

STATE OF INDIANA
COUNTY OF LAGRANGE

SS:

IN THE LAGRANGE CIRCUIT/SUPERIOR COURT
CAUSE NO. _____

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

Plaintiff,

v.

BEVERLY S. ELLIOTT and AUTO-
OWNERS INSURANCE COMPANY,

Defendants.

COMPLAINT TO RECOVER PUBLIC FUNDS

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana (the “State”), by Luke P. Hodgins, Deputy Attorney General, for its Complaint to Recover Public Funds due and owing, states as follows:

FACTS

1. The State Board of Accounts (“SBOA”), pursuant to Ind. Code § 5-11-1-9, performed an examination of the books, accounts, and records of the Clerk of the Circuit Court, LaGrange County (the “Clerk”). The results of the examination are set forth in SBOA Audit Report B38833, dated June 28, 2011. Said Audit Report is attached hereto and incorporated herein as Exhibit A.

2. The Defendant, Beverly S. Elliott (“Elliott”), is and was the Clerk of the LaGrange County Circuit Court (the “Court”) at all times during the audit period.

3. The Audit Report disclosed malfeasance, misfeasance, or nonfeasance on the part of Elliott, and was placed by the State Examiner with Attorney General Gregory F. Zoeller pursuant to Ind. Code § 5-11-5-1(a).

4. The Audit Report also disclosed public money that had been unlawfully expended, obtained by fraud or any unlawful manner, or wrongfully withheld from the public treasury pursuant to Ind. Code § 5-11-6-3.

5. The Defendant, Auto-Owners Insurance Company (“Auto-Owners”), is a corporation duly authorized to conduct business in Indiana. Auto-Owners is now, and was at all times relevant to this action, engaged in the business, among others, of issuing insurance policies and/or surety bonds in the State of Indiana.

6. The public funds that the State seeks to recover upon this Complaint were found by the SBOA to be either:

- a. misappropriated, diverted, or unaccounted;
- b. illegally received;
- c. illegally retained;
- d. unaccountable for or not paid over any money so received;
- e. obtained by fraud or in any unlawful manner; and/or
- f. wrongfully withheld from the public treasury.

7. The Defendants are either delinquent officers, sureties of the officers, or any other proper persons against whom recovery of such misappropriated, diverted, or unaccounted for funds may be had.

8. This Complaint is brought for the benefit of the Clerk of the Circuit Court, LaGrange County.

9. 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

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of the Defendant, Beverly S. Elliott, and says:

10. During the audit period, Elliott had a duty to properly account for funds of the Court to assure that the funds of the Court were expended as authorized by law, and/or to commit no acts of misfeasance, malfeasance, or nonfeasance.

11. During the audit period, Elliott wrongfully or negligently failed to properly account for, expend, and/or deposit the funds of the Court or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.

12. The nature of the breach by Elliott was so egregious as to constitute gross negligence or an intentional disregard of her duties.

13. The total amount of loss to the Court is as follows:

a.	Receipts not deposited	\$500.00
b.	Credit card receipts not deposited	\$6,401.00
c.	Overpayment of trust	\$1,600.00
d.	Cash Necessary to balance, bank reconciliations	\$1,308.56
e.	Additional Audit cost	\$8,593.75

14. As a direct and proximate result the breach of Elliott’s duty to the Court, the Court suffered a pecuniary loss in the amount of Eighteen Thousand Three Hundred Eighty Six and 88/100 Dollars (\$18,386.88).

15. Elliott is liable to the State of Indiana, the Court, and LaGrange County in the amount of \$18,386.88.

WHEREFORE, the Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests the Court to (1) enter judgment for the State and against the Defendant, Beverly S. Elliott, in the amount of \$18,386.88, plus costs, attorney fees, and prejudgment interest, and (2) grant the State all other just and proper relief.

COUNT II

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of the Defendant, Beverly S. Elliott, and says:

16. The State 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.

17. 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.

18. The State is a party suffering a pecuniary loss as a result of a violation by Defendant Elliott of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, and/or Ind. Code § 35-43-5-3, as described in SBOA Audit Report B38833.

19. The State is a party suffering a pecuniary loss as a result of a breach by the Defendant Elliott, of the Defendant's contract and trust, both real and constructive, which the State imposed on the Defendant by law to properly account for public funds of the Court.

20. The State is entitled to the relief described in Ind. Code § 34-24-3-1, including three times the actual loss, which is Fifty Five Thousand One Hundred Sixty and 64/100 Dollars (\$55,160.64), plus costs, attorney fees, and prejudgment interest.

WHEREFORE, the Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests the Court to (1) enter judgment for the State and against the Defendant, Beverly S. Elliott, (2) grant the State the relief described in Ind. Code § 34-24-3-1, plus attorney fees, costs, and prejudgment interest, and (3) grant the State all other just and proper relief.

COUNT III

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of the Defendant, Auto-Owners Insurance Company, and says:

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

22. Auto-Owners issued an Official Bond in the amount of Sixty Thousand Dollars (\$60,000.00) for the period beginning January 1, 2010 and ending January 1, 2011. Said bond is attached hereto and incorporated herein as Exhibit B.

23. During the terms of said bond coverage, Elliott wrongfully and negligently failed to account for, expend, and/or deposit the funds of the Court, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.

24. Elliott's acts, or failures to act, constitute dishonesty, gross negligence, or an intentional disregard of the requirements of her office.

25. The amount of funds that Elliott misappropriated, diverted, or misapplied during the term of said insurance coverage is \$18,386.88.

26. As a result of the matters alleged in the rhetorical paragraphs above, Auto-Owners is jointly and severally liable with the Defendant Elliott in the amount of \$18,386.88.

WHEREFORE, the Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests the Court to (1) enter judgment for the State and against the Defendant, Auto-Owners Insurance Company, in the amount of \$18,386.88, plus costs, attorney fees, and prejudgment interest, and (2) grant the State all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: _____
Luke P. Hodgkin
Deputy Attorney General
Attorney No. 27162-49

Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204-2770
Telephone: (317) 232-6356

APPEARANCE FORM (CIVIL)
Initiating Party

Cause Number: _____

1. Name of Initiating Party

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

2. Telephone number of *pro se* initiating party: N/A

3. Attorney Information (as applicable for service process):

Name: Luke P. Hodgin
Attorney No.: 27162-49

Address: Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204

Phone: (317) 232-6356
FAX: (317) 232-7979
E-Mail: luke.hodgin@atg.in.gov

4. Case Type Requested: CC

5. Will accept FAX Service: Yes ___ No XX

6. Social Security numbers of family members in cases involving support issues: N/A

7. Are there related cases: Yes ___ No XX If yes, list case and number below:

Caption: _____ Case Number: _____
Caption: _____ Case Number: _____

8. Additional Information required by State or local rule: N/A

SUMMONS

STATE OF INDIANA
COUNTY OF LAGRANGE

SS:

IN THE LAGRANGE CIRCUIT/SUPERIOR COURT
CAUSE NO. _____

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

Plaintiff,

v.

BEVERLY S. ELLIOTT and AUTO-
OWNERS INSURANCE COMPANY,

Defendants.

TO DEFENDANT: Beverly S. Elliott
2400 S 600 W
Topeka, IN 46571

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above. The Court's Address and Phone are: LaGrange County Circuit & Superior Courts Clerk, Courthouse, 105 N. Detroit Street, LaGrange, IN 46761; Phone: (260) 499-6368.

The nature of the suit against you is stated in the complaint which is attached to this document. It also states the relief sought or the demand made against you by the Plaintiff. You must answer the complaint in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons (you have twenty-three (23) days to answer if this summons was received by mail), or a judgment by default may be rendered against you for the relief Plaintiff has demanded. If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

(The following manner of service of summons is hereby designated.)

 X **Personal Service by Investigator with the Office of the Indiana Attorney General.**

Date: _____

Clerk of the Court, LaGrange County (Seal)

Luke P. Hodgin, Deputy Attorney General
Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 232-6356

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STATE OF INDIANA
COUNTY OF LAGRANGE

SS:

IN THE LAGRANGE CIRCUIT/SUPERIOR COURT
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STATE OF INDIANA *ex rel.*
GREGORY F. ZOELLER,
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

BEVERLY S. ELLIOTT and AUTO-
OWNERS INSURANCE COMPANY,

Defendants.

TO DEFENDANT: Auto Owners Insurance Company
PO Box 421399
Indianapolis, IN 46242-1399

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above. The Court's Address and Phone are: LaGrange County Circuit & Superior Courts Clerk, Courthouse, 105 N. Detroit Street, LaGrange, IN 46761; Phone: (260) 499-6368.

The nature of the suit against you is stated in the complaint which is attached to this document. It also states the relief sought or the demand made against you by the Plaintiff. You must answer the complaint in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons (you have twenty-three (23) days to answer if this summons was received by mail), or a judgment by default may be rendered against you for the relief Plaintiff has demanded. If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

(The following manner of service of summons is hereby designated.)

 X **Personal Service by Investigator with the Office of the Indiana Attorney General.**

Date: _____

Clerk of the Court, LaGrange County (Seal)

Luke P. Hodgin, Deputy Attorney General
Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 232-6356

CCS ENTRY FORM
LAGRANGE CIRCUIT/SUPERIOR COURT

File Stamped Here

CASE NUMBER: _____

CAPTION: *State of Indiana ex rel. Gregory F. Zoeller, Attorney General of Indiana v. Beverly S. Elliott and Auto-Owners Insurance Company*

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS): The Plaintiff files its: *Summons, Complaint, Verified Motion for Temporary Restraining Order, and Verified Motion for Preliminary Injunction*

Luke P. Hodgin
Attorney No. 27162-49

Name and I.D. Number of Submitting Attorney

Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204
(317) 232-6356

Address and Telephone Number

State of Indiana
Party Represented

Name, Address and Telephone Number of Opposing Counsel
(Or, when appropriate: "Mailing list attached")

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

- () Placed in case file
- () Discarded after entry on the CCS
- () Mailed to all counsel by: ____ Counsel ____ Clerk ____ Court
- () There is no attached order: or
The attached order shall be placed in the RJO: Yes () No ()

DATE: _____

APPROVED: _____
Judge, LaGrange Circuit/Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF LAGRANGE)

IN THE LAGRANGE _____ COURT
CAUSE NO. _____

STATE OF INDIANA *ex rel.*)
GREGORY F.ZOELLER,)
ATTORNEY GENERAL OF INDIANA,)
)
Plaintiff,)
)
v.)
)
BEVERLY S. ELLIOTT and AUTO-)
OWNERS INSURANCE COMPANY,)
)
Defendants.)

STATE OF INDIANA’S VERIFIED MOTION FOR PRELIMINARY INJUNCTION

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana (the “State”), by Luke P. Hodgin, Deputy Attorney General, respectfully moves this Court pursuant to Rule 65 of the Indiana Rules of Trial Procedure and Ind. Code § 34-26-1-6 to issue a Preliminary Injunction against the Defendant, Beverly S. Elliott, and her agents, representatives, successors, and assigns to enjoin them from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in the Defendant’s possession or control pending disposition of the State’s Complaint. In support of this Motion, the State shows the following:

1. On July 12, 2011, the State filed its Complaint in this action alleging that the Defendant, Beverly S. Elliott, wrongfully or negligently failed to properly account for public funds of the LaGrange County Circuit Court (the “Court”), or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds totaling \$18,386.88. The allegations of the Plaintiff’s

Complaint are incorporated herein and made a part of this Motion by reference. *See also* Affidavit of Susan Metzger, which is attached to the State's Verified Motion for Temporary Restraining Order as Exhibit A and incorporated herein.

2. The Defendant, Beverly S. Elliott, as Clerk of the LaGrange County Circuit Court, failed to deposit receipts received by the Clerk's Office on December 9, 2010.

3. The Defendant, Beverly S. Elliott, as Clerk of the LaGrange County Circuit Court, failed to collect credit card payments made September 5, 2008, from the credit card company.

4. The Defendant, Beverly S. Elliott, as Clerk of the LaGrange County Circuit Court, issued sixteen (16) checks without approved claims or supporting documentation.

5. The Defendant, Beverly S. Elliott, as Clerk of the LaGrange County Circuit Court, overpaid a trust account using Court funds.

6. The Defendant, Beverly S. Elliott, as Clerk of the LaGrange County Circuit Court, failed to balance the Court's bank accounts leaving an unidentified shortage of funds.

7. The State Board of Accounts incurred additional examination costs as a result of the investigation of the missing or misappropriated public funds.

8. If the Defendant is not enjoined from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in the Defendant's possession or control including: real estate, including but not limited to that located at 1400 N 200E, LaGrange, IN 46761; bank accounts; vehicles, including but not limited to, a 2003 Oldsmobile Silhouette and a 2003 Ford Taurus; and pensions or retirement accounts, the State will be irreparably harmed by not being able to collect on the misappropriated, diverted, or misapplied public funds.

9. There is the likelihood that the Defendant's property has been or may be sold, conveyed, or otherwise disposed of with the intent to cheat, hinder, or delay the State of Indiana and the LaGrange County Circuit Court.

10. A preliminary injunction is necessary to preserve the status quo until the issues raised by the State's Complaint can be heard and considered at hearing.

11. There is substantial likelihood that the State will prevail on its Complaint in this action, and the State does not have an adequate remedy at law to protect the interests of the State of Indiana and the LaGrange County Circuit Court.

12. The State of Indiana is a governmental organization and is not required to offer security pursuant to Rule 65(C) of the Indiana Rules of Trial Procedure.

13. The Court has set this matter for a hearing on the ____ day of July, 2011, at ____ a.m. / p.m.

WHEREFORE, the Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests that the Court: (1) issue an order enjoining the Defendant, Beverly S. Elliott, and her agents, representatives, successors, and assigns from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in the Defendant's possession or control pending disposition of the State's Complaint, and (2) grant the State all other just and proper relief.

I affirm under the penalties of perjury that the foregoing representations are true and correct to the best of my knowledge.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: _____
Luke P. Hodgkin
Deputy Attorney General
Attorney No. 27162-49

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was duly served upon the parties listed below by personal service (Elliott), and U.S. Mail, Certified (Auto-Owners), on this 12th day of July, 2011:

Beverly S. Elliott
2400 S 600W
Topeka, IN 46571

Auto-Owners Insurance Company
P.O. Box 421399
Indianapolis, IN 46242

Luke P. Hodgkin
Deputy Attorney General

Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204-2770
Telephone: (317) 232-6356
Facsimile: (317) 232-7979