

**DECISION**



95379  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

FILE: B-182983

30504  
DATE: February 4, 1975

MATTER OF: Argonaut Insurance Company

**DIGEST:**

Payment bond surety who paid claims for labor and material under contract when contractor was unable to pay debts has superior right to unpaid contract balance presently held by Government than contractor's assignee bank; however, to protect Government against subsequent claim from assignee, indemnification agreement should be obtained from surety prior to payment of contract balance.

The Federal Highway Administration (FHA), Department of Transportation has requested a decision as to whether the \$33,989.19 balance under contract No. DOT-FH8-2771 may be paid to the payment bond surety.

The contract was awarded to Wood Construction, Inc. (Wood), on July 12, 1972. The Argonaut Insurance Company (Argonaut), as surety, executed the required performance and payment bonds. On September 15, 1972, Wood assigned the contract proceeds to the Citizens Bank of Albuquerque, New Mexico. The contract was completed on November 7, 1973.

In February 1974, Wood notified Argonaut that it was in default on a number of contracts and was unable to pay certain obligations due on contracts already completed by the company including the above-referenced contract. Argonaut paid \$62,445.20 in labor and material claims to the creditors of Wood under the above contract and has now requested that the undisbursed contract proceeds be paid to it as surety of Wood. FHA has requested our opinion as to the propriety of the disbursement in view of the presence of the assignee bank. FHA provided the assignee an opportunity to comment on a proposed payment to the surety, but no reply was received.

A payment bond surety who has paid a contractor's obligations for labor and material has been held to have a superior right to the final contract payment than the contractor's assignee.

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Argonaut Insurance Company v. United States, 434 F.2d 1362  
(Ct. Cl. 1970) and Pearlman v. Reliance Ins. Co., 371 U.S. 132  
(1962). However, to protect the Government against a subsequent  
claim from the assignee, an indemnification agreement should be  
obtained from the surety prior to payment of the contract balance.  
B-162163, September 11, 1967.

  
Deputy Comptroller General  
of the United States