



**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0027]

06/08/2012 2:21 PM

Page 33 of 89

---

**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.

---

**Date:** 04/03/2008

**Type:** User

**User ID:** igfldn

**Subject:** Reviewed claim on mgr's diary. Handled & denied appropriately

Reviewed claim on mgr's diary. Handled & denied appropriately for bar date. Thanks, John.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0027]

06/08/2012 2:21 PM

Page 34 of 89

<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-036-0027	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: Alleged MTBE Contamination - See X-claim #PCO-036-0028

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fundl 03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITAN On 1110 W. Washington, Suite 270e CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:i Home Insurance Company, in Liquidation

STYLE OF CASE:" Albertson Water District v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Albertson Water District

CLAIM NUMBER:h PCO-036-0027 and PCO-036-0028

Dear Mr. Chandler:

We are in receipt of your letter dated February 20, 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 20, 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-036-0027]

06/08/2012 2:21 PM

Page 34 of 89

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-036-0027]

06/08/2012 2:21 PM

Page 35 of 89

<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-036-0027	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** Alleged MTBE Contamination - See X-claim #PCO-036-0028

BAR DATE

**Date:** 03/05/2008

**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 2/22/08 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-036-0027 and PCO-036-0028.

This loss relates to suit in US District Court in NY, 07CV2406, filed by the Albertain Water District (AWD). The AWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 20,000 residents in NY. The AWD 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, 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 AWD is requesting \$480 million in compensatory damages as well as \$1.75 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 29% of the AWD's wells show traces of MTBE.

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-036-0027]

06/08/2012 2:21 PM

Page 35 of 89

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:

---

**Date:** 03/05/2008

**Type:** Claim No Ct

**User ID:** igftlg

**Subject:** Claimno Reassigned from {PCO-042-0001} to {PCO-036-0027} by  
Claimno Reassigned from {PCO-042-0001} to {PCO-036-0027} by {igftlg}

---

**Date:** 03/04/2008

**Type:** Claim No Ct

**User ID:** igftlg

**Subject:** Claimno Reassigned from {PCO-041-0001} to {PCO-042-0001} by  
Claimno Reassigned from {PCO-041-0001} to {PCO-042-0001} by {igftlg}

Arizona Property & Casualty Insurance Guaranty Fund

D-2

Notes - Claim and Loss

Claim No:[PCO-036-0028]

06/08/2012 2:22 PM

Page 5 of 8

<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-036-0028	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: Alleged MTBE Contamination - See X-Claim & master #PCO-036-0027

BAR DATE

Date: 03/04/2008

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-036-0028]

06/08/2012 2:22 PM

Page 4 of 8

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:** 03/05/2008

**Type:** Claim No Ct

**User ID:** igftlg

**Subject:** Claimno Reassigned from {PCO-042-0002} to {PCO-036-0028} by  
Claimno Reassigned from {PCO-042-0002} to {PCO-036-0028} by {igftlg}

---

**Date:** 03/04/2008

**Type:** Claim No Ct

**User ID:** igftlg

**Subject:** Claimno Reassigned from {PCO-041-0002} to {PCO-042-0002} by  
Claimno Reassigned from {PCO-041-0002} to {PCO-042-0002} by {igftlg}



# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0028]

06/08/2012 2:22 PM

Page 4 of 8

<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-036-0028	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: Alleged MTBE Contamination - See X-Claim & master #PCO-036-0027

BAR DATE

Date: 03/05/2008

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 2/22/08 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-036-0027 and PCO-036-0028.

This loss relates to suit in US District Court in NY, 07CV2406, filed by the Alberton Water District (AWD). The AWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 20,000 residents in NY. The AWD 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, 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 AWD is requesting \$480 million in compensatory damages as well as \$1.75 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 29% of the AWD's wells show traces of MTBE.

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-036-0028]

06/08/2012 2:22 PM

Page 3 of 8

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-036-0028]

06/08/2012 2:22 PM Page 3 of 8

<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-036-0028	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** Alleged MTBE Contamination - See X-Claim & master #PCO-036-0027

BAR DATE

**Date:** 03/07/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

[www.id.state.az.us](http://www.id.state.az.us)

March 7, 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: J Albertson Water District v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  Albertson Water District

CLAIM NUMBER:  PCO-036-0027 and PCO-036-0028

Dear Mr. Chandler:

We are in receipt of your letter dated February 20, 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 20, 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-036-0028]

06/08/2012 2:22 PM

Page 2 of 8

---

**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.

---

**Date:** 04/03/2008

**Type:** User

**User ID:** igfldn

**Subject:** Reviewed claim on mgr's diary. Handled & denied appropriately

Reviewed claim on mgr's diary. Handled & denied appropriately for bar date. Thanks, John.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0028]

06/08/2012 2:22 PM

Page 2 of 8

<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-036-0028	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** Alleged MTBE Contamination - See X-Claim & master #PCO-036-0027

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-036-0029]

D-3

06/08/2012 2:22 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-036-0029	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

**Close Dt:** 06/05/2009

**DOL:** 08/03/1980

**Claim Description:** Alleged MTBE Contamination - See X-Claim #PCO-036-0030, and master claim # PCO-036-0027

BAR DATE

**Date:** 04/18/2011 **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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfldn

**Subject:** All adjuster & manager notes can be found in master claim #  
 All adjuster & manager notes can be found in master claim # PCO-036-0027, unless specifically pertinent to this claim.

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0029]

06/08/2012 2:22 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-036-0029	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** Alleged MTBE Contamination - See X-Claim #PCO-036-0030, and master claim # PCO-036-0027

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-036-0029]

06/08/2012 2:22 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.

---

**Date:** 04/03/2008

**Type:** User

**User ID:** igfldn

**Subject:** Reviewed claim on mgr's diary. Handled & denied appropriately

Reviewed claim on mgr's diary. Handled & denied appropriately for bar date. Thanks, John.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0029]

06/08/2012 2:22 PM Page 3 of 7

IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0029	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: Alleged MTBE Contamination - See X-Claim #PCO-036-0030, and master claim # PCO-036-0027

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:x City of Glen Cove Water District v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT:n City of Glen Cove Water District

CLAIM NUMBER: PCO-036-0029 and PCO-036-0030

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0029]

06/08/2012 2:22 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-036-0029]

06/08/2012 2:22 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-036-0029	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** Alleged MTBE Contamination - See X-Claim #PCO-036-0030, and master claim # PCO-036-0027

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0029 and PCO-036-0030.

This loss relates to suit in US District Court in NY, 07CV2403, filed by the City of Glen Cove Water District (GCWD). The GCWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 47,000 residents in NY. The GCWD 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 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 GCWD is requesting \$480 million in compensatory damages as well as \$1.75 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-036-0029]

06/08/2012 2:22 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:** 03/05/2008

**Type:** Claim No Ct

**User ID:** igftlg

**Subject:** Claimno Reassigned from {PCO-042-0003} to {PCO-036-0029} by  
Claimno Reassigned from {PCO-042-0003} to {PCO-036-0029} by {igftlg}

---

**Date:** 03/04/2008

**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-036-0030}

D-4

06/08/2012 2:22 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-036-0030	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** Alleged MTBE contamination - See X-Claim #PCO-036-0029

BAR DATE

**Date:** 04/18/2011 **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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfidn

**Subject:** Adjuster & management notes can be found in master file

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0030]

06/08/2012 2:22 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-036-0030	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** Alleged MTBE contamination - See X-Claim #PCO-036-0029

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-036-0030]

06/08/2012 2:22 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.

---

**Date:** 04/03/2008

**Type:** User

**User ID:** igfldn

**Subject:** Reviewed claim on mgr's diary. Handled & denied appropriately

Reviewed claim on mgr's diary. Handled & denied appropriately for bar date. Thanks, John.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0030]

06/08/2012 2:22 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-036-0030	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: Alleged MTBE contamination - See X-Claim #PCO-036-0029

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITAN On 1110 W. Washington, Suite 270e CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:y City of Glen Cove Water District v. Amerada Hess Corporation et al.

INSURED: Giant Industries

RCLAIMANT:n City of Glen Cove Water District

CLAIM NUMBER: PCO-036-0029 and PCO-036-0030

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0030]

06/08/2012 2:22 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-036-0030]

06/08/2012 2:22 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-036-0030	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** Alleged MTBE contamination - See X-Claim #PCO-036-0029

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0029 and PCO-036-0030.

This loss relates to suit in US District Court in NY, 07CV2403, filed by the City of Glen Cove Water District (GCWD). The GCWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 47,000 residents in NY. The GCWD 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 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 GCWD is requesting \$480 million in compensatory damages as well as \$1.75 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-036-0030]

06/08/2012 2:22 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:** 03/05/2008

**Type:** Claim No Ct

**User ID:** igftlg

**Subject:** Claimno Reassigned from {PCO-042-0004} to {PCO-036-0030} by  
Claimno Reassigned from {PCO-042-0004} to {PCO-036-0030} by {igftlg}

---

**Date:** 03/04/2008

**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-036-0031]

D-5

06/08/2012 2:22 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-036-0031	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0032

BAR DATE

**Date:** 04/18/2011 **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 {} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfldn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008 **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-036-0031]

06/08/2012 2:22 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-036-0031	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0032

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-036-0031]

06/08/2012 2:22 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0031]

06/08/2012 2:22 PM

Page 3 of 7

IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0031	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0032

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

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 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:} City of Lowell v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT: City of Lowell

CLAIM NUMBER:  PCO-036-0031 and PCO-036-0032

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0031]

06/08/2012 2:22 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-036-0031]

06/08/2012 2:22 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-036-0031	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0032

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0031 and PCO-036-0032.

This loss relates to suit in US District Court in NY, 05V4018, filed by the City of Lowell ("The City"). The City is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in Massachusetts. The City 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, Civil Conspiracy and Violation of MA Oil and Hazardous Material Release Prevention Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the City is requesting compensatory damages and 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. 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-036-0031]

06/08/2012 2:22 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:** 03/05/2008

**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-036-0032]

06/08/2012 2:22 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-036-0032	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0031

BAR DATE

**Date:** 04/18/2011 **Type:** File Loc Cha **User ID:** igftlg

**Subject:** lcfileloc\_date Reassigned from {02/22/2008} to {03/23/2011} by lcfileloc\_date Reassigned from {02/22/2008} to {03/23/2011} by {igftlg}

**Date:** 04/18/2011 **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 {} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfldn

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

**Date:** 04/08/2008 **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-036-0032]

D-6

06/08/2012 2:22 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.

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

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

Claim No:[PCO-036-0032]

06/08/2012 2:22 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-036-0032	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0031

BAR DATE

**Date:** 03/07/2008**Type:** User**User ID:** igfjdd**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

 Insurance Guaranty Fund  03/07/08 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 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

 RE:wHome Insurance Company, in Liquidation STYLE OF CASE:b City of Lowell v. Amerada Hess Corporation et al. INSURED: Giant Industries CLAIMANT: City of Lowell CLAIM NUMBER: PCO-036-0031 and PCO-036-0032

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0032]

06/08/2012 2:22 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-036-0032]

06/08/2012 2:22 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-036-0032	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0031

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0031 and PCO-036-0032.

This loss relates to suit in US District Court in NY, 05V4018, filed by the City of Lowell ("The City"). The City is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in Massachusetts. The City 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, Civil Conspiracy and Violation of MA Oil and Hazardous Material Release Prevention Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the City is requesting compensatory damages and 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. 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-036-0032]

06/08/2012 2:22 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:** 03/05/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim



D-7

06/08/2012 2:23 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-036-0033	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0034

BAR DATE

**Date:** 04/18/2011 **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 {02/22/2008} to {03/26/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfldn  
**Subject:** Adjuster & management notes can be found in master file  
 Adjuster & management notes can be found in master file #PCO-036-0027, unless specifically pertinent to this claim.

**Date:** 04/08/2008 **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-036-0033]

06/08/2012 2:23 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-036-0033	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

**Close Dt:** 06/05/2009

**DOL:** 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0034

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 they 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-036-0033]

06/08/2012 2:23 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.

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0033]

06/08/2012 2:23 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-036-0033	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0034

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/07/08
- 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 7, 2008.

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

- RE:wHome Insurance Company, in Liquidation
- STYLE OF CASE:wCity of New York v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT:GCity of New York
- CLAIM NUMBER: PCO-036-0033 and PCO-036-0034

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0033]

06/08/2012 2:23 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-036-0033]

06/08/2012 2:23 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-036-0033	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0034

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0033 and PCO-036-0034.

This loss relates to suit in US District Court in NY, 04CV3417, filed by the City of New York (NYC). NYC is a municipal corporation, assigned with the preservation and distribution of groundwater to over 8 million residents in NY via the Department of Environmental Protection. NYC 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, Civil Conspiracy, 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, NYC is requesting \$300 million in compensatory damages as well as punitive damages to be determined 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. They claim that 1/4 of the 70 wells that make up the Jamaica, Queens aquifer have been exposed to MTBE.

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-036-0033]

06/08/2012 2:23 PM

Page 4 of 7

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:** 03/05/2008

**Type:** New Claim

**User ID:** igftg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0034]

06/08/2012 2:23 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-036-0034	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0033

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-036-0034]

06/08/2012 2:23 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0034]

06/08/2012 2:23 PM Page 3 of 7

IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0034	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0033

BAR DATE

Date: 03/07/2008 Type: User User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/07/08
- 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 7, 2008

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

- RE:wHome Insurance Company, in Liquidation
- STYLE OF CASE:wCity of New York v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT:GCity of New York
- CLAIM NUMBER: PCO-036-0033 and PCO-036-0034

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0034]

06/08/2012 2:23 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-036-0034]

06/08/2012 2:23 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-036-0034	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0033

BAR DATE

**Date:** 03/07/2008**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 2/22/08 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-036-0033 and PCO-036-0034.

This loss relates to suit in US District Court in NY, 04CV3417, filed by the City of New York (NYC). NYC is a municipal corporation, assigned with the preservation and distribution of groundwater to over 8 million residents in NY via the Department of Environmental Protection. NYC 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, Civil Conspiracy, 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, NYC is requesting \$300 million in compensatory damages as well as punitive damages to be determined 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. They claim that 1/4 of the 70 wells that make up the Jamaica, Queens aquifer have been exposed to MTBE.

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-036-0034]

06/08/2012 2:23 PM

Page 4 of 7

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:** 03/05/2008

**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-036-0035]

D-9

06/08/2012 2:23 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-036-0035	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

**Close Dt:** 06/03/2009

**DOL:** 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0036

BAR DATE

**Date:** 04/18/2011 **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 {} boxno Reassigned from {} to {1} by {igftlg}

**Date:** 06/03/2009 **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:** 06/05/2008 **Type:** User **User ID:** igfidn  
**Subject:** Adjuster & management notes can be found in master file  
Adjuster & management notes can be found in master file #PCO-036-0027, unless specifically pertinent to this claim.

**Date:** 04/08/2008 **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-036-0035]

06/08/2012 2:23 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-036-0035	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0036

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-036-0035]

06/08/2012 2:23 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0035]

06/08/2012 2:23 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-036-0035	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0036

BAR DATE

**Date:** 03/07/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOZ 1110 W. Washington, Suite 270, CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

[www.id.state.az.us](http://www.id.state.az.us)

March 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:b City of Inverness Water District v. Amerada Hess Corporation et al.

INSURED: Giant Industries

RCLAIMANT:n City of Inverness Water District

k CLAIM NUMBER: PCO-036-0035 and PCO-036-0036

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0035]

06/08/2012 2:23 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-036-0035]

06/08/2012 2:23 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-036-0035	BOP8816174	GIANT INDUSTRIES	OTHER	igjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0036

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0035 and PCO-036-0036.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the City of Inverness Water District (IWD). The IWD is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The IWD 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 and Trespass. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the IWD is requesting \$360 million in compensatory damages as well as \$1.25 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-036-0035]

06/08/2012 2:23 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:** 03/05/2008

**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-036-0036]

D-10

06/08/2012 2:23 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-036-0036	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0035

BAR DATE

**Date:** 04/18/2011 **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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} by {igftlg}

**Date:** 06/03/2009 **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:** 06/05/2008 **Type:** User **User ID:** igfldn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008 **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-036-0036]

06/08/2012 2:23 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-036-0036	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0035

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-036-0036]

06/08/2012 2:23 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

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

Claim No:[PCO-036-0036]

06/08/2012 2:23 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-036-0036	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0035

BAR DATE

**Date:** 03/07/2008**Type:** User**User ID:** igfjdd**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

 Insurance Guaranty Fund  03/07/08 Arizona Department of Insurance Telephone: (602) 364-3863 Facsimile: (602) 364-3872

JANET NAPOLITANOZ 1110 W. Washington, Suite 270, CHRISTINA URIAS

 Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

 RE:wHome Insurance Company, in Liquidation STYLE OF CASE:b City of Inverness Water District v. Amerada Hess Corporation et al. INSURED: Giant Industries RCLAIMANT:n City of Inverness Water District k CLAIM NUMBER: PCO-036-0035 and PCO-036-0036

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0036]

06/08/2012 2:23 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-036-0036]

06/08/2012 2:23 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-036-0036	BOP8931246	GIANT INDUSTRIES	OTHER	igfdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-FILE #PCO-036-0035

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfdd

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 2/22/08 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-036-0035 and PCO-036-0036.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the City of Inverness Water District (IWD). The IWD is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The IWD 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 and Trespass. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the IWD is requesting \$360 million in compensatory damages as well as \$1.25 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-036-0036]

06/08/2012 2:23 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:** 03/05/2008

**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-036-0037]]

D-11

06/08/2012 2:23 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-036-0037	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0038

BAR DATE

**Date:** 04/18/2011 **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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfldn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008 **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-036-0037]

06/08/2012 2:23 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-036-0037	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0038

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 they 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-036-0037]

06/08/2012 2:23 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0037]

06/08/2012 2:23 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-036-0037	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0038

BAR DATE

**Date:** 03/07/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

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 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:x City of Greenlawn Water District v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT:n City of Greenlawn Water District

CLAIM NUMBER: PCO-036-0037 and PCO-036-0038

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0037]

06/08/2012 2:23 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-036-0037]

06/08/2012 2:23 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-036-0037	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0038

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0037 and PCO-036-0038.

This loss relates to suit in US District Court in NY, 07CV2407, filed by the City of Greenlawn Water District (GWD). The GWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 47,000 residents in NY. The GWD 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 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 AWD is requesting \$480 million in compensatory damages as well as \$1.75 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-036-0037]

06/08/2012 2:23 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: 03/05/2008

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-036-0038]

D-12

06/08/2012 2:24 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-036-0038	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0037

BAR DATE

**Date:** 04/18/2011 **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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfidn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008 **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-036-0038]

06/08/2012 2:24 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-036-0038	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0037

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-036-0038]

06/08/2012 2:24 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0038]

06/08/2012 2:24 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-036-0038	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0037

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

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 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:x City of Greenlawn Water District v. Amerada Hess Corporation et al.

INSURED: Giant Industries

RCLAIMANT:n City of Greenlawn Water District

k CLAIM NUMBER: PCO-036-0037 and PCO-036-0038

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0038]

06/08/2012 2:24 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-036-0038]

06/08/2012 2:24 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-036-0038	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0037

BAR DATE

Date: 03/07/2008

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 2/22/08 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-036-0037 and PCO-036-0038.

This loss relates to suit in US District Court in NY, 07CV2407, filed by the City of Greenlawn Water District (GWD). The GWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 47,000 residents in NY. The GWD 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 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 AWD is requesting \$480 million in compensatory damages as well as \$1.75 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-036-0038]

06/08/2012 2:24 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:** 03/05/2008

**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-036-0039]

D-13

06/08/2012 2:24 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-036-0039	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

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

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0040  
BAR DATE

---

**Date:** 04/18/2011 **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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfldn

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

---

**Date:** 04/08/2008 **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-036-0039]

06/08/2012 2:24 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-036-0039	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0040

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-036-0039]

06/08/2012 2:24 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0039]

06/08/2012 2:24 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-036-0039	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed	

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0040

BAR DATE

**Date:** 03/07/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

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](http://www.id.state.az.us)

March 7, 2008

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

RE:wHome Insurance Company, in Liquidation

h STYLE OF CASE:x City of Crystal River v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT:a City of Crystal River

k CLAIM NUMBER: PCO-036-0039 and PCO-036-0040

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0039]

06/08/2012 2:24 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-036-0039]

06/08/2012 2:24 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-036-0039	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0040

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0039 and PCO-036-0040.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the City of Crystal River ("The City"). The City is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The City 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 and Negligence. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the City is requesting \$300 million in compensatory damages as well as \$1.25 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-036-0039]

06/08/2012 2:24 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:** 03/05/2008

**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-036-0040]

D-14

06/08/2012 2:24 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-036-0040	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0039

BAR DATE

**Date:** 04/18/2011

**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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008

**Type:** User

**User ID:** igfidn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008

**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-036-0040]

06/08/2012 2:24 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-036-0040	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0039

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-036-0040]

06/08/2012 2:24 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

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

Claim No:[PCO-036-0040]

06/08/2012 2:24 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-036-0040	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0039

BAR DATE

**Date:** 03/07/2008**Type:** User**User ID:** igfjdd**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

 Insurance Guaranty Fund  03/07/08 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 7, 2008

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

 RE:wHome Insurance Company, in Liquidation h STYLE OF CASE:x City of Crystal River v. Amerada Hess Corporation et al. INSURED: Giant Industries CLAIMANT:a City of Crystal River k CLAIM NUMBER: PCO-036-0039 and PCO-036-0040

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0040]

06/08/2012 2:24 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-036-0040]

06/08/2012 2:24 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-036-0040	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0039

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0039 and PCO-036-0040.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the City of Crystal River ("The City"). The City is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The City 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 and Negligence. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the City is requesting \$300 million in compensatory damages as well as \$1.25 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-036-0040]

06/08/2012 2:24 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:** 03/05/2008

**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-036-0041]

06/08/2012 2:24 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-036-0041	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0042

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-036-0041]

06/08/2012 2:24 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0041]

06/08/2012 2:24 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-036-0041	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

**Close Dt:** 06/05/2009

**DOL:** 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0042

BAR DATE

**Date:** 03/07/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

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](http://www.id.state.az.us)

March 7, 2008

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

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:  Buchanan County School Board v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  Buchanan County School Board

CLAIM NUMBER:  PCO-036-0041 and PCO-036-0042

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0041]

06/08/2012 2:24 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-036-0041]

06/08/2012 2:24 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-036-0041	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0042

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0041 and PCO-036-0042.

This loss relates to suit in US District Court in NY, 04CV3418, filed by the Buchanan County School Board ("The Board"). The Board is a government entity in the State of Virginia, whose duties include providing clean water to students and staff at its various schools. It is alleged that the water systems for J.M. Blevins Elementary School, Hurley Elementary - Middle School and Hurley High School are contaminated by MTBE. The Board 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 Failure to Warn, Negligence, Violation of Toxic Substances Control Act, Breach of Warranty, Trespass 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 Board is requesting \$210 million in compensatory damages as well as \$2.145 million 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-036-0041]

06/08/2012 2:24 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:** 03/05/2008

**Type:** New Claim

**User ID:** igfttg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim



**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No: [PCO-036-0042]

D-16

06/08/2012 2:24 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-036-0042	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0041

BAR DATE

**Date:** 04/18/2011

**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 {} boxno Reassigned from {} to {1} 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:** 06/05/2008

**Type:** User

**User ID:** igfidn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008

**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-036-0042]

06/08/2012 2:24 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-036-0042	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0041

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-036-0042]

06/08/2012 2:24 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0042]

06/08/2012 2:24 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-036-0042	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0041

BAR DATE

**Date:** 03/07/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

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](http://www.id.state.az.us)

March 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE: Buchanan County School Board v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Buchanan County School Board

CLAIM NUMBER: PCO-036-0041 and PCO-036-0042

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0042]

06/08/2012 2:24 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-036-0042]

06/08/2012 2:24 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-036-0042	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0041

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0041 and PCO-036-0042.

This loss relates to suit in US District Court in NY, 04CV3418, filed by the Buchanan County School Board ("The Board"). The Board is a government entity in the State of Virginia, whose duties include providing clean water to students and staff at its various schools. It is alleged that the water systems for J.M. Blevins Elementary School, Hurley Elementary - Middle School and Hurley High School are contaminated by MTBE. The Board 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 Failure to Warn, Negligence, Violation of Toxic Substances Control Act, Breach of Warranty, Trespass 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 Board is requesting \$210 million in compensatory damages as well as \$2.145 million 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-036-0042]

06/08/2012 2:24 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:** 03/05/2008

**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-036-0043]

06/08/2012 2:25 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-036-0043	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0044

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-036-0043]

06/08/2012 2:25 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0043]

06/08/2012 2:25 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-036-0043	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0044

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOZ 1110 W. Washington, Suite 270, CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 7, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:  American Distilling and Mfg. v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  American Distilling and Mfg.

CLAIM NUMBER:  PCO-036-0043 and  PCO-036-0044

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0043]

06/08/2012 2:25 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-036-0043]

Page 4 of 7

06/08/2012 2:25 PM

<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-036-0043	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0044

BAR DATE

Date: 03/07/2008

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 2/22/08 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-036-0043 and PCO-036-0044.

This loss relates to suit in US District Court in NY, 04CV1719, filed by American Distilling and Manufacturing(AD&M). AD&M is a Connecticut corporation, responsible for distribution of groundwater to residents in CT. They note to have two underground wells where MTBE has been detected in or near. They established and are using a filtering system. AD&M 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, Fraud, Civil Trespass, Civil Conspiracy, Unreasonable Pollution, Violation of Toxic Substance Contamination Act and Violation of CT Unfair Trade Practices Act. They are seeking to have the defendants assume the expense and duty of filtering the water and install early warning MTBE detectors at the water tables. In addition, they request compensatory damages and punitive damages as 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. 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-036-0043]

06/08/2012 2:25 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:** 03/05/2008

**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-036-0044]

D-18

06/08/2012 2:25 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-036-0044	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0043

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 {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} 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:** 06/05/2008 **Type:** User **User ID:** igfidn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008 **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-036-0044]

06/08/2012 2:25 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-036-0044	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0043

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-036-0044]

06/08/2012 2:25 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0044]

06/08/2012 2:25 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-036-0044	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0043

BAR DATE

**Date:** 03/07/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOZ 1110 W. Washington, Suite 270, CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

[www.id.state.az.us](http://www.id.state.az.us)

March 7, 2008

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

RE:wHome Insurance Company, in Liquidation

STYLE OF CASE:  American Distilling and Mfg. v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  American Distilling and Mfg.

CLAIM NUMBER:  PCO-036-0043 and  PCO-036-0044

Dear Mr. Chandler:

We are in receipt of your letter dated February 21, 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 21, 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-036-0044]

06/08/2012 2:25 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-036-0044]

06/08/2012 2:25 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-036-0044	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0043

BAR DATE

**Date:** 03/07/2008

**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 2/22/08 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-036-0043 and PCO-036-0044.

This loss relates to suit in US District Court in NY, 04CV1719, filed by American Distilling and Manufacturing(AD&M). AD&M is a Connecticut corporation, responsible for distribution of groundwater to residents in CT. They note to have two underground wells where MTBE has been detected in or near. They established and are using a filtering system. AD&M 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, Fraud, Civil Trespass, Civil Conspiracy, Unreasonable Pollution, Violation of Toxic Substance Contamination Act and Violation of CT Unfair Trade Practices Act. They are seeking to have the defendants assume the expense and duty of filtering the water and install early warning MTBE detectors at the water tables. In addition, they request compensatory damages and punitive damages as 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. 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-036-0044]

06/08/2012 2:25 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:** 03/05/2008

**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-036-0045]

06/08/2012 2:25 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-036-0045	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0046

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-036-0045]

06/08/2012 2:25 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0045]

06/08/2012 2:25 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-036-0045	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0046

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/10/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOZ 1110 W. Washington, Suite 270, CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

[www.id.state.az.us](http://www.id.state.az.us)

March 10, 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:  Homosassa Water District v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  Homosassa Water District

CLAIM NUMBER:  PCO-036-0045 and PCO-036-0046

Dear Mr. Chandler:

We are in receipt of your letter dated February 22, 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 22, 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-036-0045]

06/08/2012 2:25 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-036-0045]

06/08/2012 2:25 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-036-0045	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0046

BAR DATE

**Date:** 03/10/2008

**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 2/25/08 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-036-0045 and PCO-036-0046.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the Homosassa Water District (HWD). The HWD is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The HWD 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 and Trespass. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the HWD is requesting \$360 million in compensatory damages as well as \$1.25 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-036-0045]

06/08/2012 2:25 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:** 03/05/2008

**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-036-0046]

D-20

06/08/2012 2:25 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-036-0046	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0045

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 {02/25/2008} to {03/23/2011} boxno Reassigned from {} to {1} by {igftlg}

**Date:** 06/03/2009

**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:** 06/05/2008

**Type:** User

**User ID:** igfldn

**Subject:** Adjuster & management notes can be found in master file

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

**Date:** 04/08/2008

**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-036-0046]

06/08/2012 2:25 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-036-0046	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0045

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-036-0046]

06/08/2012 2:25 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.

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed file on diary. Claim presented after the bar date and

Reviewed file on diary. Claim presented after the bar date and has been denied. No response to denial. I will pend file for 90 days and close if no response.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0046]

06/08/2012 2:25 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-036-0046	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0045

BAR DATE

Date: 03/10/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/10/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOZ 1110 W. Washington, Suite 270, CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 10, 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 Homosassa Water District v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  Homosassa Water District

CLAIM NUMBER:  PCO-036-0045 and PCO-036-0046

Dear Mr. Chandler:

We are in receipt of your letter dated February 22, 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 22, 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-036-0046]

06/08/2012 2:25 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-036-0046]

06/08/2012 2:25 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-036-0046	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0045

BAR DATE

**Date:** 03/10/2008

**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 2/25/08 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-036-0045 and PCO-036-0046.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the Homosassa Water District (HWD). The HWD is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The HWD 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 and Trespass. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the HWD is requesting \$360 million in compensatory damages as well as \$1.25 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-036-0046]

06/08/2012 2:25 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:** 03/05/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim

