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Eleventh Circuit Affirms Surety's Rights Under Indemnity Agreement

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Today, in *Fidelity & Deposit Company of Maryland vs. C.E. Hall*, the United States Eleventh Circuit Court of Appeals ruled that a surety, that has previously made a demand for collateral security upon its principal, which demand was refused by the principal, retains the right to settle the obligee's claims. The Court ruled this right existed pursuant to the terms of the indemnity agreement at issue, regardless of actual liability to the obligee and that the right may be exercised simply because it may be necessary or expedient for the surety to do so. The Court also noted that the "mere exercise of a contractual right is not evidence of bad faith." The Court also rejected the principal's assertions that valid defenses to the claims necessarily render the surety's settlement payments as not being made in "good faith." Rejecting the principal's arguments to the contrary, the Court held that the principal was required, where the indemnity agreement so provided, to have both made a request that the surety defend the claims *and* posted the requested collateral security with the surety *before* the surety had any obligation to contest the obligee's claims. Applying Georgia law, the Court also held that "Bad Faith is not simply bad judgment or negligence, but it imports a dishonest purpose or some moral obliquity, and it implies conscious doing of wrong, and means breach of known duty through some motive or interest of ill will."

This is an important decision in the Eleventh Circuit as the court has affirmed the surety's right to settle the principals' affirmative claims, over the objections of the principal, even if valid defenses otherwise exist, so long as the principal fails to post the collateral security demanded by the surety.