

# DRAFT COPY

STATE OF INDIANA  
COUNTY OF MADISON

SS:

IN THE MADISON CIRCUIT COURT  
CAUSE NO. 48C01-0911-CC-\_\_\_\_\_

STATE OF INDIANA ex rel.,  
GREGORY F. ZOELLER,  
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

CHRISTOPHER PARRISH, JAMES  
KIMM, JOSEPH BROWN, JAMES  
WALTERS, CHRISTOPHER WALTERS,  
OHIO CASUALTY INSURANCE  
COMPANY, and FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND,

Defendants.

## STATE OF INDIANA'S COMPLAINT FOR RECOVERY OF PUBLIC FUNDS

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, for its Complaint to Recover Public Funds due and owing, states as follows:

### INTRODUCTION

1. The State Board of Accounts (the "SBOA"), pursuant to Ind. Code § 5-11-1-9, performed an examination of the books, accounts, and records of the Town of Chesterfield, Madison County ("Chesterfield"). The results of the examination are set forth in SBOA Audit Report B34981 dated October 26, 2009. *See* Exhibit A.
2. Christopher Parrish ("Parrish") served as the Clerk-Treasurer of Chesterfield from January 1, 2000 to January 31, 2009.
3. James Kimm ("Kimm") was the former Town Marshal of Chesterfield.

4. Joseph Brown (“Brown”) was a former Police Officer of Chesterfield.
5. Christopher Walters (“Christopher Walters”) was the former Maintenance Superintendent of Chesterfield.
6. James Walters (“James Walters”) was a former Maintenance Worker of Chesterfield, Madison County.
7. Fidelity and Deposit Company of Maryland (“F&D”) is a corporation duly authorized to conduct business in Indiana. F&D is now and was at all times relevant to this action, engaged in the business of, among others, writing bonds upon and in favor of public officials and their subordinate public employees in the State of Indiana.
8. F&D is also engaged in the business of providing employee theft insurance coverage in the State of Indiana.
9. Ohio Casualty Insurance Company (“Ohio Casualty”) is a corporation duly authorized to conduct business in Indiana. Defendant Ohio Casualty Insurance Company is now and was at all times relevant to this action, engaged in the business of, among others, writing bonds upon and in favor of public officials and their subordinate public employees in the State of Indiana.
10. The Audit Report disclosed malfeasance, misfeasance, or nonfeasance on the part of the Defendants and was referred by the State Examiner to Attorney General Gregory F. Zoeller under Ind. Code § 5-11-5-1(a).
11. The Audit Report additionally disclosed public money that had been unlawfully expended or obtained by fraud or any unlawful manner; or wrongfully withheld from the public treasury under Ind. Code § 5-11-6-3.

12. The Audit Report also charged the Defendants with having illegally received, and/or having illegally retained, and/or failing to account for and pay over money received under Ind. Code § 5-11-7-1.
13. Defendant(s) is (are) either a delinquent officer(s), a surety (sureties) of the officer, or an other proper person(s) against whom recovery of such misappropriated, diverted, or unaccounted for funds may be had.
14. This Complaint is brought for the benefit of the Town of Chesterfield, Madison County.
15. This Complaint is brought by Attorney General Gregory F. Zoeller in the name of the State of Indiana pursuant to Ind. Code § 5-11-7-1.

**COUNT I**  
**(Parrish—Misappropriated Funds)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of the Defendant, Christopher Parrish, and says:

16. During the audit period, Parrish had a duty to properly account for and deposit all funds of Chesterfield and/or to assure that the funds of Chesterfield were expended as authorized by law and commit no acts of misfeasance, malfeasance, or nonfeasance.
17. During the audit period, Parrish wrongfully or negligently failed to properly account for, expend and/or deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.
18. The nature of the breach by Parrish was so egregious as to constitute gross negligence or an intentional disregard of his duties.
19. The loss to Chesterfield by Parrish is as follows:

- a. unauthorized personal services, \$1,200.00;
- b. improper travel reimbursements, \$9,646.44;
- c. penalties and interest, \$1,668.97;
- d. improper computer purchases, \$2,751.22;
- e. unsubstantiated miscellaneous payments, \$1,944.08;
- f. unsupported petty cash disbursements, \$1,383.31;
- g. cell phone usage, \$1,284.03; and
- h. cash necessary to balance in the amount of \$11,657.86.

20. As a direct and proximate result of the breach of Parrish's duty to Chesterfield, the town suffered a pecuniary loss in the amount of Thirty-One Thousand Five Hundred Thirty-Five Dollars and Ninety-One Cents (\$31,535.91).

21. Parrish is liable to the State of Indiana and to Chesterfield in the amount of Thirty-One Thousand Five Hundred Thirty-Five Dollars and Ninety-One Cents (\$31,535.91).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against the Defendant, Christopher Parrish, in the amount of Thirty-One Thousand Five Hundred Thirty-Five Dollars and Ninety-One Cents (\$31,535.91), plus costs attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT II**  
**(Parrish—Treble Damages)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of the Defendant, Christopher Parrish, and says:

22. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I, and those paragraphs are incorporated in Count II as if wholly set forth herein.
23. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Ind. Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for: (1) An amount not to exceed three times the actual damages of the person suffering the loss; (2) The costs of the action; (3) A reasonable attorney's fee; (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to: (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter; (5) A reasonable amount to compensate the person suffering loss for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); and (7) All other reasonable costs of collection.
24. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a violation by Defendant Parrish of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, or Ind. Code § 35-43-5-3, as described in State Board of Accounts Audit Report B34981. The loss consists of the sum of Thirty-One Thousand Five Hundred

Thirty-Five Dollars and Ninety-One Cents (\$31,535.91). Plaintiff is entitled to the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

25. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a breach by Defendant Parrish, of Defendants contract and trust, both real and constructive, which Plaintiff imposed on Defendant Parrish by law to properly account for public funds for Chesterfield.

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against the Defendant, Christopher Parrish, grant Plaintiff the relief described in Indiana Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT III**  
**(Parrish and Kimm—Misappropriated Funds)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish and James Kimm, and says:

26. Plaintiff, State of Indiana restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I through Count II, and those paragraphs are incorporated in Count III as if wholly set forth herein.

27. During the audit period, Kimm wrongfully or negligently received falsified travel reimbursements of Fifty-Two Thousand Five Hundred Fifty-Three Dollars and Six Cents (\$52,553.06) when the travel was never performed.

28. Also during the audit period, Kimm wrongfully or negligently received petty cash disbursements of One Thousand Seven Hundred Dollars (\$1,700.00) that were not supported by written receipts to substantiate the expense.
29. Parrish was the duly-elected Clerk-Treasurer of Chesterfield during the period of the loss and had a duty to:
- a. receive and care for all town money and pay the money out only on order of the town legislative body;
  - b. prescribe payroll and account forms for all town offices;
  - c. prescribe the manner in which creditors, officers, and employees shall be paid; and
  - d. commit no acts of misfeasance, malfeasance or nonfeasance in the management of the town's funds.
30. Parrish failed to properly account for, expend and/or deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.
31. Parrish's acts were so egregious as to constitute gross negligence or an intentional disregard of their duties.
32. As a direct and proximate result of the actions of Parrish and Kimm, they are indebted to the State of Indiana and to Chesterfield, jointly and severally, in the amount of Fifty-Four Thousand Two Hundred Fifty-Three Dollars and Six Cents (\$54,253.06).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish and James Kimm jointly and severally liable

in the amount of Fifty-Four Thousand Two Hundred Fifty-Three Dollars and Six Cents (\$54,253.06) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT IV**  
**(Parrish and Kimm—Treble Damages)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish and James Kimm, and says:

33. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs, inclusive, of Count I through III, and those paragraphs are incorporated in Count IV as if wholly set forth herein.
34. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Ind. Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for: (1) An amount not to exceed three times the actual damages of the person suffering the loss; (2) The costs of the action; (3) A reasonable attorney's fee; (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to: (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter; (5) A reasonable amount to compensate the person suffering loss for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to: (A) file papers and attend court proceedings related to the recovery of a

judgment under this chapter; or (B) travel to and from activities described in clause (A); and (7) All other reasonable costs of collection.

35. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a violation by Defendants Christopher Parrish and James Kimm of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, or Ind. Code § 35-43-5-3, as described in State Board of Accounts Audit Report B34981. The loss consists of the sum of Fifty-Four Thousand Two Hundred Fifty-Three Dollars and Six Cents (\$54,253.06). Plaintiff is entitled to the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

36. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a breach by Defendants Parrish and Kimm of Defendants' contract and trust, both real and constructive, which Plaintiff imposed on Defendant, Parrish and Kimm, by law to properly account for public funds for Chesterfield.

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish and James Kimm, grant Plaintiff the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT V**  
**(Parrish, Kimm, and Brown—Misappropriated Funds)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish, James Kimm, and Joseph Brown, and says:

37. Plaintiff, State of Indiana restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I through IV, and those paragraphs are incorporated in Count V as if wholly set forth herein.
38. During the audit period, Brown wrongfully or negligently received payments for unsubstantiated repair of town equipment of One Hundred Fifteen Thousand, Three Hundred Ninety-One Dollars and Forty-Four Cents (\$115,391.44) which the repair work was never performed.
39. During the audit period, Kimm wrongfully or negligently certified for repair of town equipment in the amount of One Hundred Fifteen Thousand, Three Hundred Ninety-One Dollars and Forty-Four Cents (\$115,391.44) that was never ordered nor received by Chesterfield.
40. Parrish was the duly-elected Clerk-Treasurer of Chesterfield during the period of the loss and had a duty to:
- a. receive and care for all town money and pay the money out only on order of the town legislative body;
  - b. prescribe the manner in which creditors, officers, and employees shall be paid; and
  - c. commit no acts of misfeasance, malfeasance or nonfeasance in the management of the town's funds.
41. Parrish failed to properly account for, expend and/or deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.

42. Parrish's acts were so egregious as to constitute gross negligence or an intentional disregard of their duties.

43. As a direct and proximate result of the actions of Parrish, Brown and Kimm, they are indebted to the State of Indiana and to Chesterfield, jointly and severally, in the amount of One Hundred Fifteen Thousand, Three Hundred Ninety-One Dollars and Forty-Four Cents (\$115,391.44).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish, James Kimm, and Joseph Brown jointly and severally liable in the amount of One Hundred Fifteen Thousand, Three Hundred Ninety-One Dollars and Forty-Four Cents (\$115,391.44) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT VI**  
**(Parrish, Kimm, and Brown—Treble Damages)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish, James Kimm, and Joseph Brown, and says:

44. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I through V and those paragraphs are incorporated in Count VI as if wholly set forth herein.

45. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Indiana Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for: (1) An amount not to exceed three times the actual damages of the person suffering the loss; (2) The costs of the action; (3) A reasonable attorney's fee; (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1)

through (3) and are incurred by the person suffering loss to: (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter; (5) A reasonable amount to compensate the person suffering loss for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); and (7) All other reasonable costs of collection.

46. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a violation by Defendants Parrish, Kimm, and Brown, of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, or Ind. Code § 35-43-5-3, as described in State Board of Accounts Audit Report B34981. The loss consists of the sum of One Hundred Fifteen Thousand, Three Hundred Ninety-One Dollars and Forty-Four Cents (\$115,391.44), Plaintiff is entitled to the relief described in Indiana Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.
47. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a breach by Defendants Parrish, Kimm, and Brown, of Defendants' contract and trust, both real and constructive, which Plaintiff imposed on Defendants, Parrish, Kimm, and Brown, by law to properly account for public funds for Chesterfield.

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants, Christopher Parrish, James Kimm, and Joseph Brown, and grant Plaintiff the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT VII**  
**(Parrish and James Walters— Unauthorized or Wrongful Payment of Funds)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish and James Walters, and says:

48. Plaintiff, State of Indiana restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through VI and those paragraphs are incorporated in Count VII as if wholly set forth herein.

49. During the audit period, James Walters wrongfully or negligently received wages and benefits of Thirteen Thousand Two Dollars and Eighty Eight Cents (\$13,002.88) for hours not worked.

50. Also during the audit period, James Walters was wrongfully or negligently reimbursed for the purchase of tools without sufficient documentation to substantiate the purchase price of Two Thousand Eight Hundred Fifty Dollars (\$2,850.00).

51. Parrish was the duly-elected Clerk-Treasurer of Chesterfield during the period of the loss and had a duty to:

- a. receive and care for all town money and pay the money out only on order of the town legislative body;
- b. prescribe payroll and account forms for all town offices;

- c. prescribe the manner in which creditors, officers, and employees shall be paid; and
  - d. commit no acts of misfeasance, malfeasance or nonfeasance in the management of the town's funds.
52. Parrish failed to properly account for, expend and/or deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.
53. Parrish's acts were so egregious as to constitute gross negligence or an intentional disregard of their duties.
54. As a direct and proximate result of the actions of Parrish and James Walters, both Parrish and James Walters are indebted to the State of Indiana and to Chesterfield, jointly and severally, in the amount of Fifteen Thousand Eight Hundred Fifty-Two Dollars and Eighty-Eight Cents (\$15,852.88).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish and James Walters jointly and severally liable in the amount of Fifteen Thousand Eight Hundred Fifty-Two Dollars and Eighty-Eight Cents (\$15,852.88) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT VIII**  
**(Parish and James Walters—Treble Damages)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish and James Walters, and says:

55. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I through VII, and those paragraphs are incorporated in Count VIII as if wholly set forth herein.
56. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Indiana Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for: (1) An amount not to exceed three times the actual damages of the person suffering the loss; (2) The costs of the action; (3) A reasonable attorney's fee; (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to: (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter; (5) A reasonable amount to compensate the person suffering loss for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); and (7) All other reasonable costs of collection.
57. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a violation by Defendants, Parrish and James Walters, of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, or Ind. Code § 35-43-5-3, as described in State Board of Accounts Audit Report B34981. The loss consists of the sum of Fifteen Thousand Eight

Hundred Fifty-Two Dollars and Eighty-Eight Cents (\$15,852.88). Plaintiff is entitled to the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

58. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a breach by Defendants Parrish and James Walters, of Defendants' contract and trust, both real and constructive, which Plaintiff imposed on Defendants Parrish and James Walters, by law to properly account for public funds for Chesterfield.

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish and James Walters, grant Plaintiff the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT IX**  
**(Parish and Christopher Walters—Unauthorized Payments)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish and Christopher Walters, and says:

59. Plaintiff, State of Indiana restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through VIII, and those paragraphs are incorporated in Count IX as if wholly set forth herein.

60. During the audit period, Christopher Walters wrongfully or negligently received wages and benefits of Four Thousand Nine Hundred Ninety-Two Dollars and Seventy-Six Cents (\$4,992.76) for hours not worked.

61. Parrish was the duly-elected Clerk-Treasurer of Chesterfield during the period of the loss and had a duty to:

- a. receive and care for all town money and pay the money out only on order of the town legislative body;
- b. prescribe payroll and account forms for all town offices;
- c. prescribe the manner in which creditors, officers, and employees shall be paid; and
- d. commit no acts of misfeasance, malfeasance or nonfeasance in the management of the town's funds.

62. Parrish failed to properly account for, expend and/or deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.

63. Parrish's acts were so egregious as to constitute gross negligence or an intentional disregard of their duties.

64. The nature of the breach by Parrish and Christopher Walters was so egregious as to constitute gross negligence or an intentional disregard of their duties.

65. As a direct and proximate result of the actions of Parrish and Christopher Walters, they are indebted to the State of Indiana and to Chesterfield, jointly and severally, in the amount of Four Thousand Nine Hundred Ninety-Two Dollars and Seventy-Six Cents (\$4,992.76).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish and Christopher Walters, jointly and severally liable in the amount of Four Thousand Nine Hundred Ninety-Two Dollars and Seventy-Six Cents (\$4,992.76) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT X**  
**(Parish and Christopher Walters—Treble Damages)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of the Defendant, Christopher Parrish and Christopher Walters, and says:

66. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I through IX, and those paragraphs are incorporated in Count X as if wholly set forth herein.
67. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Indiana Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for: (1) An amount not to exceed three times the actual damages of the person suffering the loss; (2) The costs of the action; (3) A reasonable attorney's fee; (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to: (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter; (5) A reasonable amount to compensate the person suffering loss for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); and (7) All other reasonable costs of collection.

68. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a violation by Defendants, Parrish and Christopher Walters, of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, or Ind. Code § 35-43-5-3, as described in State Board of Accounts Audit Report B34981. The loss consists of the sum of Four Thousand Nine Hundred Ninety-Two Dollars and Seventy-Six Cents (\$4,992.76). Plaintiff is entitled to the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

69. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a breach by Defendants, Parrish and Christopher Walters, of Defendants' contract and trust, both real and constructive, which Plaintiff imposed on Defendant, Parrish and Christopher Walters, by law to properly account for public funds for Chesterfield.

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish and Christopher Walters, grant Plaintiff the relief described in Indiana Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

#### **COUNT XI**

##### **(Parrish, James Walters, and Christopher Walters—Unauthorized Payments)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish, James Walters, and Christopher Walters, and says:

70. Plaintiff, State of Indiana restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through X, and those paragraphs are incorporated in Count XI as if wholly set forth herein.

71. During the audit period, James Walters and Christopher Walters wrongfully or negligently authorized payments of Thirty-Seven Thousand Six Hundred Dollars and Thirty-Two Cents (\$37,600.32) for unsubstantiated maintenance and repair of town property which the repair work was never performed.
72. Parrish was the duly-elected Clerk-Treasurer of Chesterfield during the period of the loss and had a duty to:
- a. receive and care for all town money and pay the money out only on order of the town legislative body;
  - b. prescribe the manner in which creditors, officers, and employees shall be paid; and
  - c. commit no acts of misfeasance, malfeasance or nonfeasance in the management of the town's funds.
73. Parrish failed to properly account for, expend and/or deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.
74. Parrish's acts were so egregious as to constitute gross negligence or an intentional disregard of their duties.
75. As a direct and proximate result of the actions of Parrish, James Walters, and Christopher Walters, they are indebted to the State of Indiana and to Chesterfield, jointly and severally, in the amount of Thirty-Seven Thousand Six Hundred Dollars and Thirty-Two Cents (\$37,600.32).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish, James Walters, and Christopher Walters

jointly and severally liable in the amount of Thirty-Seven Thousand Six Hundred Dollars and Thirty-Two Cents (\$37,600.32) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT XII**  
**(Parrish, James Walters, and Christopher Walters—Treble Damages)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendants Christopher Parrish, James Walters, and Christopher Walters, and says:

76. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through XI and those paragraphs are incorporated in Count XII as if wholly set forth herein.

77. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Indiana Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for: (1) An amount not to exceed three times the actual damages of the person suffering the loss; (2) The costs of the action; (3) A reasonable attorney's fee; (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to: (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter; (5) A reasonable amount to compensate the person suffering loss for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and

agents for time used to: (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or (B) travel to and from activities described in clause (A); and (7) All other reasonable costs of collection.

78. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a violation by Defendants, Parrish, James Walters, and Christopher Walters, of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, or Ind. Code § 35-43-5-3, as described in State Board of Accounts Audit Report B34981. The loss consists of the sum of Thirty-Seven Thousand Six Hundred Dollars and Thirty-Two Cents (\$37,600.32). Plaintiff is entitled to the relief described in Indiana Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

79. Plaintiff, State of Indiana, is a party suffering a pecuniary loss as a result of a breach by Defendant, Parrish, James Walters, and Christopher Walters, of Defendants' contract and trust, both real and constructive, which Plaintiff imposed on Defendants, Parrish, James Walters, and Christopher Walters, by law to properly account for public funds for Chesterfield.

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment for the Plaintiff and against Defendants Christopher Parrish, James Walters, and Christopher Walters, grant Plaintiff the relief described in Ind. Code § 34-24-3-1 plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT XIII**  
**(F&D—Surety Recovery)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendant Fidelity and Deposit Company of Maryland, and says:

80. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through XII, and those paragraphs are incorporated in Count XIII as if wholly set forth herein.
81. Defendant F&D executed a bond in the amount of Fifty Thousand Dollars (\$50,000.00) that was conditioned upon the faithful performance and discharge of duties of Christopher Parrish as Clerk-Treasurer of Chesterfield for the period beginning January 1, 2007, and ending January 1, 2008. *See* Exhibit B.
82. During the term of the bond, Defendant Parrish wrongfully and negligently failed to account for, expend, and deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which acts resulted in the misappropriation, diversion, and misapplication of public funds.
83. Parrish's acts, or failures to act, constitute gross negligence or an intentional disregard of the requirements of his/her office.
84. The total of the funds which Defendant Parrish misappropriated, diverted, or unaccounted or misapplied during the period of the bond is in excess of Fifty Thousand Dollars (\$50,000.00).
85. As a result of the matters alleged in the above rhetorical paragraphs, Defendant F&D is jointly and severally liable with the Defendant Parrish in the sum of Fifty Thousand Dollars (\$50,000.00).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter a judgment for the Plaintiff and against the Defendant, Christopher Parrish, and Fidelity & Deposit Company of Maryland, in the amount of Fifty Thousand Dollars (\$50,000.00) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT XIV**  
**(F&D—Surety Recovery)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendant Fidelity and Deposit Company of Maryland, and says:

86. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through XIII, and those paragraphs are incorporated in Count XIV as if wholly set forth herein.
87. Defendant F&D executed a bond in the amount of Fifty Thousand Dollars (\$50,000.00) that was conditioned upon the faithful performance and discharge of duties of Christopher Parrish as Clerk-Treasurer of Chesterfield for the period beginning January 1, 2008 and ending January 1, 2009. *See Exhibit C.*
88. During the term of the bond, Defendant Parrish wrongfully and negligently failed to account for, expend, and deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which acts resulted in the misappropriation, diversion, and misapplication of public funds.
89. Parrish's acts, or failures to act, constitute gross negligence or an intentional disregard of the requirements of his/her office.
90. The total of the funds which Defendant Parrish misappropriated, diverted, and misapplied during the period of the bond is in excess of Fifty Thousand Dollars (\$50,000.00).
91. As a result of the matters alleged in the above rhetorical paragraphs, Defendant F&D is jointly and severally liable with Defendant Parrish in the sum of Fifty Thousand Dollars (\$50,000.00).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter a judgment for the Plaintiff and against Defendants Christopher Parrish, and Fidelity & Deposit Company of Maryland, in the amount of Fifty Thousand Dollars (\$50,000.00) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT XV**  
**(Ohio Casualty—Surety Recovery)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendant Ohio Casualty, and says:

92. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through XIV, and those paragraphs are incorporated in Count XV as if wholly set forth herein.
93. Defendant Ohio Casualty executed a bond in the amount of Eight Thousand Five Hundred Dollars (\$8,500.00) that was conditioned upon the faithful performance and discharge of duties of James Kimm as Town Marshal for the Town of Chesterfield for the term beginning August 18, 2008. *See* Exhibit D.
94. During the term of the bond, Defendant Kimm wrongfully and negligently failed to account for, expend, and deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which acts resulted in the misappropriation, diversion, and misapplication of public funds.
95. The total of the funds which Defendant Kimm misappropriated, diverted, and misapplied during the term of the bond exceeds Eight Thousand Five Hundred Dollars (\$8,500.00).

96. As a result of the matters alleged in the above rhetorical paragraphs, Defendant Ohio Casualty is jointly and severally liable with Defendant Kimm in the sum of Eight Thousand Five Hundred Dollars (\$8,500.00).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter a judgment for the Plaintiff and against Defendants James Kimm and Ohio Casualty in the amount of Eight Thousand Five Hundred Dollars (\$8,500.00) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT XVI**  
**(F&D—Surety Recovery)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendant Fidelity and Deposit Company of Maryland, and says:

97. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through XV, and those paragraphs are incorporated in Count XVI as if wholly set forth herein.

98. Defendant F&D executed a bond in the amount of Eight Thousand Five Hundred Dollars (\$8,500.00) that was conditioned upon the faithful performance and discharge of duties of James Kimm as the Town Marshal, Town of Chesterfield, for the term beginning August 18, 2004 and ending August 17, 2008. *See* Exhibit E.

99. During the term of the bond, Defendant Kimm wrongfully and negligently failed to account for, expend, and deposit the funds of Chesterfield, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which acts resulted in the misappropriation, diversion, and misapplication of public funds.

100. The total of the funds which Defendant Kimm misappropriated, diverted, and misapplied during the term of the bond exceeds Eight Thousand Five Hundred Dollars (\$8,500.00).

101. As a result of the matters alleged in the above rhetorical paragraphs, Defendant F&D is jointly and severally liable with Defendant Kimm in an amount that exceeds Eight Thousand Five Hundred Dollars (\$8,500.00).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter a judgment for the Plaintiff and against Defendants James Kimm and Fidelity and Deposit Company of Maryland in an amount that exceeds Eight Thousand Five Hundred Dollars (\$8,500.00) plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT XVII**  
**(F&D—Dishonesty Coverage)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendant, Fidelity and Deposit Company of Maryland, and says:

102. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through XVI, and those paragraphs are incorporated in Count XVII as if wholly set forth herein.

103. Defendant F & D issued employee dishonesty insurance coverage to Chesterfield in the amount of Ten Thousand Dollars (\$10,000.00) to cover employee theft in which there has been a loss suffered resulting directly from theft committed by each employee, whether identified or not, acting alone or in collusion with other persons, for the term beginning January 1, 2007 to January 1, 2008. *See Exhibit F.*

104. During the term of the stated policies, Defendants Kimm, Brown, Christopher Walters and James Walters each either wrongfully or negligently failed to properly account for, expend and/or deposit the funds of Chesterfield which resulted in the misappropriation, diversion, and misapplication of public funds.

105. Defendant F & D endorsed the employee dishonesty insurance coverage to add Faithful Performance of Duty Coverage for Government Employee for Seven Thousand Five Hundred Dollars (\$7,500.00) "per employee coverage" that covers losses resulting directly from the failure of any employee to faithfully perform his duties as prescribed by law, when such failure has a direct and immediate result in a loss. *See Exhibit F.*

106. Further, for each employee F&D provided coverage in the amount of \$17,500.00 that covers employee dishonesty and faithful performance of duties.

107. The total of the funds in which Defendants Parrish, Kimm, Brown, Christopher Walters and James Walters each either obtained by fraud or in any unlawful manner or wrongfully withheld from the public treasury during the term of the policy exceeds Seventy Thousand Dollars (\$70,000.00).

108. As a result of the matters alleged in the above rhetorical paragraphs, Defendant F & D is jointly and severally liable with Defendants Kimm, Brown, Christopher Walters, and James Walters in an amount that exceeds Seventy Thousand Dollars (\$70,000.00).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter a judgment for the Plaintiff and against Defendants James Kimm, Joseph Brown, Christopher Walters, James Walters, and Fidelity & Deposit Company of Maryland in an amount no less than that allowable under the policy limits, plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

**COUNT XVIII**  
**(F&D—Dishonesty Coverage)**

Plaintiff, State of Indiana, by counsel, Gregory F. Zoeller, Attorney General of Indiana, and LeGrand L. Clark, Deputy Attorney General, complains of Defendant, Fidelity and Deposit Company of Maryland, and says:

109. Plaintiff, State of Indiana, restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I through XVII, and those paragraphs are incorporated in Count XVIII as if wholly set forth herein.
110. Defendant F & D issued employee dishonesty insurance coverage to Chesterfield in the amount of Ten Thousand Dollars (\$10,000.00) to cover employee theft in which there has been a loss suffered resulting directly from theft committed by each employee, whether identified or not, acting alone or in collusion with other persons, for the term beginning January 1, 2008 to January 1, 2009. *See Exhibit G.*
111. During the term of the stated policy, Defendants Kimm, Brown, Christopher Walters, and James Walters each either wrongfully or negligently failed to properly account for, expend and/or deposit the funds of Chesterfield which resulted in the misappropriation, diversion, and misapplication of public funds.
112. Further, Defendant F & D endorsed the employee dishonesty insurance coverage to add Faithful Performance of Duty Coverage for Government Employee[s] in the amount of Seven Thousand Five Hundred Dollars (\$10,000.00) “per employee coverage” which covers losses resulting directly from the failure of any employee to faithfully perform his duties as prescribed by law, when such failure has a direct and immediate result in a loss. *See Exhibit G.*

113. The total of the funds in which Defendants Parrish, Kimm, Brown, Christopher Walters and James Walters each either obtained by fraud or in any unlawful manner or wrongfully withheld from the public treasury during the term of the policy in an amount that exceeds Seventy Thousand Dollars (\$80,000.00).

114. As a result of the matters alleged in the above rhetorical paragraphs, Defendant F & D is jointly and severally liable with Defendants Kimm, Brown, Christopher Walters, and James Walters in the sum of Seventy Thousand Dollars (\$80,000.00).

WHEREFORE, Plaintiff, State of Indiana requests the Court to enter a judgment for the Plaintiff and against Defendants James Kimm, Joseph Brown, Christopher Walters, James Walters, and Fidelity & Deposit Company of Maryland in an amount no less than that allowable under the policy limits, plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

Respectfully submitted,

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Attorney General of Indiana  
Attorney No. 1958-98

By: \_\_\_\_\_  
LeGrand L. Clark  
Deputy Attorney General  
Attorney No. 16675-49

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