

1978 WL 35149 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1978

*1 Norman W. Stevenson, Esquire
Barnwell, Whaley, Stevenson & Patterson
120 Meeting Street
Charleston, South Carolina 29402

Dear Mr. Stevenson:

As trustee in liquidation for a broker-dealer in securities which has gone out of business, you have asked whether you may bring suit on several surety bonds of the broker and its agent. Such suits will be brought for the benefit of persons damaged by breach of the conditions of the bond. The question arises because the bond names the Securities Commissioner of the State of South Carolina as obligee for the use and benefit of any person damaged by any breach under the bond. After examining pertinent authorities, it is my opinion that the Securities Commissioner need not be a party plaintiff and that any person within the class set forth in the bond may bring suit. The basis for this conclusion is 72 CJS, Principal and Surety, § 264, which states that 'persons not expressly named as obligees in a bond may recover thereon where they are included within a class to which the right has been given by . . . an express provision in the instrument.' This result also follows the general rule in contract law that a third party beneficiary may maintain an action on a contract made between others for his benefit.

Please let me know if I may be of further assistance.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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