

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LEXON INSURANCE COMPANY,

Plaintiff,

v.

AMERICAN RESOURCES CORPORATION,
AMERICAN CARBON CORPORATION f/k/a
QUEST ENERGY, INC.,
DEANE MINING LLC,
ERC MINING INDIANA CORP.,
KNOTT COUNTY COAL LLC f/k/a ICG
KNOTT COUNTY, LLC,
MCCOY ELKHORN COAL LLC and
SAMUEL COAL COMPANY, INC.,

Defendants.

Civil Action No.

COMPLAINT

Plaintiff, Lexon Insurance Company (“Lexon”), makes the following allegations against Defendants, American Resources Corporation, American Carbon Corporation f/k/a Quest Energy, Inc., Deane Mining LLC, ERC Mining Indiana Corp., Knott County Coal LLC f/k/a ICG Knott County, LLC, McCoy Elkhorn Coal LLC and Samuel Coal Company, Inc., as follows:

PARTIES

1. Lexon is a Texas corporation with its principal place of business in Nashville, Tennessee.
2. American Resources Corporation is a corporation organized and existing under the laws of the state of Florida, with a principal office and place of business in Fishers, Indiana.

3. American Carbon Corporation, f/k/a Quest Energy, Inc., is a corporation organized and existing under the laws of the state of Indiana, with a principal office and place of business in Fishers, Indiana.

4. Deane Mining LLC is a limited liability company organized and existing under the laws of the state of Delaware, with a principal office and place of business in Fishers, Indiana.

5. ERC Mining Indiana Corp. is a corporation organized and existing under the laws of the state of Indiana, with a principal office and place of business in Fishers, Indiana.

6. Knott County Coal LLC, f/k/a IGC Knott County, LLC, is a limited liability company organized and existing under the laws of the state of Delaware, with a principal office and place of business in Fishers, Indiana.

7. McCoy Elkhorn Coal LLC is a limited liability company organized and existing under the laws of the state of Indiana, with a principal office and place of business in Fishers, Indiana.

8. Samuel Coal Company, Inc. is a domestic corporation organized and existing under the laws of the state of Kentucky, with a principal office and place of business in Fishers, Indiana.

9. Defendant American Resources Corporation operates through subsidiaries and/or affiliate companies that were formed for the purpose of acquiring, rehabilitating and operating various natural resource mining assets including coal used in the steel making and industrial markets, critical and rare earth elements used in the electrification economy, and aggregated metal and steel products used in the recycling industries.

10. Co-defendants American Carbon Corporation f/k/a Quest Energy, Inc., Deane Mining LLC, ERC Mining Indiana Corp., Knott County Coal LLC f/k/a IGC Knott County, LLC, McCoy Elkhorn Coal LLC and Samuel Coal Company, Inc. are wholly owned and controlled subsidiaries and/or affiliates of American Resources Corporation.

11. For ease of reference, American Resources Corporation and its co-defendant affiliates and subsidiaries are collectively referred to as the “Indemnitors”.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship between Lexon and all the Indemnitors and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

13. Venue is proper in this District under 28 U.S.C. § 1391 and by the agreement of the parties under the forum selection clause of the below-described Collateral Agreement.

THE GENERAL AGREEMENTS OF INDEMNITY

14. Starting in 2015, Indemnitors began making preparations to conduct surface coal mining in the State of Kentucky.

15. Before any surface mining operations can begin, Kentucky coal operators are required by the Kentucky Department of National Resources to post a surety bond(s) to ensure proper reclamation.

16. To fulfill their obligations to the State of Kentucky, the Indemnitors requested that Lexon issue surety bonds on their behalf.

17. A chart listing the bonds issued by Lexon on behalf of one or more of the Indemnitors is attached as **Exhibit A** (hereinafter collectively, the “Bonds”).

18. Since 2015, Lexon has issued at least 175 Bonds on behalf of one or more of the Indemnitors with a current collective penal sum of \$25,074,700.00.

19. At or about the time the Bonds were issued, as partial consideration for the issuance of the Bonds, Indemnitors executed one or more General Agreement of Indemnity in favor of Lexon. There are a total of three General Agreements of Indemnity dated October 16, 2015, May 15, 2016 and March 25, 2020, respectively (collectively, the “GAIs”). A copy of each GAI is attached hereto as **Exhibits B, C & D**.

20. Each GAI provides that Indemnitors are jointly and severally liable to pay all premiums and costs charged by Lexon for each Bond.

21. Each GAI provides that the Indemnitors shall, upon demand, promptly indemnify, exonerate, reimburse and hold Lexon harmless from and against any Loss (as defined by the GAI) and pay Lexon for any Loss sustained or incurred in connection with the execution of any Bond or the failure of any Indemnitor to perform or company with the covenants and conditions of any GAI.

THE COLLATERAL AGREEMENT

22. As partial consideration for the issuance of the Bonds, Indemnitors American Resources Corporation, American Carbon Corporation, Deane Mining LLC, ERC Mining Indiana Corp., Knott County Coal LLC, McCoy Elkhorn Coal LLC and Samuel Coal Company, Inc. (collectively, the “Collateral Indemnitors”) also executed a Collateral Agreement dated May 10, 2021, a copy of which is attached as **Exhibit E** (“Collateral Agreement”).

23. The Collateral Agreement required the Collateral Indemnitors to cause the discharge of \$7,000,000.00 from the penal sum of the Bonds by June 30, 2021.

24. In connection with the prospective reduction of the penal sum of the Bonds, the Collateral Agreement required collateral in the sum \$14,574,333 (the “Collateral Requirement”) to be deposited with Lexon to, in part, secure the performance of the bonded obligations.

25. Commencing April 7, 2021, the Collateral Agreement required the Collateral Indemnitors to satisfy the Collateral Requirement through a “Collateral Funding Obligation” by making certain monthly “Coal Production Collateral Payments” up to the amount of the Collateral Requirement.

BREACH OF THE GAIS

26. To date, Indemnitors have failed to pay at least \$547,335.40 in premiums owed to Lexon for issuing the Bonds.

27. Despite due demand, the Indemnitors have failed to fulfill their obligations under the GAIs by failing to pay the bond premiums as required by the GAIs.

BREACH OF THE COLLATERAL AGREEMENT

28. Collateral Indemnitors failed to make their required Coal Production Collateral Payments beginning in April, 2022

29. Collateral Indemnitors have failed to satisfy their Collateral Requirement under the Collateral Agreement.

30. Collateral Indemnitors have failed to satisfy their Collateral Funding Obligations under the Collateral Agreement.

31. Collateral Indemnitors have failed to satisfy their Coal Production Collateral Payments under the Collateral Agreement.

32. Despite due demand, the Collateral Indemnitors have failed to fulfill their obligations under the Collateral Agreement by failing to perform their aforementioned collateral obligations as required by the Collateral Agreement.

COUNT I
(As Against the Indemnitors for Unpaid Bond Premiums)

33. Lexon repeats and realleges the allegations contained in paragraphs 1 through 32 of the Complaint as if fully set forth herein.

34. Lexon has fully satisfied any and all obligations under the GAIs.

35. Despite due demand, the Indemnitors have failed to fulfill their obligations under the GAIs by failing to pay the bond premiums as required by the GAIs.

36. Pursuant to the express terms and conditions of the GAIs, Lexon is entitled to be indemnified by the Indemnitors for all losses sustained under the Bonds.

37. Specifically, the Indemnitors are obligated, among other things, to indemnify and save Lexon harmless from and against every liability, cost and expense, including bond premiums and attorneys' fees incurred as a result of executing the Bonds.

38. To date, Lexon has incurred at least \$547,335.40 in damages for unpaid bond premiums, and will continue to incur liability, costs, charges and expenses, including attorneys' fees, as a result of its issuance of the Bonds.

39. By reason of the foregoing, Lexon is entitled to a judgment in its favor against the Indemnitors, jointly and severally, in an amount to be determined at trial, but believed to exceed \$547,335.40, together with an award of reasonable attorneys' fees, applicable interest, and the costs and disbursements of this action.

COUNT II

(As Against the Collateral Indemnitors for Breach of the Collateral Agreement)

40. Lexon repeats and realleges the allegations contained in paragraphs 1 through 39 of the Complaint as if fully set forth herein.

41. Lexon has fully satisfied any and all obligations under the Collateral Agreement.

42. Collateral Indemnitors breached the Collateral Agreement by: (1) failing to make the required Coal Production Collateral Payments beginning in April, 2022; (2) failing to satisfy the Collateral Requirement; (3) failing to satisfy the Collateral Funding Obligations, and; (4) failing to satisfy the Coal Production Collateral Payment obligations.

43. By reason of the foregoing, Lexon is entitled to a judgment against the Collateral Defendants in an amount to be determined at trial not less than \$24,430,000.00, together with an award of reasonable attorneys' fees, applicable interest, and the costs and disbursements of this action.

COUNT III

(As Against the Indemnitors for Specific Performance for Collateral Security)

44. Lexon repeats and realleges the allegations contained in paragraphs 1 through 43 of the Complaint as if fully set forth herein.

45. On or about March 28, 2022, pursuant to the Collateral Agreement and the March 25, 2020 GAI, Lexon served a demand on the Indemnitors demanding collateral in the amount of \$24,430,000.00, as the total bond in force liability.

46. Despite due demand, the Indemnitors have failed to fulfill their obligations under the Collateral Agreement and the March 25, 2020 GAI by failing to deposit with Lexon collateral in the amount of \$24,430,000.00.

47. As a result of the foregoing, Lexon is entitled to specific performance of the Collateral Agreement and the March 25, 2020 GAI directing the Indemnitors to post collateral security with Lexon in an amount of \$24,430,000.00 as security for all current and future losses, costs and expenses resulting from Lexon's issuance of the Bonds.

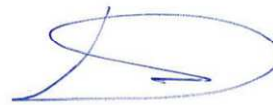
PRAYER FOR RELIEF

Plaintiff Lexon Insurance Company respectfully requests this Court enter judgment in its favor and against the Indemnitors, granting the following relief:

- A. On its First Count, an entry of judgment in Lexon's favor and against the Indemnitors, jointly and severally, in an amount to be determined at trial, but in excess of \$547,335.40, plus interest, costs, disbursements and attorneys' fees, and for such additional liability costs, charges and expenses, including attorneys' fees, as may be incurred by Lexon in the future.
- B. On its Second Count, an entry of judgment in Lexon's favor and against the Collateral Indemnitors, jointly and severally, in an amount to be determined at trial, but in excess of \$24,430,000.00, plus interest, costs, disbursements and attorneys' fees, and for such additional liability costs, charges and expenses, including attorneys' fees, as may be incurred by Lexon in the future.
- C. On its Third Count, for specific performance directing, ordering and adjudging that the Indemnitors post collateral security with Lexon in an amount of \$24,430,000.00.
- D. Any other and further relief that this Court deems just and proper.

Date: July 12, 2022

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