying legal fees for years. The communications are not only false, they certainly include defamatory innuendo which is also actionable and clearly a concept you do not understand. Enjoy your evening. Rex

Rex H. Elliott, Esq.

Cooper & Elliott, LLC

2175 Riverside Drive

Columbus, Ohio 43221

(614) 481-6000

(614) 481-6001 (Facsimile)

www.cooperelliott.com

From: Blaine Grant [mailto:blaine@hayden-grant.com]
Sent: Thursday, August 07, 2014 3:03 PM
To: Rex Elliott
Cc: G. Bruce Stigger
Subject: FW: Todd Loehnert, et al. v. Pinnacle Surety Services, Inc.

Rex - This is in response to your attached July 31, 2014 letter requesting that Pinnacle cease and desist from communicating with its own customers. As you informed the principals of Pinnacle when you represented Pinnacle in the Wells Fargo matter, and as set forth on page 15 of the Answer and Counterclaims you filed on behalf of Pinnacle, Mr. Loehnert and Mr. Ayres in the Wells Fargo matter, Pinnacle "has valid business relationships or expectancies with [its] customers", and has every right to communicate with its customers, determine what bonds were written and during what time frame from Pinnacle's Kentucky office, and make sure that Pinnacle is properly paid for such bonds, and paid in full.

P425-158

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EXHIBIT N

Hayden Grant PLLC Mail - RE: Todd Lochnert, et al. v. Pinnacle Surety Services, Inc.

Page 2 of 4

There is no tortious interference or defamation by Pinnacle and for you to send a cease and desist letter trying to improperly keep Pinnacle from communicating with its own customers is in itself tortious interference

As for the specific allegations in your letter, you contend that it was false and defamatory for Pinnacle to describe your clients leaving Pinnacle as "premature", and for Pinnacle to describe your clients' resignation date with Pinnacle effective June 8, 2014. Regarding the premature description, your clients were unquestionably under contract with Pinnacle for three years. To leave after approximately one year is by definition premature. Moreover, your clients were not "legally entitled to resign immediately", as you suggest. As set forth in paragraph 12.D. of the Employment Agreement, paragraph 27 of Pinnacle's Verified Complaint, my letter to Mr. Stigger dated July 2, 2014, and my email to you dated June 3, 2014, Pinnacle has set forth in painstaking detail why your clients' May 30, 2014 resignation was invalid and defective and why they both were required to work for Pinnacle through, and their resignations were effective on, June 8, 2014. Again, there is nothing improper here.

You also contend that simply because Pinnacle seeks to verify whether it has been or is being paid in full for bonds written from Pinnacle's Kentucky office through the date of your clients' resignation that Pinnacle is somehow suggesting that your clients have misappropriated funds, illegally diverted money or committed fraud. There is no such statement(s) contained in the letters to Pinnacle's customers, and I challenge you to find that language in those letters.

Simply put, there is no tortious interference or defamation by Pinnacle, and, as you previously confirmed in the Wells Fargo matter, Pinnacle "has valid business relationships or expectancies with [its] customers", and has every right to communicate with its customers, determine what bonds were written and during what time frame from Pinnacle's Kentucky office, and make sure that Pinnacle is properly paid for such bonds and paid in full.

Regards,

P. Blaine Grant

Hayden Grant PLLC

718 West Main Street, Suite 202A

Louisville, Kentucky 40202

blaine@hayden-grant.com

tel: 502.638.2817

cell: 502.314.0488

fax: 502.849.0707

www.Hayden-Grant.com

P425-159

Hayden Grant PLLC Mail - RE: Todd Loehnert, et al. v. Pinnacle Surety Services, Inc. Page 3 of 4

From: Lori Smurr [mailto:loris@cooperelliott.com]
Sent: Thursday, July 31, 2014 1:30 PM
To: blaine@hayden-grant.com
Cc: Rex Elliott
Subject: Todd Loehnert, et al. v. Pinnacle Surety Services, Inc.


Mr. Grant:

Please see attached correspondence from Rex Elliott.

Lori Smurr

Lori Lindsey Smurr

Lori Lindsey Smurr
Office Administrator
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, Ohio 43221
(614) 481-6000
(614) 481-6001 (Facsimile)
www.cooperelliott.com

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P425-160

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Hayden Grant PLLC Mail - RE: Todd Lochnert, et al. v. Pinnacle Surety Services, Inc.

Page 4 of 4

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P425-161

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Page 2 of 3

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From: Eric Lowey
Sent: Friday, May 16, 2014 5:48 PM
To: Todd Lehnert
Cc: Eric Lowey; Brian Ayres; Mark Richardson
Subject: Re: Pinnacle Surety of Kentucky

Ok keep me posted I want to know what your intentions are so we know how to proceed

Have a good weekend

Eric

Sent from my iPhone

On May 16, 2014, at 1:14 PM, "Todd Lehnert" <Todd@pinnaclesurety.com> wrote:

Your response to our proposal was clear. As a result, we are doing our jobs. Should we decide otherwise, we will let you know. If you have something further to discuss I am more than happy to talk to you next week. Have a good weekend.

Sent from my iPhone

On May 16, 2014, at 4:02 PM, "Eric Lowey" <Eric@pinnaclesurety.com> wrote:

How about for how long?

Sent from my iPhone

On May 16, 2014, at 12:51 PM, "Todd Lehnert" <Todd@pinnaclesurety.com> wrote:

not sure what you want me to say beyond the fact that we continue to do our jobs

Sent from my iPhone

On May 16, 2014, at 3:38 PM, "Eric Lowey" <Eric@pinnaclesurety.com> wrote:

Do you really think this is an acceptable answer you need to do better then this

Sent from my iPhone

On May 16, 2014, at 12:13 PM, "Todd Lehnert" <Todd@pinnaclesurety.com> wrote:

We are working for Pinnacle and will be in touch when and if that changes.

Sent from my iPhone

On May 16, 2014, at 3:03 PM, "Eric Lowey" <Eric@pinnaclesurety.com> wrote:

Good afternoon
Todd and Brian,

I wanted to touch base with you

5/19/2014

P425-167

EXHIBIT **O**

Page 3 of 3

guys and see
what your gains
plan is going
forward.

Let me know
ASAP.

Thank you,

Erle Lowey
Pinnacle Surety
151 Kalmus Dr.,
Ste. A201
Covina Mesa, CA
92626
Phone: 714-546-
3100 Ext. 26
Fax: 714-546-
3707
Cell: 714-634-
2522

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compliment
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receive is a
referral.
Thank you
for your
partnership
& your
trust!

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5/19/2014

P425-168

From: Todd Loehnert
Sent: Saturday, May 31, 2014 10:58 AM
Subject: Name Change to L A Surety Solutions LLC

We are very excited to announce that Todd Loehnert & Brian Ayres have assumed 100% ownership of our Surety Agency and as a result, have changed the name effective May 31, 2014 to L A Surety Solutions LLC. The staff of our agency remains the same and our transition will be seamless. I have attached contact information for myself, Brian Ayres, Monica Kaiser, Paula Teague and our summer intern Lauren Loehnert. Please share this information with all of your key employees who are involved in submitting and/or requesting bid, performance & payment bonds.

**Please note the address change and the email
(@lasurety.net)**

We are now truly a 100% locally owned and operated Surety Agency!!!

P425-157

EXHIBIT P

Blaine Grant

From: Blaine Grant
Sent: Tuesday, June 10, 2014 1:23 PM
To: 'Rex Elliott'; 'Bruce Stigger'
Subject: RE: Pinnacle v. Loehnert and Ayres

Rex/Bruce – We have considered the conflict issue, and your emails, and still believe there is a conflict with you or your firms representing Mr. Loehnert and Mr. Ayres.

Even assuming the final Wells Fargo payment was made as you indicated in a prior email, as set forth below, Pinnacle still has a conflict concern with your prior representation of the parties regarding the Employment Agreement, your prior representation of Pinnacle, Loehnert and Ayres in the Wells Fargo matter, and now your representation of Loehnert and Ayres directly against Pinnacle in this matter. Pinnacle also has a conflict concern given the related nature of the representations - they involve Pinnacle's employment of your clients, the parties' Employment Agreement, and the time and expense to Pinnacle associated with the Wells Fargo matter was a factor in the \$250,000 reimbursement figure now sought by Pinnacle against Loehnert and Ayres per the Employment Agreement. Finally, Pinnacle has a conflict concern given the disclosure of confidential communications to you in the Wells Fargo matter, and regarding the Employment Agreement, that could be used against Pinnacle in this matter.

We also never received the promised response from you explaining your clients' breach allegation, why they are not required to pay my client \$250,000 for their premature resignation, [REDACTED]

Regards,

P. Blaine Grant
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
blaine@hayden-grant.com
tel: 502.638.2817
cell: 502.314.0488
fax: 502.849.0707
www.Hayden-Grant.com

From: Rex Elliott [<mailto:rexe@cooperelliott.com>]
Sent: Thursday, June 05, 2014 9:21 AM
To: Blaine Grant
Cc: Bruce Stigger
Subject: RE: Pinnacle v. Loehnert and Ayres

Blaine: Sounds good. Let me know where you are on this and on the monetary amount we believe is owed so we can work to schedule a meeting next week assuming you reach the same conclusion I have on the conflict issue. Rex.

Rex H. Elliott, Esq.
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, Ohio 43221
(614) 481-6000
(614) 481-6001 (Facsimile)

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From: Blaine Grant [<mailto:blaine@hayden-grant.com>]
Sent: Thursday, June 05, 2014 7:24 AM
To: Rex Elliott
Cc: Bruce Stigger
Subject: Re: Pinnacle v. Loehnert and Ayres

Rex - We are in the process of reviewing and analyzing this and your other emails from yesterday regarding the conflict issue. I'll get back to you.

Regards,

P. Blaine Grant
Member
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
Tel: 502-638-2817
Cell: 502-314-0488
blaine@hayden-grant.com
www.hayden-grant.com

On Jun 4, 2014, at 11:53 AM, Rex Elliott <rexe@cooperelliott.com> wrote:

Blaine: The Wells Fargo payment was made today as you can see by the attached. So, even though I do not agree with your assessment at all, this issue is no longer part of the dispute between our clients and yours. Let me know when your clients are available to meet. Rex.

Rex H. Elliott, Esq.
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, Ohio 43221
(614) 481-6000
(614) 481-6001 (Facsimile)
www.cooperelliott.com



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From: Blaine Grant [<mailto:blaine@hayden-grant.com>]

Sent: Wednesday, June 04, 2014 11:41 AM

To: Rex Elliott; Bruce Stigger

Subject: RE: Pinnacle v. Loehnert and Ayres

Rex/Bruce –

Given the importance of this issue, I feel compelled to respond to your email in which you refuse to withdraw as counsel for Mr. Loehnert and Mr. Ayres despite what is a clear conflict.

As stated below, SCR 3.130(1.9)(a) confirms that there is a clear conflict which precludes you and your firms from representing Mr. Loehnert and Mr. Ayres directly against Pinnacle given your multiple representation of Pinnacle, Mr. Loehnert and Mr. Ayres in the recent Wells Fargo litigation matter.

You state below that you only represented Pinnacle at Pinnacle's request. I'm not sure what difference that makes. Your email response and the attached pleading, along with multiple correspondence, confirms that you clearly represented all three parties in the Wells Fargo matter, including Pinnacle. Despite that, you are now adverse to Pinnacle in your representation of Mr. Loehnert and Mr. Ayres regarding their Employment Agreement with Pinnacle, which is not allowed. You have continuing duties with respect to confidentiality and conflict of interest to Pinnacle that must be adhered to.

You also state below that these matters are separate and that your representation of Mr. Loehnert and Mr. Ayres has nothing to do with the Wells Fargo matter. But simply reviewing the attached letter, in which you threaten Pinnacle regarding the Wells Fargo matter, and contend that you will seek damages against Pinnacle on behalf of Mr. Loehnert and Mr. Ayres regarding the Wells Fargo matter, confirms that these matters are substantially related and that you cannot be adverse to Pinnacle. Moreover, the Wells Fargo matter involved Pinnacle's employment of Mr. Loehnert and Mr. Ayres, and you are currently representing Mr. Loehnert and Mr. Ayres against Pinnacle regarding the same issue - their employment with Pinnacle. This you cannot do.

Finally, we disagree with your suggestion that Pinnacle has no interest in meeting and attempting to resolve the matter. Pinnacle would very much like to meet and resolve this matter. Its concern is meeting with its former counsel that is now adverse to it.

Please reconsider your email below and confirm for me in writing that you and your firms have ceased your representation of Mr. Loehnert and Mr. Ayres, and let me know who will be acting as their counsel. Thank you.

Regards,

P. Blaine Grant
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
blaine@hayden-grant.com
tel: 502.638.2817
cell: 502.314.0488
fax: 502.849.0707
www.Hayden-Grant.com

From: Rex Elliott [mailto:rexe@cooperelliott.com]
Sent: Tuesday, June 03, 2014 6:56 PM
To: Blaine Grant; Bruce Stigger
Subject: RE: Pinnacle v. Loehnert and Ayres

Blaine: Like nearly everything else we have received from you, this is not accurate. In the underlying case, we represented Mr. Loehnert and Mr. Ayres first and only acted on behalf of the other defendant at Pinnacle's request. Moreover, that representation ended a year ago. And, we have never acted on Pinnacle's behalf on any matter other than the completely separate Wells Fargo matter. This matter, on the other hand, has nothing to do with Wells Fargo and relates solely to the Employment Agreement between our clients and Pinnacle. In that matter, we have never represented Pinnacle. In fact, Pinnacle had its own lawyers draft the Agreement and we were adverse to Pinnacle reviewing it on behalf of Mr. Loehnert and Mr. Ayres. As such, there is no conflict and we will not step aside. The last two emails make it clear that you and/or your clients have no interest in meeting to discuss a resolution. I will respond in more detail to your earlier inaccurate email but our clients left everything behind in their offices other than their personal items and they took pictures of how they left the office. Rex.

Rex H. Elliott, Esq.
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, Ohio 43221
(614) 481-6000
(614) 481-6001 (Facsimile)
www.cooperelliott.com

<image004.jpg>

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From: Blaine Grant [<mailto:blaine@hayden-grant.com>]

Sent: Tuesday, June 03, 2014 6:17 PM

To: Rex Elliott; Bruce Stigger

Subject: Pinnacle v. Loehnert and Ayres

Rex and Bruce:

It has just come to my attention that you both previously and very recently represented Pinnacle Surety Services, Inc. ("Pinnacle"), along with Mr. Loehnert and Mr. Ayres, in a 2013 lawsuit filed in Jefferson Circuit Court by Wells Fargo. Please see the attached Answer and Counterclaim, at page 18, in which you both are listed as counsel for Pinnacle, Mr. Loehnert and Mr. Ayres.

As you know, and as reflected in the attached letter, you both are now representing Mr. Loehnert and Mr. Ayres directly against Pinnacle (my client). This representation constitutes a conflict of interest, in accordance with SCR 3.130(1.9)(a), and is not waived by Pinnacle. This obviously precludes the suggested meeting and your continued representation of Mr. Loehnert and Mr. Ayres.

Please confirm for me in writing that you and your firms have ceased your representation of Mr. Loehnert and Mr. Ayres, and let me know who will be acting as their counsel. Thank you.

Regards,

P. Blaine Grant
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
blaine@hayden-grant.com
tel: 502.638.2817
cell: 502.314.0488
fax: 502.849.0707
www.Hayden-Grant.com

REDACTED

Blaine Grant

From: Rex Elliott
Sent: Wednesday, June 04, 2014 12:31 PM
To: Blaine Grant; Bruce Stigger
Subject: RE: Pinnacle v. Loehnert and Ayres

Blaine: The only time I have ever spoken to anyone at Pinnacle is in connection with the Wells matter and this was only on a couple occasions because the Wells case had to do with our clients contractual relationship with Wells, not Pinnacle. Moreover, none of the few communications with your client had anything to do with the current dispute and, in fact, Pinnacle used its own lawyers in the contract matter. We were adverse to Pinnacle in the drafting of the Employment Agreement and the Reformation Agreement, which was done to correct errors made by Pinnacle's lawyers, so there can be no conflict as to this matter. Finally, our representation of Pinnacle ended with the resolution of the Wells matter a year ago. There is no conflict and I would submit it is not even a close call. It is unfortunate that your clients insist on raising side issues instead of focusing on the merits of the case. Rex.

Rex H. Elliott, Esq.
Cooper & Elliott, LLC
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From: Blaine Grant [mailto:blaine@hayden-grant.com]
Sent: Wednesday, June 04, 2014 12:24 PM
To: Rex Elliott; Bruce Stigger
Subject: RE: Pinnacle v. Loehnert and Ayres

One final point regarding the conflict issue. As you will see in the Commentary of SCR 3.130(1.9), "substantially related" is not just limited to similar or related matters. It also includes the risk of confidential factual information you obtained in your prior representation of Pinnacle that could now be used against Pinnacle in your representation of Mr. Loehnert and Mr. Ayres. We believe that is a serious concern here, and further reiterates the need for you to cease representing Mr. Loehnert and Mr. Ayres.

Regards,

P. Blaine Grant
Hayden Grant PLLC
718 West Main Street, Suite 202A
Louisville, Kentucky 40202
blaine@hayden-grant.com
tel: 502.638.2817
cell: 502.314.0488
fax: 502.849.0707
www.Hayden-Grant.com

From: Blaine Grant [mailto:blaine@hayden-grant.com]
Sent: Wednesday, June 04, 2014 11:41 AM
To: 'Rex Elliott'; 'Bruce Stigger'
Subject: RE: Pinnacle v. Loehnert and Ayres

Rex/Bruce –

Given the importance of this issue, I feel compelled to respond to your email in which you refuse to withdraw as counsel for Mr. Loehnert and Mr. Ayres despite what is a clear conflict.

As stated below, SCR 3.130(1.9)(a) confirms that there is a clear conflict which precludes you and your firms from representing Mr. Loehnert and Mr. Ayres directly against Pinnacle given your multiple representation of Pinnacle, Mr. Loehnert and Mr. Ayres in the recent Wells Fargo litigation matter.

You state below that you only represented Pinnacle at Pinnacle's request. I'm not sure what difference that makes. Your email response and the attached pleading, along with multiple correspondence, confirms that you clearly represented all three parties in the Wells Fargo matter, including Pinnacle. Despite that, you are now adverse to Pinnacle in your representation of Mr. Loehnert and Mr. Ayres regarding their Employment Agreement with Pinnacle, which is not allowed. You have continuing duties with respect to confidentiality and conflict of interest to Pinnacle that must be adhered to.

You also state below that these matters are separate and that your representation of Mr. Loehnert and Mr. Ayres has nothing to do with the Wells Fargo matter. But simply reviewing the attached letter, in which you threaten Pinnacle regarding the Wells Fargo matter, and contend that you will seek damages against Pinnacle on behalf of Mr. Loehnert and Mr. Ayres regarding the Wells Fargo matter, confirms that these matters are substantially related and that you cannot be adverse to Pinnacle. Moreover, the Wells Fargo matter involved Pinnacle's employment of Mr. Loehnert and Mr. Ayres, and you are currently representing Mr. Loehnert and Mr. Ayres against Pinnacle regarding the same issue - their employment with Pinnacle. This you cannot do.

Finally, we disagree with your suggestion that Pinnacle has no interest in meeting and attempting to resolve the matter. Pinnacle would very much like to meet and resolve this matter. Its concern is meeting with its former counsel that is now adverse to it.

Please reconsider your email below and confirm for me in writing that you and your firms have ceased your representation of Mr. Loehnert and Mr. Ayres, and let me know who will be acting as their counsel. Thank you.

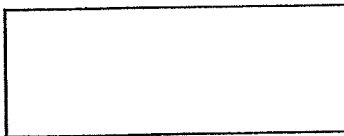
Regards,

P. Blaine Grant
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From: Rex Elliott [<mailto:rexe@cooperelliott.com>]
Sent: Tuesday, June 03, 2014 6:56 PM
To: Blaine Grant; Bruce Stigger
Subject: RE: Pinnacle v. Loehnert and Ayres

Blaine: Like nearly everything else we have received from you, this is not accurate. In the underlying case, we represented Mr. Loehnert and Mr. Ayres first and only acted on behalf of the other defendant at Pinnacle's request. Moreover, that representation ended a year ago. And, we have never acted on Pinnacle's behalf on any matter other than the completely separate Wells Fargo matter. This matter, on the other hand, has nothing to do with Wells Fargo and relates solely to the Employment Agreement between our clients and Pinnacle. In that matter, we have never represented Pinnacle. In fact, Pinnacle had its own lawyers draft the Agreement and we were adverse to Pinnacle reviewing it on behalf of Mr. Loehnert and Mr. Ayres. As such, there is no conflict and we will not step aside. The last two emails make it clear that you and/or your clients have no interest in meeting to discuss a resolution. I will respond in more detail to your earlier inaccurate email but our clients left everything behind in their offices other than their personal items and they took pictures of how they left the office. Rex.

Rex H. Elliott, Esq.
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From: Blaine Grant [<mailto:blaine@hayden-grant.com>]
Sent: Tuesday, June 03, 2014 6:17 PM
To: Rex Elliott; Bruce Stigger
Subject: Pinnacle v. Loehnert and Ayres

Rex and Bruce:

It has just come to my attention that you both previously and very recently represented Pinnacle Surety Services, Inc. ("Pinnacle"), along with Mr. Loehnert and Mr. Ayres, in a 2013 lawsuit filed in Jefferson Circuit Court by Wells Fargo. Please see the attached Answer and Counterclaim, at page 18, in which you both are listed as counsel for Pinnacle, Mr. Loehnert and Mr. Ayres.

As you know, and as reflected in the attached letter, you both are now representing Mr. Loehnert and Mr. Ayres directly against Pinnacle (my client). This representation constitutes a conflict of interest, in accordance with SCR 3.130(1.9)(a), and is not waived by Pinnacle. This obviously precludes the suggested meeting and your continued representation of Mr. Loehnert and Mr. Ayres.

Please confirm for me in writing that you and your firms have ceased your representation of Mr. Loehnert and Mr. Ayres, and let me know who will be acting as their counsel. Thank you.

Regards,

P. Blaine Grant
Hayden Grant PLLC
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Louisville, Kentucky 40202
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cell: 502.314.0488
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REDACTED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:14-CV-425-H

PINNACLE SURETY SERVICES, INC.

PLAINTIFF

v.

TODD P. LOEHNERT, *et al.*

DEFENDANTS

MEMORANDUM OPINION AND ORDER

In April 2013, Defendants John Ayres and Todd Loehnert left their positions at Wells Fargo for leadership roles at Pinnacle Surety Services (“Pinnacle”). Wells Fargo sued Ayres, Loehnert, and Pinnacle, claiming that Ayres and Loehnert breached their employment agreements and that Pinnacle tortiously interfered with those agreements. Two law firms—Manion Stigger, LLP and Cooper & Elliot, LLC—represented all three defendants in that matter and ultimately negotiated a settlement. In May 2014, Ayres and Loehnert left Pinnacle and formed their own allegedly competing entity, L.A. Surety Solutions LLC. Pinnacle then sued Ayres and Loehnert, alleging that they violated their employment agreements with Pinnacle. Ayres and Loehnert also asserted various counterclaims. Now, Manion Stigger and Cooper & Elliot represent Ayres and Loehnert against Pinnacle, their former client. Pinnacle has moved to disqualify both firms, arguing a conflict of interest precludes them from serving as counsel in this matter.

This case presents difficult questions amid some acrimony. The Court has attempted to accurately assess the events and their significance. Both sides did an excellent job briefing the issues. To that end, the Court engaged in a lengthy discussion with the parties concerning the pending motions. The Court bases its ultimate conclusion upon the discernable hard facts.

I.

Rex Elliot (of Cooper & Elliot, LLC) and Bruce Stigger (of Manion Stigger, LLP) have represented Todd Loehnert for more than two decades, but the chain of events leading to this disqualification motion began just two years ago. On April 12, 2013, Loehnert and Ayres quit Wells Fargo to work for Pinnacle. A day later, they signed the Employment Agreement with Pinnacle. It provided that Loehnert and Ayres would work for Pinnacle for a minimum of three years, beginning on April 13, 2013. If both left early, each would be required to pay Pinnacle \$125,000 in liquidated damages (for a total of \$250,000). This section of the contract explains the basis for the provision:

Executives recognize that Pinnacle is expending significant resources on establishing the Kentucky Office, and that those resources are being expended based on Executive's [sic] promises and representation with regard to their expertise in the industry and their devotion to Pinnacle's business. Executives further recognizes [sic] that Pinnacle will only receive appropriate return on its investment in the Kentucky office if the office remains open and profitable for a period of time, and that Executive(s') termination of employment from Pinnacle will cause Pinnacle to incur injury and damage, the actual amount of which would be extremely difficult to determine. . . .

Pinnacle claims the parties anticipated litigation with Wells Fargo and that this was one of the significant factors the parties considered in reaching the \$250,000 liquidated damages figure. Loehnert and Ayres, meanwhile, claim the figure was totally unrelated to the Wells Fargo matter.

Attorneys from Cooper & Elliot and Manion Stigger represented Loehnert and Ayres in negotiating this employment agreement and its subsequent reformation¹ in December 2013; the law firms did not represent Pinnacle in either negotiation. Nevertheless, the purpose of the liquidated damage provision would reemerge as a potential issue in subsequent litigation.

¹ The parties agreed to this reformation after someone discovered a printing error in the April 2013 Employment Agreement. The Court refers to these two documents collectively as the "Employment Agreement."

On April 25, 2013, Wells Fargo sued Loehnert, Ayres, and Pinnacle in Jefferson County Circuit Court, alleging six counts: (1) breach of contract (against Ayres and Loehnert); (2) breach of fiduciary duty of loyalty (against Ayres and Loehnert); (3) breach of covenant of good faith and fair dealing (against Ayres and Loehnert); (4) violation of the Kentucky trade secret statute (against all defendants); (5) unfair competition (against all defendants); and (6) tortious interference with contract (against all defendants). According to Loehnert and Ayres, shortly after Wells Fargo filed this complaint, Pinnacle proposed that Cooper & Elliot and Manion Stigger also represent Pinnacle in order to save money “and because everyone knew Mr. Loehnert and Mr. Ayres were the primary defendants in the case.” DN 17 at 5. Though neither had ever represented Pinnacle, both Manion Stigger and Cooper & Elliot agreed and represented Loehnert, Ayres, and Pinnacle in the litigation.

Loehnert and Ayres claim that during this representation Cooper & Elliot had only a few telephone conversations with Pinnacle’s owner; used Loehnert and Ayres as the primary points of contact in the litigation; and only provided updates on the status of the litigation without sharing any confidential information.² Moreover, they assert that no one from Manion Stigger or Cooper & Elliot has ever personally met the owners of Pinnacle. The lawyers nevertheless submitted an answer and alleged multiple counterclaims on behalf of all three. Pinnacle paid Cooper & Elliot a total of \$32,650 after this matter settled.³

Attorneys from Manion Stigger and Cooper & Elliot settled this lawsuit with Wells Fargo on June 4, 2013, and the suit was dismissed three days later. The terms of this settlement are confidential. The parties have nevertheless disclosed that, as a part of this settlement, Loehnert

² Pinnacle disputes this point and claims that its principals “had numerous confidential and privileged communications” with the lawyers regarding case strategy and facts. DN 14-1 at 6.

³ Loehnert and Ayres admit that Pinnacle made this payment but claim it was an advance to Loehnert and Ayres, who subsequently reimbursed Pinnacle for those fees.

and Ayres agreed to pay Wells Fargo \$100,000 immediately and another \$100,000 a year later; they made the final payment to Wells Fargo on June 4, 2014.

On June 5, 2013, Pinnacle wired \$100,000 to the account of Manion Stigger, who was acting as counsel to Ayres, Loehnert, and Pinnacle. Pinnacle describes this payment as an advance on commissions to assist Ayres and Loehnert in paying their settlement obligations to Wells Fargo. Pinnacle later signed a promissory note requiring it to pay \$100,000 to Todd Loehnert and Brian Ayres “with the interest at the simple interest rate of 4% per annum from June 4th, 2013, until paid” It further provided: “The whole sum of principal and interest shall become immediately due and payable on June 4th, 2014.” The parties dispute liability under the promissory note and for the initial \$100,000 payment, but the arguments on both sides are not really clear and this issue is not currently before this Court.⁴ But even under Loehnert and Ayres’s version of the facts, the payment and promissory note stem from the first \$100,000 owed under the Wells Fargo Settlement.⁵

On May 23, 2014, Rex Elliot (acting as counsel to Loehnert and Ayres) sent a demand letter to Pinnacle, threatening a lawsuit seeking “any damages . . . due to the inability make [sic] the second installment payment on June 1st in accordance with the Wells Fargo Settlement Agreement, including Wells Fargo’s legal fees to enforce the obligation and the 10% interest obligation set forth in the Note.” DN 14-4 at 1. Loehnert and Ayres now note that they eventually paid this out of their own savings and chose not to pursue this remedy.

⁴ Loehnert and Ayres contend that Pinnacle failed to pay amounts owed under the promissory note and sued Pinnacle in a matter that has been consolidated with this one. Conversely, Pinnacle argues it paid its obligation under the promissory note and that “both the loan and note are unquestionably connected to the Wells Fargo matter.”

⁵ A counterclaim asserted by Loehnert and Ayres notes that Pinnacle executed the promissory note “recognizing the extraordinary value Plaintiff could receive by pulling [Loehnert and Ayres] from Wells Fargo.” DN 7 at 6. The counterclaim also references the Wells Fargo settlement in another context: “On March 15, 2014, Pinnacle disbursed the sum of \$86,999.40, as directed by [Loehnert and Ayres], and withheld payment of the remaining \$50,000, as directed by [Loehnert and Ayres] for a June 4, 2014 payment the parties previously agreed to make to Wells Fargo in order to settle a 2013 lawsuit involving Wells Fargo, Pinnacle, and the individual defendants.” DN 7 at 7.

On May 30, 2014, Loehnert and Ayres resigned from Pinnacle and two days later started doing business as LA Surety Solutions LLC.⁶ The parties dispute whether Loehnert and Ayres's early resignation was a breach of the Employment Agreement. Loehnert and Ayres claim they did not breach because Pinnacle failed to pay amounts owed under the Employment Agreement and the promissory note (and have sued Pinnacle to recover these amounts). Pinnacle claims Loehnert and Ayres breached the Employment Agreements and are therefore required to pay \$125,000 each in liquidated damages (and has sued Loehnert and Ayres to recover this amount). Attorneys from Manion Stigger LLP and Cooper & Elliot, LLC currently represent Loehnert and Ayers against their former client.

II.

Disqualification "is a drastic measure which courts should be hesitant to impose except when absolutely necessary." *Zurich Ins. Co. v. Knotts*, 52 S.W.3d 555, 560 (Ky. 2001). It "separates a party from the counsel of its choice with immediate and measurable effect." *Id.* The Sixth Circuit has repeatedly held that disqualification is appropriate if "(1) a past attorney-client relationship existed between the party seeking disqualification and the attorney it seeks to disqualify; (2) the subject matter of those relationships was/is substantially related; and (3) the attorney acquired confidential information from the party seeking confidential information." *Bowers v. Ophthalmology Group*, 733 F.3d 647, 651 (6th Cir. 2013) (quoting *Dana Corp. v. Blue Cross & Blue Shield Mut. of N. Ohio*, 900 F.2d 882, 889 (6th Cir. 1990)). This standard is easy to state but difficult to apply in circumstances such as these. In application, the third element blends into the second. This is because the "former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the

⁶ Loehnert and Ayres actually formed this entity on April 25, 2014. Bruce Stigger (of Manion Stigger) signed the Articles of Organization as L.A. Surety's registered agent.

lawyer has confidential information.” *Id.* at 651-52 (quoting Ky. S. Ct. R. 3.130(1.9) (cmt. 3)); *id.* at 651 n.2 (“For this reason, our prior single-judge order was wrong to state that ‘it [has not] been shown that any confidential information was disclosed that would pose a conflict.’”).

Still, an attorney’s duty to protect a former client’s confidential information is central to determining whether two matters are “substantially related.” In *Bowers*, the Sixth Circuit squarely addressed this issue. There, the court applied Rule 1.9(a) of the Kentucky Rules of Professional Conduct to a disqualification motion and said the rule “is essentially the same” as the Sixth Circuit’s tripartite test. *Id.* at 651. This Kentucky Rule provides: “A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in . . . a substantially related matter in which that person’s interests are materially adverse to the interests of the former client.” Ky. S. Ct. R. 3.130(1.9)(a); *see also* MODEL RULES OF PROF’L CONDUCT R. 1.9(a) (2011) (using identical language).

In *Bowers*, the court relied heavily on the comments to this rule and a federal district court opinion in Kansas to define “substantially related.” *Bowers*, 733 F.3d at 651. In pertinent part, the comments to Rule 1.9 state that “[m]atters are ‘substantially related’ . . . if they involve the same transaction or legal dispute or if there is otherwise a substantial risk that confidential factual information *as would normally have been obtained* in the prior representation would materially advance the client’s position in the subsequent matter.” Ky. S. Ct. R. 3.130(1.9) (cmt. 3) (emphasis added). The court also relied on “a well-regarded opinion” from a federal district court in Kansas:

In determining whether a substantial relationship exists, the court evaluates the similarities between the factual bases of the two representations. A commonality of legal claims or issues is not required. At a functional level, the inquiry is whether the attorneys were trying to acquire information vitally related to the subject matter of the pending litigation. To accomplish this inquiry, the court must be able to reconstruct the attorney’s representation of the former client, to

infer what confidential information could have been imparted in that representation, and to decide whether that information has any relevance to the attorney's representation of the current client. What confidential information could have been imparted involves considering what information and facts ought to have been or would typically be disclosed in such a relationship. Consequently, the representations are substantially related if they involve the same client and the matters or transactions in question are *relevantly interconnected* or *reveal the client's pattern of conduct*.

Bowers, 733 F.3d at 652 (quoting *Koch v. Koch Indus.*, 798 F. Supp. 1525, 1536 (D. Kan. 1992))

(emphasis added). In other words, this Court must determine what confidential information might normally have been learned, not what information actually was learned.

As the *Bowers* court explained, in analyzing this motion to disqualify counsel, “the court must look to the general type of information that the potentially conflicted lawyer would have been exposed to in a normal or typical representation of the type that occurred with the now-adverse client.” *Id.* (citation omitted). “Admittedly, this approach has its difficulties, most notably that reconstructing a representation using generalities is less exact than examining what actually happened. Nonetheless, this method presents a necessary alternative to engaging with the specific—perhaps confidential—facts surrounding a potentially conflicted attorney's prior representation of a now-adverse client.” *Id.*

III.

The Court now applies this approach to the present case. The parties do not dispute the first part of the test: attorneys from Manion Stigger and Cooper & Elliot represented Pinnacle in the Wells Fargo dispute, and Pinnacle is now directly adverse to their current clients, Loehnert and Ayres. The second part of the test is the issue here: If the Court determines these matters are “substantially related,” the attorneys have a conflict and must be disqualified. As the Sixth Circuit described in *Bowers*, the first step in determining substantial similarity is to reconstruct the prior representation of Pinnacle in the Wells Fargo matter. From this, the Court must

determine whether there is a substantial risk that confidential information as would normally or typically have been obtained in the attorneys' prior representation of Pinnacle would materially advance the positions of Loehnert and Ayres in the present case. *See id.* at 653. Counsel must be disqualified if the Court determines the matters (1) are relevantly interconnected or (2) reveal the Pinnacle's pattern of conduct. *See id.* at 652 (quoting *Koch*, 798 F. Supp. at 1536).

A.

To track the *Bowers* analysis, the Court first reconstructs a "normal or typical representation" of the type in the Wells Fargo matter. *See Bowers*, 733 F.3d at 653. In that case, Loehnert and Ayres left their jobs at Wells Fargo to work at Pinnacle, so Wells Fargo sued Loehnert, Ayres, and Pinnacle, and these three defendants asserted several counterclaims. Wells Fargo asserted six causes of action in the suit, including claims against only Loehnert and Ayres (breach of contract, breach of fiduciary duty of loyalty, and breach of covenant of good faith and fair dealing), and claims against all three defendants (violation of Kentucky trade secret statute, unfair competition, and tortious interference with contract). Ultimately, the Manion Stigger and Cooper & Elliot attorneys negotiated a confidential settlement on behalf of all three defendants in that case. Both sides of the current litigation—Pinnacle and Loehnert and Ayres—have access to this agreement.

In a typical representation of the kind in the Wells Fargo matter, Pinnacle's counsel would have obtained various pieces of confidential information that could be helpful in representing Loehnert and Ayres in this action. Most significantly, how much were Loehnert and Ayres worth to Pinnacle? In negotiating the Wells Fargo settlement, the attorneys would have learned whether Pinnacle was willing to pay or make advances on any amounts owed to Wells Fargo for violating their employment agreements. If Pinnacle was willing to pay, the

attorneys likely would have been given a maximum amount that Pinnacle could afford to spend on the new employees. Moreover, the attorneys would learn Pinnacle's litigation and negotiation strategies in cases involving employment contracts, trade secrets, and fiduciary duties. This is information that, but for their representation of Pinnacle in the Wells Fargo matter, these attorneys could not have otherwise obtained. If obtained, it would certainly be useful to Loehnert and Ayres in litigation and potential settlement discussions in the present case. Under *Bowers*, whether the attorneys actually learned the information is not directly relevant.

B.

After determining the type of confidential information that would be shared in the "normal" representation of the type in the Wells Fargo matter, the Court must examine whether the matters are "relevantly interconnected" or reveal Pinnacle's "pattern of conduct." *Bowers*, 733 F.3d at 652 (quoting *Koch*, 798 F. Supp. at 1536). Though either would be grounds for the Court to find substantial similarity, the Court finds that both apply here.

Though the Wells Fargo matter and the current lawsuit involve different employment agreements, fiduciary duties, and trade secrets, the matters are "relevantly interconnected" for two reasons. First, the promissory note and loan from Pinnacle to Loehnert and Ayres are contentious in the present litigation, and both stem from the Wells Fargo litigation. In the Wells Fargo matter, the parties agreed to a confidential settlement agreement. The parties have disclosed that this agreement required them to make two \$100,000 payments to Wells Fargo—one in June 2013 and another in June 2014. The parties now disagree on the purpose of those payments. In one of their counterclaims against Pinnacle, Loehnert and Ayres assert that Pinnacle "has failed to pay the \$100,000 owed under the Promissory Note which was due and payable on June 4, 2014." DN 7 at 9. By contrast, Pinnacle asserts that it satisfied the \$100,000

Promissory Note and also advanced \$100,000 on Loehnert and Ayres's behalf to assist them in paying their settlement obligation to Wells Fargo. DN 20 at 10, n.10.

Second, the interpretation and enforceability of the Employment Agreement are also contentious and related to the Wells Fargo matter. Broadly speaking, the whole basis of Wells Fargo's suit against Pinnacle was that it employed Loehnert and Ayres; and, of course, Pinnacle employed the two through the Employment Agreement.⁷ More specifically, Pinnacle points to the contentious \$250,000 liquidated damages clause. As the Court noted in Section I of this opinion, the terms of this provision state that Loehnert and Ayres understood "that Pinnacle will only receive appropriate return on its investment in the Kentucky office if the office remains open and profitable for a period of time." When the parties entered into the Employment Agreement, everyone was aware of the Wells Fargo litigation. Pinnacle has now taken the reasonable position that the resolution of the Wells Fargo litigation was a significant factor in determining that \$250,000 would enable it to "receive appropriate return on investment."

Loehnert and Ayres dispute this claim, but the Court fails to see how they could know what Pinnacle considered—at various points in their response and surreply to this motion, Loehnert and Ayres emphasize that Pinnacle had its own separate counsel in negotiating the Employment Agreement. What the Manion Stigger and Cooper & Elliot attorneys *could know*, however, is the value that Pinnacle placed on these two employees from their prior representation in the Wells Fargo matter. And this information could be critical in litigating and negotiating the disputes over the promissory note and the Employment Agreement.

⁷ Pinnacle seems to argue that the Cooper & Elliot and Manion Stigger attorneys should be disqualified in this matter because they had a concurrent conflict in negotiating Loehnert and Ayres's employment agreement with Pinnacle while the Wells Fargo matter was still pending. This argument fails because, even if the attorneys had a concurrent conflict in that negotiation, that was a separate matter from the current litigation and would not be grounds for disqualification now. Pinnacle could have raised its objection to its counsel's participation in the negotiations at that time.

The Court well understands that the *Bowers* analysis may seem unfair to the attorneys. They would prefer to require Pinnacle to prove that confidential information was actually communicated. However, the proper analysis does not provide for such a showing. And, because the Court finds the matters were “relevantly interconnected,” the matters were “substantially related” and the Manion Stigger and Cooper & Elliot attorneys must be disqualified.

IV.

There is another independent basis for disqualification: the matters reveal Pinnacle’s “pattern of conduct.” There are many parallels between the Wells Fargo matter and this one. In the Wells Fargo matter, Loehnert and Ayres were sued in April 2013 by their former employer (Wells Fargo) when they quit to work somewhere else (Pinnacle) and allegedly broke an employment agreement (with Wells Fargo). They also asserted counterclaims before settling in June 2013. Here, Loehnert and Ayres were sued in June 2013 by their former employer (Pinnacle) when they quit to work under their own entity (L.A. Surety) and allegedly broke an employment agreement (with Pinnacle). They have also asserted counterclaims. In a “normal or typical” representation like counsels’ representation of Pinnacle in the Wells Fargo matter, the attorneys would have learned the value Pinnacle placed on Loehnert and Ayres through Pinnacle’s litigation strategies, negotiation tactics, ability and willingness to pay to settle claims, and tolerance for risk in a case with many factual similarities to the present litigation.

Though “[i]nformation that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying,” Ky. S. Ct. R. 3.130(1.9) (cmt. 3), it is not hard to imagine how confidential information obtained in that former representation could have a substantial impact in this case. And because a lawsuit of this kind could create a conflict

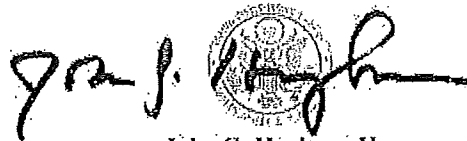
between the employees and their new employer, a typical representation would have included confidential conversations between the employer and its attorneys concerning the value the employer placed on its new employees if the negotiations with Wells Fargo were to turn sour and Pinnacle had to sacrifice the two to serve its own interest. This information could have a substantial effect on the potential damages in this case—particularly in a possible negotiation. Because the law firms' prior representation of Pinnacle would reveal a "pattern of conduct" in a typical case, the matters are "substantially related" and the attorneys must be disqualified.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Pinnacle's motion to disqualify the law firms of Manion Stigger LLP and Cooper & Elliot, LLC is GRANTED and the law firms are DISQUALIFIED.

IT IS FURTHER ORDERED that all discovery is STAYED while Loehnert and Ayres obtain new counsel.

November 18, 2014


John G. Heyburn II
Senior Judge, U.S. District Court

cc: Counsel of Record

**UNITED STATES DISTRICT COURT
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

PINNACLE SURETY SERVICES, INC.)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:15-CV-364-DJH
)	
MANION STIGGER, LLP,)	Judge David J. Hale
COOPER & ELLIOTT, LLC,)	
G. BRUCE STIGGER and)	
REX E. ELLIOTT)	
)	
Defendants.)	
_____)	

**ORDER GRANTING PINNACLE SURETY SERVICES, INC.'S MOTION
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

Plaintiff, Pinnacle Surety Services, Inc. ("Plaintiff"), having moved the Court for leave to file its First Amended Complaint, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's Motion for Leave to File its First Amended Complaint is hereby GRANTED, and Pinnacle's First Amended Complaint is deemed filed and made a part of the record in this matter as of the date of this Order.

Tendered by:

/s/ P. Blaine Grant

P. Blaine Grant

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