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## MEMORANDUM

**TO:** RPPTL Construction Law Committee

**FROM:** Ty G. Thompson  
Surety & Insurance Subcommittee

**DATE:** February 11, 2013

**RE:** Case Law Update

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In *SureTec Insurance Co. v. National Concrete Structures, Inc.*, 2013 WL 394873 (S.D. Fla. January 31, 2013), the court granted the surety summary judgment on the issue of liability. The surety paid losses and sued the principal and indemnitors. The court reviewed the provisions of the indemnity agreement and the affidavit submitted by the surety and found that the surety was entitled to judgment. The court rejected the argument of one individual indemnitor that there was no consideration supporting her execution of the agreement. The court noted that the agreement itself described the consideration and that the surety issued its bonds in reliance on the executed agreement. The court found that continuing events may change the amount owed to the surety and deferred ruling on the amount of losses, prejudgment interest, expenses and attorneys fees to be included in the final judgment.

In *United States Surety Co. v. Global Egg Corp.*, 2013 WL 247433 (M.D. Fla. January 2, 2013), the court denied the surety's motion for a preliminary injunction to prevent an equipment renter from removing its equipment from the job site in violation of an agreement among the surety, its principal and the equipment renter. The court had granted the surety a temporary restraining order, which had expired, but the equipment renter denied that it ever intended to remove its equipment. It claimed that it was just securing the equipment to protect it from vandalism or theft while the job was delayed and that its inquiry as to interstate transportation was to bring other equipment to the site, not to remove what was already there. The court held that the surety had not shown a substantial likelihood of prevailing on its claim that the equipment renter breached, or intended to breach, the agreement. The court also found that the financial difficulties of the rental company did not amount to irreparable harm or lack of a remedy at law for the surety.