

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ARROWOOD INDEMNITY COMPANY,

Plaintiff,

v.

THE COVENANT GROUP, INC., COVENANT
MANAGEMENT, LLC and COVENANT
INSURANCE SERVICES, INC.,

Defendants.

CIVIL ACTION NO.:

SEPTEMBER 17, 2008

COMPLAINT

Plaintiff Arrowood Indemnity Company, on behalf of itself and as successor in interest by merger to Security Insurance Company of Hartford and the Fire and Casualty Insurance Company of Connecticut, by and through its undersigned attorneys, for its Complaint in this action, alleges as follows:

NATURE OF ACTION

1. This is an action for monetary relief relating to Defendants' breach of contract arising out of an Indemnification Agreement executed between the parties (the "Indemnification Agreement"), a copy of which is attached hereto as Exhibit A and is incorporated herein by reference.

2. Pursuant to the Indemnification Agreement, Defendants agreed to hold harmless

and indemnify Plaintiff for Defendants' failure to collect all premium audits arising under certain insurance policies issued to Defendants' members and to guarantee payment of the same. Defendants have refused to comply with this contractual obligation, despite due demand that they do so, and Plaintiff has suffered monetary damages as a result.

PARTIES

3. Plaintiff Arrowood Indemnity Company is a corporation, organized under the laws of the State of Delaware, with a principal place of business at 3600 Arco Corporate Drive, Charlotte, North Carolina. Arrowood Indemnity Company is the successor in interest by merger to Security Insurance Company of Hartford and the Fire and Casualty Insurance Company of Connecticut (hereinafter, collectively with Arrowood Indemnity Company, "Arrowood").

4. Defendant The Covenant Group, Inc. is a corporation, organized under the laws of the State of Georgia with a place of business at 11330 Lakefield Drive, Suite 100, Duluth, Georgia, and was formerly known as Covenant Management, Inc.

5. Defendant Covenant Management, LLC is a limited liability company, organized under the laws of the State of Alabama, with places of business listed at 449 St. Luke's Drive, Montgomery, Alabama and 450A Century Park South, Suite 202, Birmingham, Alabama.

6. Defendant Covenant Insurance Services, Inc. is a corporation, organized under the laws of the State of Texas, with a place of business at 1420 West Mockingbird Lane, Suite 775, Dallas, Texas. On June 1, 2006, Timothy M. Habeck, as CEO/Treasurer/Director of Covenant Insurance Services, Inc., caused Articles of Dissolution to be filed with the Office of the

Secretary of State of Texas, representing that all debts, liabilities and obligations of Covenant Insurance Services, Inc. had been paid, satisfied, or discharged or that adequate provision had been made for payment, satisfaction, or discharge thereof and that the remainder of the properties and assets of Covenant Insurance Services, Inc. had been distributed to its shareholders.

JURISDICTION

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

VENUE

8. Venue is proper under 28 U.S.C. § 1391(a)(2) because the Indemnification Agreement is deemed executed by the parties in Connecticut and provides that Connecticut courts shall have exclusive jurisdiction of any controversy arising therefrom.

FACTUAL ALLEGATIONS

9. In March of 2005, the parties executed the Indemnification Agreement.

10. Pursuant to the terms of the Indemnification Agreement, Defendants agreed to hold harmless and indemnify Arrowood for Defendants' failure to collect all premium audits arising under insurance policies issued pursuant to certain Program Administrator Agreements.

11. Pursuant to Section One, paragraph A of the Indemnification Agreement, Defendants agreed to reimburse Arrowood for any obligation for payment of reinsurance premiums, fines, assessments and other payments for which Arrowood became obligated as a

result of any unpaid premium audits arising under the policies issued to Defendants' members during the periods (or portions thereof) pursuant to the Program Administrator Agreements (the "Obligations").

12. Pursuant Section Four, paragraph A of the Indemnification Agreement, Defendants guaranteed to Arrowood the full and timely payment when due of all of the Obligations defined in Section One, Paragraph A of the Indemnification Agreement.

13. As of March 18, 2008, there was a difference of \$363,669.10 between the amount of premium written and the amount of premiums collected under the insurance policies covered by the Indemnification Agreement.

14. The \$363,669.10 falls within the Obligations under Section One, paragraph A of the Indemnification Agreement.

15. By letter to Defendant The Covenant Group, Inc. dated March 18, 2008 (the "Demand Letter") Arrowood gave notice to Defendants of the computation of the \$363,669.10 and made demand for payment of this sum as Obligations under the Indemnification Agreement. A copy of the Demand Letter is attached hereto as Exhibit B and is incorporated herein by reference.

16. As of this date, Defendants have failed and refused to pay to Arrowood the Obligations required by the Indemnification Agreement.

CAUSE OF ACTION

(Breach of Contract)

17. Arrowood repeats and realleges each and every allegation set forth in paragraphs 1 through 16 above as if fully set forth herein.

18. Defendants have breached their Obligations under the Indemnification Agreement by failing to pay Arrowood the sum of \$363,669.10 in unpaid premium as required by the same.

19. Arrowood has demanded that Defendants satisfy their Obligations under the Indemnification Agreement, but Defendants have failed to do so.

20. Defendants' breach of the Indemnification Agreement is the actual and proximate cause of Arrowood's damages and, as of this date, Defendants are jointly and severally indebted to Arrowood under the Indemnification Agreement in an amount of no less than \$363,669.10.

21. Interest will continue to accrue on the foregoing amount at the maximum rate allowable by law.

PRAYER FOR RELIEF

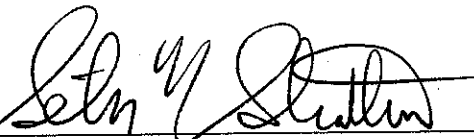
Wherefore, Arrowood respectfully requests that this Court:

1. enter judgment in Arrowood's favor and against Defendants, jointly and severally;
2. award Arrowood compensatory damages;
3. award Arrowood prejudgment interest under General Statutes § 37-3a;
4. award Arrowood costs and reasonable attorneys' fees; and

5. grant Arrowood such other relief as this Court may deem just and equitable.

Dated at Hartford, Connecticut this 17th day of September, 2008.

PLAINTIFF,
ARROWOOD INDEMNITY COMPANY

By: 

Stuart D. Rosen [ct 05472]

Seth N. Stratton [ct 27293]

BINGHAM MCCUTCHEN LLP

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Hartford, CT 06103-3178

(860) 240-2700

(860) 240-2818 (fax)

stuart.rosen@bingham.com

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Its Attorneys

Of counsel:

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Kenneth R. Keller

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Post Office Box 540

235 North Edgeworth Street

Greensboro, NC 27401

(336) 478-1124

(336) 273-7885

kmg@crlaw.com

krk@crlaw.com

EXHIBIT A

INDEMNIFICATION AGREEMENT

This **INDEMNIFICATION AGREEMENT** effective July 1, 2000 (hereinafter referred to as the "Agreement") made by and between Security Insurance Company of Hartford and The Fire and Casualty Insurance Company of Connecticut, Connecticut corporations having their principal place of business at 9 Farm Springs Road, Farmington, Connecticut 06032 (hereinafter collectively referred to as the "Indemnitee"), and The Covenant Group, Inc., a Georgia Corporation having its principal place of business at Building II, Suite 100, 11330 Lakefield Drive, Duluth, Georgia 30097 and Covenant Management, LLC, an Alabama Limited Liability Company having its principal place of business at 450A Century Park South, Suite 202, Birmingham, Alabama 35226 and Covenant Insurance Services, Inc., a Texas Corporation having its principal place of business at One Mockingbird Plaza, #775, 1420 West Mockingbird Lane, Dallas, Texas 75274 (hereinafter collectively referred to as the "Indemnitor").

WHEREAS, the Indemnitee has agreed to issue certain policies of insurance (the "Policies") to the Indemnitor's clients only upon the condition that the Indemnitor shall indemnify the Indemnitee for its Obligations as hereinafter defined;

WHEREAS, the Indemnitee has agreed to issue the Policies to or at the request of Indemnitor in reliance on the representations, warranties, guarantee, indemnification and other agreements of the Indemnitor contained herein, and that the Indemnitor executes this Agreement;

WHEREAS, the Indemnitee seeks to be held harmless and indemnified for the Indemnitor's failure to collect all premiums and audits written pursuant to those certain Program Administrator Agreements attached hereto as Exhibit I.

NOW THEREFORE, the Indemnitor, under seal and in consideration of the issuance of the Policies by the Indemnitee, agrees:

SECTION ONE INDEMNITOR'S OBLIGATIONS

- A. The term "Obligations" as employed in this Agreement shall refer to the Indemnitor's limited obligation to reimburse the Indemnitee for the Indemnitee's obligation for payment of certain but not limited to any and/or all reinsurance premiums; fines, assessments and other payments to which the Indemnitee may become obliged as a result of any unpaid premium audits arising under the Policies issued to the Indemnitor's members during the periods (or portions thereof) pursuant of the Program Administrator Agreements. The Indemnitor shall reimburse the Indemnitee one hundred percent (100%) of the Indemnitee's additional Obligations for all such reinsurance premiums, fines, assessments and other payments to which the Indemnitee becomes obligated as a result of any unpaid premium audits.

SECTION TWO
WARRANTIES

- A. The execution, delivery and performance of this Agreement by the Indemnitor is authorized under the laws of the State of Connecticut, and have been duly authorized by all necessary corporate actions, and the Agreement is binding upon and enforceable against the Indemnitor in accordance with its terms.
- B. There are no actions, suits, claims, administrative inquiries, proceedings or hearings, or investigations pending or threatened against the Indemnitor before or by any governmental body or agency, nor any outstanding order or decree against or affecting the Indemnitor that would prohibit or impair in any way the Indemnitor's performance of any of its obligations under the Agreement.
- C. The performance by the Indemnitor hereunder will not: (i) conflict with or violate any provision of its Certificate of Incorporation or By-laws or other governing instruments of the Indemnitor; (ii) require any consent, approval or notice under or violate any provision of, or be an event which with the passage of time will result in a violation of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligations under, or result in the imposition of any lien upon or the creation of a security interest in any of the Indemnitor's assets or properties pursuant to, any note, bond, indenture, mortgage, lien, lease, agreement, license or other instrument to which the Indemnitor is a part or by which it is bound, and will not violate or conflict with any other material restriction of any kind or character to which the Indemnitor is subject; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Indemnitor or any of its properties, or assets.

SECTION THREE
COVENANTS

Except with the prior written approval of the Indemnitee, the Indemnitor hereby agrees that it will take no action which would or reasonably could impair the ability of the Indemnitor to perform its obligations under this Agreement.

SECTION FOUR
GUARANTEE

- A. The Indemnitor hereby guarantees to the Indemnitee the full and timely payment when due of all of the Obligations. This Agreement is an absolute, unconditional and continuing guarantee of the full and timely payment and performance of all of the Obligations, and not of their collectibility only, and is in no way conditioned upon any requirement that the Indemnitee first attempt to collect any of the Obligations from any other source or resort to any collateral security or other means of obtaining payment.

- B. In the event payments become due and payable by the Indemnitee, the obligations of the Indemnitor hereunder with respect to the Obligations shall become due and payable to the Indemnitee within fifteen (15) days following notice to Indemnitor of such Obligations.
- C. The guarantee and indemnification by the Indemnitor with respect to the Policies issued is a continuing guarantee. Unless otherwise agreed by the Indemnitor and Indemnitee, such guarantee will continue for so long as Indemnitee shall have liability under the Policies.
- D. It is expressly understood and agreed that the Indemnitor's obligations survive any change in the ownership or control of the Indemnitor, unless the Indemnitor arranges for a substitute guarantee acceptable to the Indemnitee.

SECTION FIVE
INDEMNIFICATION

- A. The Indemnitor agrees to indemnify and hold the Indemnitee harmless from, against, and in respect of any loss, cost, expense, claim, obligation, liability or damage, including attorney's fees, demand, assessment, penalty, fines, judgment, and arbitration award that the Indemnitee may at any time be exposed to, incur or suffer, directly or indirectly, arising out of or in any way connected with the failure of the Indemnitor to fully perform and discharge all its obligations according to this Agreement.
- B. The Indemnitee agrees to indemnify and hold the Indemnitor harmless from, against, and in respect of any loss, cost, expense, claim, obligation, liability or damage, including attorney's fees, demand, assessment, penalty, fines, judgment, and arbitration award that the Indemnitor may at any time be exposed to, incur or suffer, directly or indirectly, arising out of or in any way connected with the failure of the Indemnitee to fully perform and discharge all its obligations according to this Agreement.

SECTION SIX
MISCELLANEOUS

A. Notices

All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given or made (i) when delivered personally; (ii) when delivered by a recognized national express mail courier service; (iii) when made or given by telecopier, or (iv) in the case of mail delivery, upon deposit in the United States mail, certified or registered, postage prepaid, to the parties hereto at their respective addresses, as set forth below:

If to the Indemnitee:

Alternative Risk Transfer Insurance Strategies, Inc.
100 Northfield Drive
Windsor, CT 06095
Attention: Jon Gice
Facsimile No.: (860) 902-7870

~~Facsimile No. (860) 902-7870~~

~~To: The Covenant Group, Inc.
100 Northfield Drive
Building Two, Suite 100
Danah, GA 30097
Attention: Timothy M. Habock, President
Facsimile No. (770) 251-8099~~

B. Assignment

This Agreement may not be assigned or transferred, in whole or in part, by any party without the express written consent of the other parties hereto.

C. Captions

The captions contained in this Agreement are inserted only as matter of convenience and in no manner define, limit or extend the scope or intent of this Agreement or any provision herein.

D. Parties-in-Interest

This Agreement will benefit and be enforceable by the parties hereto, and, to the extent permitted by this Agreement, their respective successors and assigns. Under no circumstances, will any other person be considered a third party beneficiary of this Agreement.

E. Applicable; Law; Jurisdiction; Venue; Service of Process; Waiver of Right to Jury Trial

1. It is agreed that for all purposes, this Agreement shall be deemed by the parties to have been executed in the State of Connecticut and shall be governed by, and construed in accordance with, the internal laws of the State of Connecticut, without giving effect to conflicts of law principles.
2. The Connecticut courts (state and federal) shall have exclusive jurisdiction of any controversies regarding this Agreement whether arising before or after the termination of the Agreement. Any action or other proceeding which involved such a controversy shall be brought in those courts and not elsewhere. The parties agree and consent that any process in any action or proceeding may, among other methods, be served by mailing such process by registered or certified mail, directed to the address first named above or such other address as the parties may hereafter designate in writing. The parties further agree that any such action or proceeding shall be submitted for the sole decision of the judge

assigned to the matter and expressly waive their rights to a jury trial of any controversy arising out of this Agreement.

3. If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements.

F. Entirety

This Agreement constitutes the entire agreement of the parties and supplements any prior agreement or understanding between them, and it may not be modified or amended in any manner other than as set forth herein.

G. Validity

If any provisions of this Agreement, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Agreement, and the application of any other provision to any persons or circumstances shall not be affected.

H. Amendments and Waiver

Any amendments, alterations, modification, or waivers of any provisions of this Agreement, or its cancellation or replacement, shall not be valid unless in writing and signed by the parties hereto. The failure by any party to enforce any and all provisions of this Agreement, or to insist upon strict compliance with the terms hereof, shall not be construed as a waiver of any rights or privileges of such party. A waiver by any party of a past act or circumstance shall not constitute a course of conduct or waiver of any subsequent action or circumstance.

IN WITNESS WHEREOF, the parties, intending to be legally bound, has caused this AGREEMENT to be executed by their duly authorized officers.

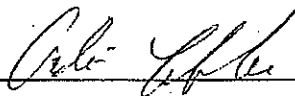
THE COVENANT GROUP INC.,
COVENANT MANGEMENT LLC.,
COVENANT INSURANCE SERVICES, INC.

BY: M. Habert

TITLE: President

DATE: 3/3/05

SECURITY INSURANCE COMPANY OF HARTFORD,
THE FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT

BY: 

TITLE: SVP & FINANCIAL RISK OFFICER

DATE: 3/29/05

EXHIBIT B

Arrowpoint CAPITAL

www.arrowpointcapitalcorp.com

Headquarters
3600 Arco Corporate Drive
Charlotte, NC 28273
Shipping Zip 28273-8135

Phone
704-522-2000
Fax
704-522-3200

March 18, 2008

The Covenant Group Inc.
11330 Lakefield Drive
Building Two, Suite 100
Duluth Georgia 30097

Attention: Timothy M. Habeck

RE: Indemnification Agreement among Security Insurance
Company of Hartford and The Fire and Casualty Insurance Company of
Connecticut and The Covenant Group, Covenant Management, LLC
and Covenant Insurance Services Inc.: Demand for Payment

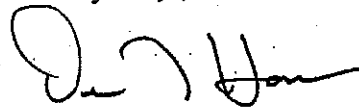
Dear Mr. Habeck:

Pursuant to the terms of the Indemnification Agreement entered into by Security Insurance Company of Hartford, The Fire and Casualty Insurance Company of Connecticut (collectively as "Indemnitee") and The Covenant Group Inc., Covenant Management, LLC and Covenant Insurance Services Inc. (collectively as "Indemnitor") demand is herein made by Arrowwood Indemnity Company, as successor in interest to via merger with the Indemnitee, upon Indemnitor for payment of \$363,669.10. This amount is equal to the insurance premium that remains due and owing on certain insurance policies issued by Indemnitee to Indemnitor's clients. In the aforementioned Indemnification Agreement Indemnitor has agreed to guaranty payment of such.

On the attached exhibit is a listing of the insurance policies and the outstanding audit premiums owed which serve as the basis (the "Obligation" as defined in the Agreement) for this demand. I have also attached a copy of the Indemnification Agreement itself.

Please forward payment to my attention within 15 days.

Very truly yours



Dennis T. Haver
Vice President and
Assistant General Counsel
(704) 522 - 3120
Dennis.Haver@Arrowpointcap.com