

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No. [PCO-036-0086]

D-60

06/08/2012 2:32 PM Page 1 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0086	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0085

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg
Subject: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc
 lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd
Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008 **Type:** User **User ID:** igfldn
Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/10/2008 **Type:** User **User ID:** igfldn
Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

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36	PCO-036-0086	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0085

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

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Claim No:[PCO-036-0086]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0086]

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Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0085

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

STYLE OF CASE: Town of Middleborough et al. v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Town of Middleborough et al.

CLAIM NUMBER: PCO-036-0085 and PCO-036-0086

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0086]

06/08/2012 2:32 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0086]

06/08/2012 2:32 PM

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36	PCO-036-0086	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0085

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0085 and PCO-036-0086.

This loss relates to suit in US District Court in NY, 06CV3741, filed by 6 plaintiffs, the lead being the Town of Middleborough. The Plaintiffs, either towns or cities, are public water providers, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc.. as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0086]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0087]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0087	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM PCO-036-0088

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc
 lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

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All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

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Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

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Arizona Property & Casualty Insurance Guaranty Fund

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Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM PCO-036-0088

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

e STYLE OF CASE: n Town of Wappinger v. Amerada Hess Corporation et al.

INSURED: Giant Industries

ACLAIMANT: o Town of Wappinger

k CLAIM NUMBER: PCO-036-0087 and PCO-036-0088

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0087]

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Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

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There are two files set up for this loss, one for each policy: PCO-036-0087 and PCO-036-0088.

This loss relates to suit in US District Court in NY, 04CV2388, filed by the Town of Wappinger (The Town). The Town is a municipal corporation, assigned with the preservation and distribution of groundwater to over 200 residents in NY. The Town filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Town is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

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OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: Policy Reas

User ID: igftlg

Subject: policyno Reassigned from {BOP 8816174} to {BOP8816174} by
policyno Reassigned from {BOP 8816174} to {BOP8816174} by {igftlg}

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim
Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0088]

D-62

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0088	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0087

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg
Subject: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc
 lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd
Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008 **Type:** User **User ID:** igfidn
Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/10/2008 **Type:** User **User ID:** igfidn
Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0088]

06/08/2012 2:32 PM

Page 2 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0088	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0087

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0088]

06/08/2012 2:32 PM

Page 2 of 7

Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0088]

06/08/2012 2:32 PM

Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0088	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0087

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

e STYLE OF CASE: n Town of Wappinger v. Amerada Hess Corporation et al.

INSURED: Giant Industries

ACLAIMANT: o Town of Wappinger

k CLAIM NUMBER: PCO-036-0087 and PCO-036-0088

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0088]

06/08/2012 2:32 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0088]

06/08/2012 2:32 PM

Page 4 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0088	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0087

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0087 and PCO-036-0088.

This loss relates to suit in US District Court in NY, 04CV2388, filed by the Town of Wappinger (The Town). The Town is a municipal corporation, assigned with the preservation and distribution of groundwater to over 200 residents in NY. The Town filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Town is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0088]

06/08/2012 2:32 PM

Page 4 of 7

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitive, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0089]

D-63

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0089	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009
DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0090

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc
lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc Reassigned from {10} to {1} lcfiloloc_sub Reassigned from {In House} to {} lcfiloloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

Subject: CLOSED FILE
CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0089]

06/08/2012 2:32 PM

Page 2 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/05/2009

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BAR DATE

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Type: User

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Omaha Indemnity
Fireman's Fund
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Assicurazioni Generali
The Fund

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0089]

06/08/2012 2:32 PM

Page 2 of 7

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Type: User

User ID: igfidn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0089]

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Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0089	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0090

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/12/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANO 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance
www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

- RE: Home Insurance Company, in Liquidation
- STYLE OF CASE: United Water Connecticut v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: United Water Connecticut
- CLAIM NUMBER: PCO-036-0089 and PCO-036-0090

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0089]

06/08/2012 2:32 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0089]

06/08/2012 2:32 PM						Page 4 of 7
<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0090

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Type: User

User ID: igjdd

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There are two files set up for this loss, one for each policy: PCO-036-0089 and PCO-036-0090.

This loss relates to suit in US District Court in NY, 04CV1721, filed by United Water Connecticut ("United"). United is a corporation who serves water to more that 25 CT residents and is deemed a water company per CT statutes and is assigned with the preservation and distribution of groundwater to residents in Connecticut. United has four wells, two in New Milford and two in Woodbury, all of which either been contaminated by MTBE or have MTBE near them. United filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Trespass, Fraud, Civil Conspiracy, Violation of the Toxic Substances Control Act, Fraud, Civil Conspiracy, Violation of the CT Unfair Trade Practices Act, Violation of the CT Products Liability Act, Damages - Unreasonable Pollution and Action - Unreasonable Pollution. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Town is requesting compensatory damages as well as punitive damages to be proven at trial.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather that utilize another party for safer oxygenators such as Ethanol, while

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0089]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

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FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0090]

D-64

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0090	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0089

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc
 lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008 **Type:** User **User ID:** igfldn

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 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

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 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0090]

06/08/2012 2:32 PM

Page 2 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0089

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0090]

06/08/2012 2:32 PM

Page 2 of 7

Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0090]

06/08/2012 2:32 PM

Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0090	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0089

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/12/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance
www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

- RE: Home Insurance Company, in Liquidation
- STYLE OF CASE: q United Water Connecticut v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: United Water Connecticut
- CLAIM NUMBER: PCO-036-0089 and PCO-036-0090

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0090]

06/08/2012 2:32 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0090]

06/08/2012 2:32 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0090	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0089

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0089 and PCO-036-0090.

This loss relates to suit in US District Court in NY, 04CV1721, filed by United Water Connecticut ("United"). United is a corporation who serves water to more that 25 CT residents and is deemed a water company per CT statutes and is assigned with the preservation and distribution of groundwater to residents in Connecticut. United has four wells, two in New Milford and two in Woodbury, all of which either been contaminated by MTBE or have MTBE near them. United filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Trespass, Fraud, Civil Conspiracy, Violation of the Toxic Substances Control Act, Fraud, Civil Conspiracy, Violation of the CT Unfair Trade Practices Act, Violation of the CT Products Liability Act, Damages - Unreasonable Pollution and Action - Unreasonable Pollution. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Town is requesting compensatory damages as well as punitive damages to be proven at trial.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0090]

06/08/2012 2:32 PM

Page 4 of 7

continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0091]

D-65

06/08/2012 2:33 PM Page 1 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0091	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0092

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftig

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftig}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008

Type: User

User ID: igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/10/2008

Type: User

User ID: igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0091]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0091	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0092

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

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USF&G
Assicurazioni Generali
The Fund

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0091]

06/08/2012 2:33 PM

Page 2 of 7

Date: 04/04/2008

Type: User

User ID: igfidn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0091]

06/08/2012 2:33 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0091	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0092

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/12/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

e STYLE OF CASE: n Village of Pawling v. Amerada Hess Corporation et al.

INSURED: Giant Industries

ACLAIMANT: o Village of Pawling

k CLAIM NUMBER: PCO-036-0091 and PCO-036-0092

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0091]

06/08/2012 2:33 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0091]

06/08/2012 2:33 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0091	BOP8816174	GIANT INDUSTRIES	OTHER	igjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0092

BAR DATE

Date: 03/12/2008

Type: User

User ID: igjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0091 and PCO-036-0092.

This loss relates to suit in US District Court in NY, 04CV2390, filed by the Village of Pawling ("The Village"). The Village is a municipal corporation, assigned with the preservation and distribution of groundwater to 605 residents in Pawling, NY. The Village filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Village is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0091]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
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Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No. [PCO-036-0092]

D-666

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0092	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0091

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008 **Type:** User **User ID:** igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/10/2008 **Type:** User **User ID:** igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0092]

06/08/2012 2:33 PM						Page 2 of 7
<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0092	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0091

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

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Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

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The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0092]

06/08/2012 2:33 PM

Page 2 of 7

Date: 04/04/2008

Type: User

User ID: igfidn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0092]

06/08/2012 2:33 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0092	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0091

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/12/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

e STYLE OF CASE: n Village of Pawling v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: o Village of Pawling

CLAIM NUMBER: PCO-036-0091 and PCO-036-0092

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0092]

06/08/2012 2:33 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0092]

06/08/2012 2:33 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0092	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0091

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0091 and PCO-036-0092.

This loss relates to suit in US District Court in NY, 04CV2390, filed by the Village of Pawling ("The Village"). The Village is a municipal corporation, assigned with the preservation and distribution of groundwater to 605 residents in Pawling, NY. The Village filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Village is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0092]

06/08/2012 2:33 PM

Page 4 of 7

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0093]

D-67

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0093	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg
Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc
 lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd
Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008 **Type:** User **User ID:** igfidn
Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/10/2008 **Type:** User **User ID:** igfidn
Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0093]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0093	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0093]

06/08/2012 2:33 PM

Page 2 of 7

Date: 04/04/2008.

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0093]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0093	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009
DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093

BAR DATE

Date: 03/12/2008 **Type:** User **User ID:** igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/12/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872
- JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS
- Governor Phoenix, Arizona 85007 Director of Insurance
- www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

- RE: Home Insurance Company, in Liquidation
- STYLE OF CASE: Water Authority of Great Neck North v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: Water Authority of Great Neck North
- CLAIM NUMBER: PCO-036-0093 and PCO-036-0094

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0093]

06/08/2012 2:33 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0093]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0093	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093

BAR DATE

Date: 03/12/2008 **Type:** User **User ID:** igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0093 and PCO-036-0094.

This loss relates to suit in US District Court in NY, 04CV1727, filed by the Water Authority of Great Neck North. However, the Complaint names the Plaintiff in the description as Sands Point and the Complaint reads the same as the Sands Point one (see Sands Point file notes). Obviously the Plaintiff description should be different, but the majority of these NY cases were filed by the same attorneys and allege the same things I.E. they supply water to NY residents and have filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, they are requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0093]

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Page 4 of 7

continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No. [PCO-036-0094]

D-68

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0094	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008

Type: User

User ID: igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/10/2008

Type: User

User ID: igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0094]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0094	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0094]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund**Notes - Claim and Loss**

Claim No:[PCO-036-0094]

06/08/2012 2:33 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0094	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093.

BAR DATE

Date: 03/12/2008**Type:** User**User ID:** igfjdd**Subject:** Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/12/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

 Governor Phoenix, Arizona 85007 Director of Insurance
www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

- RE: Home Insurance Company, in Liquidation
- STYLE OF CASE: Water Authority of Great Neck North v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: Water Authority of Great Neck North
- CLAIM NUMBER: PCO-036-0093 and PCO-036-0094

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0094]

06/08/2012 2:33 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0094]

06/08/2012 2:33 PM						Page 4 of 7
<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0094	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0093

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0093 and PCO-036-0094.

This loss relates to suit in US District Court in NY, 04CV1727, filed by the Water Authority of Great Neck North. However, the Complaint names the Plaintiff in the description as Sands Point and the Complaint reads the same as the Sands Point one (see Sands Point file notes). Obviously the Plaintiff description should be different, but the majority of these NY cases were filed by the same attorneys and allege the same things I.E. they supply water to NY residents and have filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, they are requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater; thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0094]

06/08/2012 2:33 PM

Page 4 of 7

continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0096]

D-69

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0096	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0097

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/10/2008

Type: User

User ID: igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/10/2008

Type: User

User ID: igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0096]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0096	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0097

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0096]

06/08/2012 2:34 PM

Page 2 of 7

Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0096]

06/08/2012 2:34 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0096	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0097

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/12/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

STYLE OF CASE: Water Authority of Western Nassau County v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Water Authority of Western Nassau County

CLAIM NUMBER: PCO-036-0096 and PCO-036-0097

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0096]

06/08/2012 2:34 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0096]

06/08/2012 2:34 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0096	BOP8816174	GIANT INDUSTRIES	OTHER	igjfd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0097

BAR DATE

Date: 03/12/2008

Type: User

User ID: igjfd

Subject: Reviewed new claim from the Home insolvency.

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There are two files set up for this loss, one for each policy: PCO-036-0096 and PCO-036-0097.

This loss relates to suit in US District Court in NY, 03CV9544, filed by the Water Authority of Western Nassau County ("The Authority"). The Authority is a public corporation, assigned with the preservation and distribution of groundwater to residents in the Towns of Hempstead, North Hempstead and Villages of Floral Park, South Floral Park, New Hyde Park, Steward Manor and Garden City in NY. The Authority filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Authority is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0096]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
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FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/11/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No: [PCO-036-0097]

D-70

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0097	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0096

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc
 lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

Subject: CLOSED FILE
 CLOSED FILE

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Date: 06/19/2008 **Type:** User **User ID:** igfldn

Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/11/2008 **Type:** User **User ID:** igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0097]

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DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0096

BAR DATE

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Type: User

User ID: igfjdd

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American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0097]

06/08/2012 2:34 PM

Page 2 of 7

Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0097]

06/08/2012 2:34 PM

Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0096

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/12/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

STYLE OF CASE: Water Authority of Western Nassau County v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Water Authority of Western Nassau County

CLAIM NUMBER: PCO-036-0096 and PCO-036-0097

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0097]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0097]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0097	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0096

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0096 and PCO-036-0097.

This loss relates to suit in US District Court in NY, 03CV9544, filed by the Water Authority of Western Nassau County ("The Authority"). The Authority is a public corporation, assigned with the preservation and distribution of groundwater to residents in the Towns of Hempstead, North Hempstead and Villages of Floral Park, South Floral Park, New Hyde Park, Steward Manor and Garden City in NY. The Authority filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Authority is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0097]

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continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/12/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No: [PCO-036-0098]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0098	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0099

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc
 lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc Reassigned from {10} to {1} lcfiloloc_sub Reassigned from {In House} to {} lcfiloloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008 **Type:** User **User ID:** igfldn

Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/11/2008 **Type:** User **User ID:** igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0098]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0098	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0099

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0098]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0098]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0098	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0099

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/12/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

STYLE OF CASE: Water-Sewer Utility of City of Vineland v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Water-Sewer Utility of City of Vineland

CLAIM NUMBER: PCO-036-0098 and PCO-036-0099

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0098]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0098]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0098	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0099

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0098 and PCO-036-0099.

This loss relates to suit in US District Court in NY, 05CV9070, filed by the City of Vineland Water-Sewer Utility (VWSU). The VWSU is a public water system under New Jersey law, assigned with the preservation and distribution of groundwater to residents in NJ. The VWSU filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the NJ Spill Compensation and Control Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the VWSU is requesting compensatory damages as well as punitive damages in an amount to be proven at trial.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0098]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/12/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim
Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0099]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0099	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0098

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008

Type: User

User ID: igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/11/2008

Type: User

User ID: igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0099]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/05/2009

DOL: 08/03/1982

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Date: 04/08/2008

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User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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USF&G
Assicurazioni Generali
The Fund

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0099]

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Date: 04/04/2008

Type: User

User ID: igfidn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0099]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0098

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

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There are two files set up for this loss, one for each policy: PCO-036-0098 and PCO-036-0099.

This loss relates to suit in US District Court in NY, 05CV9070, filed by the City of Vineland Water-Sewer Utility (VWSU). The VWSU is a public water system under New Jersey law, assigned with the preservation and distribution of groundwater to residents in NJ. The VWSU filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the NJ Spill Compensation and Control Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the VWSU is requesting compensatory damages as well as punitive damages in an amount to be proven at trial.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0099]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

1. Deny coverage for bar date. Send denial letter to:

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

TELEPHONE (915) 534-1400

2. Diary for 30 days.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0099]

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0099	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0098

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/12/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President
 Western Refining
 123 West Mills Avenue
 STE 200
 El Paso, TX 79901

- RE: Home Insurance Company, in Liquidation
- STYLE OF CASE: (Water-Sewer Utility of City of Vineland v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: Water-Sewer Utility of City of Vineland
- CLAIM NUMBER: e PCO-036-0098 and PCO-036-0099

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0099]

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Date: 03/12/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0100	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0101

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg
Subject: lcfilereloc_state Reassigned from {AZ} to {NY} lcfilereloc
lcfilereloc_state Reassigned from {AZ} to {NY} lcfilereloc Reassigned from {10} to {1} lcfilereloc_sub Reassigned from {In House} to {} lcfilereloc_date Reassigned from {03/03/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd
Subject: CLOSED FILE
CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008 **Type:** User **User ID:** igfidn
Subject: Adjuster & management notes will be maintained in master file
Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/11/2008 **Type:** User **User ID:** igfidn
Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0100]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0100	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0101

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint:

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0100]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0100]

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IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0100	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0101

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/12/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance
www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

- RE: Home Insurance Company, in Liquidation
- I STYLE OF CASE: n United Water New York v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: a United Water New York
- k CLAIM NUMBER: PCO-036-0100 and PCO-036-0101

Dear Mr. Chandler:

We are in receipt of your letter dated February 29, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 29, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0100]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0100]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0100	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0101

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home Insolvency.

Reviewed new claim from the Home Insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 3/3/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0100 and PCO-036-0101.

This loss relates to suit in US District Court in NY, 04CV2389, filed by United Water New York ("United"). United is a private corporation, assigned with the preservation and distribution of groundwater to over 256,000 residents in Rockland County, NY. United filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, United is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0100]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc....

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/12/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No: [PCO-036-0101]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0101	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0100

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg
Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc
 lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {03/03/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd
Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008 **Type:** User **User ID:** igfldn
Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/11/2008 **Type:** User **User ID:** igfldn
Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0101]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0101	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0100

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0101]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0101]

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IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0101	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0100

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/12/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 12, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

STYLE OF CASE: n United Water New York v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: a United Water New York

CLAIM NUMBER: PCO-036-0100 and PCO-036-0101

Dear Mr. Chandler:

We are in receipt of your letter dated February 29, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 29, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0101]

06/08/2012 2:35 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0101]

06/08/2012 2:35 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0101	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0100

BAR DATE

Date: 03/12/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 3/3/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0100 and PCO-036-0101.

This loss relates to suit in US District Court in NY, 04CV2389, filed by United Water New York ("United"). United is a private corporation, assigned with the preservation and distribution of groundwater to over 256,000 residents in Rockland County, NY. United filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, United is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0101]

06/08/2012 2:35 PM

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/12/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0102]

D-75

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0102	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0103

Date: 04/19/2011 **Type:** File Loc Che **User ID:** igftlg
Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc
 lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {03/03/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd
Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008 **Type:** User **User ID:** igfidn
Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/11/2008 **Type:** User **User ID:** igfidn
Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0102]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0102	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0103

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0102]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0102]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0102	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0103

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/14/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 14, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

i STYLE OF CASE: n State of New Hampshire v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: a State of New Hampshire

k CLAIM NUMBER: PCO-036-0102 and PCO-036-0103

Dear Mr. Chandler:

We are in receipt of your letter dated February 29, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 29, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0102]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0102]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0102	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0103

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 3/3/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0102 and PCO-036-0103.

This loss relates to suit in New Hampshire Superior Court, 03-C-550, filed by the State of New Hampshire ("The State"). The State filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Joint and Several Liability under RSA 146-A:14 and Deceptive Business Practices under RSA 358-A:2. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the State is requesting compensatory damages as well as punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0102]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/12/2008

Type: New Claim

User ID: igftig

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No [PCO-036-0103]

D-76

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0103	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0102

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {03/03/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008

Type: User

User ID: igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/11/2008

Type: User

User ID: igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund**Notes - Claim and Loss**

Claim No:[PCO-036-0103]

06/08/2012 2:36 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0103	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0102

BAR DATE

Date: 04/08/2008**Type:** User**User ID:** igfjdd**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0103]

06/08/2012 2:36 PM

Page 2 of 7

Date: 04/04/2008

Type: User

User ID: igfidn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0103]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0103	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0102

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/14/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 14, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

mSTYLE OF CASE: n State of New Hampshire v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: a State of New Hampshire

k CLAIM NUMBER: PCO-036-0102 and PCO-036-0103

Dear Mr. Chandler:

We are in receipt of your letter dated February 29, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 29, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0103]

06/08/2012 2:36 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0103]

06/08/2012 2:36 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0103	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0102

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

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There are two files set up for this loss, one for each policy: PCO-036-0102 and PCO-036-0103.

This loss relates to suit in New Hampshire Superior Court, 03-C-550, filed by the State of New Hampshire ("The State"). The State filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Joint and Several Liability under RSA 146-A:14 and Deceptive Business Practices under RSA 358-A:2. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the State is requesting compensatory damages as well as punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0103]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/12/2008

Type: New Claim

User ID: igftig

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No: [PCO-036-0104]

D-77

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0104	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0105

BAR DATE

Date: 04/19/2011

Type: File Loc Chg

User ID: igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {03/12/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008

Type: User

User ID: igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/14/2008

Type: User

User ID: igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0104]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0104	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0105

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0104]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0104]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0104	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0105

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/14/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 14, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

s STYLE OF CASE: Cty of Suffolk and Suffolk Cty Water Authority v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: County of Suffolk and Suffolk County Water Authority

k CLAIM NUMBER: PCO-036-0104 and PCO-036-0105

Dear Mr. Chandler:

We are in receipt of your letter dated March 11, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of March 11, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0104]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0104]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0104	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0105

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 3/12/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0104 and PCO-036-00105.

This loss relates to suit in US District Court in NY, 04CV5424, filed by the County of Suffolk and Suffolk County Water Association. The Plaintiffs are a municipal corporation and public benefit corporation respectively, assigned with the preservation and distribution of groundwater to over 1.1 million NY residents. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0104]

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Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/14/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No. [PCO-036-0105]

D-78

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0105	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0104

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc_sub Reassigned from {In House} to {} lcfileloc_date Reassigned from {03/12/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008 **Type:** User **User ID:** igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/14/2008 **Type:** User **User ID:** igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0105]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0105	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0104

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0105]

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Date: 04/04/2008

Type: User

User ID: igfldh

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0105]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0105	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0104

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/14/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 14, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

s STYLE OF CASE: City of Suffolk and Suffolk Cty Water Authority v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: County of Suffolk and Suffolk County Water Authority

k CLAIM NUMBER: PCO-036-0104 and PCO-036-0105

Dear Mr. Chandler:

We are in receipt of your letter dated March 11, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of March 11, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0105]

06/08/2012 2:36 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0105]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0105	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0104

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 3/12/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0104 and PCO-036-00105.

This loss relates to suit in US District Court in NY, 04CV5424, filed by the County of Suffolk and Suffolk County Water Association. The Plaintiffs are a municipal corporation and public benefit corporation respectively, assigned with the preservation and distribution of groundwater to over 1.1 million NY residents. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0105]

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Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/14/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim
Posted from Notice to Claim

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No. [PCO-036-0106]

D-79

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0106	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0107

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc

lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc Reassigned from {10} to {1} lcfiloloc_sub Reassigned from {In House} to {} lcfiloloc_date Reassigned from {03/12/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008

Type: User

User ID: igfldn

Subject: Adjuster & management notes will be maintained in master file

Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/14/2008

Type: User

User ID: igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,

Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0106]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0106	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0107

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

National Union (AIG)
Illinois National (AIG)
American Home (AIG)
American International Specialty (AIG)
Omaha Indemnity
Fireman's Fund
USF&G
Assicurazioni Generali
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0106]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0106]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0106	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0107

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/14/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 14, 2008

W. Brent Chandler - Vice President
 Western Refining
 123 West Mills Avenue
 STE 200
 El Paso, TX 79901

- RE: Home Insurance Company, in Liquidation
- STYLE OF CASE: t State of New Mexico v. Atlantic Richfield Company et al.
- INSURED: Giant Industries
- CLAIMANT: State of New Mexico
- CLAIM NUMBER: PCO-036-0106 and PCO-036-0107

Dear Mr. Chandler:

We are in receipt of your letter dated March 11, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of March 11, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0106]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0106]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0106	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0107

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 3/12/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0108 and PCO-036-0107.

This loss relates to suit in US District Court in NY, 06CV5496, filed by the State of New Mexico ("The State"). The State filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Industries and Giant Industries of Arizona, Inc., and is listed to be domiciled out of Scottsdale, AZ.

The Complaint lists causes of action to include: Statutory Public Nuisance, Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act and Civil Conspiracy. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the State is requesting compensatory damages as well as punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0106]

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/14/2008

Type: New Claim

User ID: igftig

Subject: Posted from Notice to Claim

Posted from Notice to Claim

D-80

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0107	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0106

BAR DATE

Date: 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg

Subject: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc
 lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {03/12/2008} to {03/23/2011} boxno Reassigned from {} to {3} by {igftlg}

Date: 06/05/2009 **Type:** User **User ID:** igfjdd

Subject: CLOSED FILE
 CLOSED FILE

All MTBE claims by Giant/Western have been dismissed as to the Fund and Receiver. All fee bills have been paid and no exposures remain. Closing file as planned.

Date: 06/19/2008 **Type:** User **User ID:** igfldn

Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

Date: 04/14/2008 **Type:** User **User ID:** igfldn

Subject: Reviewed claim on mgr's diary. Handled appropriately. Thanks,
 Reviewed claim on mgr's diary. Handled appropriately. Thanks, John.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0107]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0107	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0106

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

Western Refining f/k/a Giant Industries has filed a Complaint for Declaratory Relief, Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. The named defendants are:

- National Union (AIG)
- Illinois National (AIG)
- American Home (AIG)
- American International Specialty (AIG)
- Omaha Indemnity
- Fireman's Fund
- USF&G
- Assicurazioni Generali
- The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0107]

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Date: 04/04/2008

Type: User

User ID: igfldn

Subject: Rec'd Summons & Complaint filed against the Guaranty Fund itself

Rec'd Summons & Complaint filed against the Guaranty Fund itself by policyholder Giant Industries. It demands a defense from the Fund and from the other defendants, who are other insurers that provided coverage to the policyholder during the timeframe presented in the subject MTBE lawsuit. Complaint indicates multiple lawsuits for MTBE contamination filed by numerous plaintiffs, demands a defense from the insurers/Fund listed, and alleges bad faith specifically against other insurers AIG.

Assigned lawsuit to adjuster to defend based on bar date and the presence of other insurance, etc.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0107]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0107	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0106

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/14/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 14, 2008

W. Brent Chandler - Vice President
Western Refining
123 West Mills Avenue
STE 200
El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

mSTYLE OF CASE: t State of New Mexico v. Atlantic Richfield Company et al.

INSURED: Giant Industries

CLAIMANT: State of New Mexico

k CLAIM NUMBER: PCO-036-0106 and PCO-036-0107

Dear Mr. Chandler:

We are in receipt of your letter dated March 11, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of March 11, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0107]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0107]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0107	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0106

BAR DATE

Date: 03/14/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 3/12/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0108 and PCO-036-0107.

This loss relates to suit in US District Court in NY, 06CV5496, filed by the State of New Mexico ("The State"). The State filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Industries and Giant Industries of Arizona, Inc., and is listed to be domiciled out of Scottsdale, AZ.

The Complaint lists causes of action to include: Statutory Public Nuisance, Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act and Civil Conspiracy. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the State is requesting compensatory damages as well as punitive damages.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces.

It is further alleged that in addition to soil and groundwater contaminations from spills, either industrial or by the consumer, MTBE, when burned through an engine, evaporates and returns through rainwater, thus making containment almost impossible.

It is claimed that the defendants, as far back as 1980, created the American Petroleum Institute and were members of the Toxicology Committee created to review MTBE. Named defendants Exxon, Shell, Mobil, Arco, Tosco and Chevron were listed to have been on the API Committee. It is alleged that they shared information regarding MTBE and its propensity to contaminate groundwater. Despite said findings, the defendants continued to refute EPA studies as to the effects of MTBE and its possible hazards even though various internal memos warned of said dangers. The defendants were also aware of multiple spills outside of NY that resulted in groundwater contamination by MTBE.

It is further claimed that despite the dangers of MTBE, the defendants chose to use it as an oxygenator that they already had on hand from refining rather than utilize another party for safer oxygenators such as Ethanol, while continuing to claim that its utilization created cleaner burning fuel that was more environmentally friendly. Subsequent studies refute that MTBE in any way helped keep the air cleaner.

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Overall, the Complaint generally alleges that the defendants knowingly used a harmful additive to gasoline, rather than a safer alternative, to boost profits. In addition, while doing so, they went to great lengths to combat studies showing the potential hazards of MTBE while all along knowing the harm they could cause, thus deceiving the EPA and the general public.

COVERAGE: Giant Industries was insured by two Business Owner's policies with Home:

1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
2. BOP 8931246 (8/3/82-83)

Both are noted to have \$500,000 limits with a \$1,000 deductible to all claims. The copies of the policies and Dec pages that were forwarded by the Receiver include endorsement language such as Auto, Liquor, Accounts Receivable and Extended Business Liability but do not have the general liability coverage terms. It cannot be confirmed at this time if the Home policies would have afforded coverage for this loss. Areas of concern would be punitives, fraud, known hazard etc...

FUND COVERAGE: Loss was presented after the 6/13/04 bar date and is deemed late. As such, coverage will be denied.

OTHER INSURANCE: According to the schedule of insurers provided, the insured carried multiple primary and excess policies including GL, Excess Liability, Pollution Liability including certain policies for only pollution liability defense costs, Umbrella Liability and UST Pollution policies. There are very few policies that were issued by insolvent insurers such as Home and Reliance.

LIABILITY: Unknown at this time.

PENDS: Demand for coverage from Western Refining, successor to Giant Industries.

PLAN:

Date: 03/14/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

