

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 2011-HICIL-50
2011-HICIL-51
Proof of Claim Number: GOVT18901-11
GOVT18901-12
Claimant Name: Arizona Property and Casualty
Insurance Guaranty Fund

AFFIDAVIT OF JOHN DRAFTZ ON BEHALF OF CLAIMANT
ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND

State of Arizona)
) ss.
County of Maricopa)

1. I am over the age of 18 and I am a resident of Arizona. I am Claims Manager for the Arizona Property and Casualty Insurance Guaranty Fund (the "Fund"), claimant in the above-captioned matter. The following is based on my personal knowledge and the business records of the Fund.

2. I submit this affidavit in support of the Fund's claims and in response to the assertion by the Liquidator ("Liquidator") of The Home Insurance Company ("Home") in this matter that the Fund did not conduct any "individualized coverage analysis" with respect to claims made by Giant Industries, Inc. ("Giant") against the Fund for coverage, under two insurance policies issued by Home (the "Home policies"), with respect to forty lawsuits that had been brought against Giant in which Giant was alleged to have caused MTBE pollution at various sites throughout the United States (the "Giant Claims").

3. I was the Fund's Senior Claims Adjuster responsible for the Giant Claims. As set forth in paragraph 9 of the Affidavit of Michael E. Surgine sworn to July 24, 2012 that has been submitted in the above-captioned matter, over the course of several weeks from February 21, 2008 to March 14, 2008, I reviewed the allegations of each of the Giant Claims as they were submitted by Giant to the Fund. I also analyzed those portions of the Home policies, declaration pages and other insurance information that Home had provided to the Fund at that time to determine whether the Home policies may provide coverage for any of the Giant Claims. During that time period I devoted time and effort in reviewing the policy information that was then available and in considering policy defenses on an individualized basis as to each of the Giant Claims.

4. During that time period I preliminarily concluded both (a) that the Fund appeared to have no statutory obligation because each of the Giant Claims had been presented after the bar date established by the Home Liquidation Order, and (b) that based on the policy information that Home had given to the Fund, the Fund may also not have any coverage obligation under the Home Policies to the extent that the Giant claims sought punitive damages, alleged fraud, or alleged knowledge by Giant of the MBTE hazard before inception of the Home Policies, among other things. I also preliminarily concluded that the Fund may not have any statutory obligation under the Home Policies because, according to the schedule of other insurers for Giant that Home had provided to the Fund, the insured had other primary and excess policies including policies for general liability, excess liability, pollution liability (including pollution liability defense costs), umbrella liability, and underground storage tank pollution, and the Arizona statute governing the Fund required exhaustion of other insurance.

5. As a consequence of my review of the allegations of the Giant Claims and the information then available regarding the Home Policies, I sent separate letters to the insured with respect to each of the Giant Claims. In those letters, dated March 5, 7, 10, 11, 12 and 14, 2008, I informed the insured both that the Fund was denying coverage based on the bar date established by the Home Liquidation Order and that the Fund was reserving "all statutory and/or policy defenses it may have in connection with [the Giant Claims, whether stated or not in this letter." The text of each letter is set forth in the file notes for each of the Giant Claims.

6. Attached hereto as Exhibits 1 through 80, are true and accurate copies of the portions of my notes that appear in the Fund's files for each of the Giant Claims and that refer to my analysis of the allegations of the Giant Claims and coverage issues and defenses with respect to those claims. These files accurately reflect my review of the Giant Claims. These files are prepared and kept in the regular course of business of the Fund. These file notes show, contrary to the Liquidator's assertion in this matter, that I reviewed the allegations of each of the Giant complaints and that, in addition to noting the time bar defense, I referenced with respect to each of the Giant Claims the various other defenses to general liability coverage which could be implicated by the complaint, including but not limited to time bar, other insurance, "punitives, fraud, known hazard, etc."

7. Although the file notes describing my work on the files are similar in some respect for each of the Giant Claims, the file notes differ based on the varying allegations in the lawsuits concerning the plaintiffs involved, the causes of action asserted, and the type and amount of relief requested. The following are some examples of differences in the file notes based on particular claims:

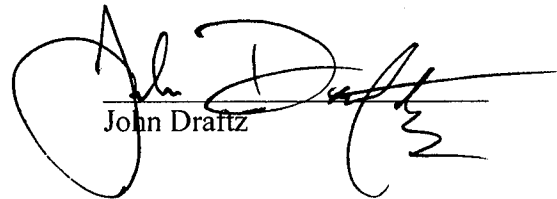
- a. In the notes for Claim No.PCO-036-0029 relating to the City of Glen Cove Water District lawsuit , I identified the specific plaintiff involved, the causes of action ("Public Nuisance, Private Nuisance, **Strict Liability for Design Defect**, **Strict Liability for Failure to Warn**, Negligence, Trespass, **Violation of NY Business Law and Violation of NY Navigation Law**"), and the relief requested (\$480

million in compensatory damages as well as \$1.75 billion in punitive damages). *See Exhibit 3* (emphasis supplied).

- b. In the notes for Claim PCO-036-0041 relating to the Buchanan County School District lawsuit, I identified the specific plaintiff involved, the causes of action (“Public Nuisance, Private Nuisance, Strict Liability for Failure to Warn, Negligence, **Violation of Toxic Substances Control Act, Breach of Warranty, Trespass and Civil Conspiracy**”), and the relief requested (\$210 million in compensatory damages and 2.145 million in punitive damages). *See Exhibit 15* (emphasis supplied).
- c. In the notes for Claim PCO-036-0043 relating to the American Distilling and Manufacturing (“AD&M”) lawsuit, I identified the specific plaintiff involved (“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 nor near. They established and are using a filtering system”), the causes of action (“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**”), and the relief requested (“compensatory damages and punitive damages as proven at trial”). *See Exhibit 17* (emphasis supplied).
- d. In the notes for Claim PCO-036-0061 relating to the New Jersey Department of Environmental Protection (“DEP”) lawsuit, I identified the specific plaintiff involved, the causes of action (“Public Nuisance, Strict Liability for Design Defect, **Strict Liability for Violation of New Jersey Spill Compensation and Control Act (“NJSA”)**, Negligence, Trespass, and **Joint and Several Liability for Violation of the NJSA** based on allegations that “15% of all NJ water supplies have been contaminated, 93% of all wells in the Cranberry Lake area, 43% of the wells in the Highlands area and 29% of wells in the Piedmont area”), and the relief requested (“compensatory damages as well as punitive damages to be determined at trial”). *See Exhibit 35* (emphasis supplied).
- e. In the notes for Claim PCO-036-0071 relating to the Town of East Hampton CT lawsuit, I identified the specific plaintiff involved, the causes of action (“Public Nuisance, Private Nuisance, Trespass, Violation of the CT Unfair Trade Practices Act, Violation of the Toxic Substances Control Act, Fraud, Civil Conspiracy, **Violation of the CT Products Liability Act, Damages—Unreasonable Pollution and Action—Unreasonable Pollution**” based on alleged contamination of two wells controlled by the Town, one of which was within 2,000 feet of a leaking underground storage tank and the other which was within one mile of property where there have been four gasoline spills), and the relief requested (compensatory damages and punitive damages to be proven at trial). *See Exhibit 45* (emphasis supplied).

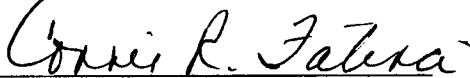
f. In the notes for Claim PCO-036-0102 relating to the State of New Hampshire lawsuit, I identified the specific plaintiff involved, the causes of action ("Public Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Joint and **Several Liability under RSA 146-A:14** and **Deceptive Business Practices under RSA 358-A:2**), and the relief requested ("compensatory damages as well as punitive damages"). See Exhibit 75 (emphasis supplied).

8. As reflected in my file notes set forth in Exhibits 1 through 80, I conducted individualized review and coverage analysis of the Giant Claims after they were submitted to the Fund and before the Fund issued its letters with respect to the Giant Claims on March 5, 7, 10, 11, 12 and 14, 2008. That review and coverage analysis was in addition to the review and analysis that I later conducted, with assistance of the Fund's coverage counsel Ryan Talamante, in April and May 2008 after the Giant coverage action had been brought and after the Fund had received from the Liquidator additional information regarding the Home Policies, as referenced in Exhibit 35 to the Liquidator's Sur-Reply Brief. Consequently, the Liquidator's conclusions stated at page 4 of his Sur-Reply Brief that it appears that the time that I spent on coverage issues for the Giant Claims was "less than 3 ½ hours (between 11:39 and 3:04 on April 29, 2008" and that I addressed them "only at a high level for all of the matters combined" are not correct.


John Draftz

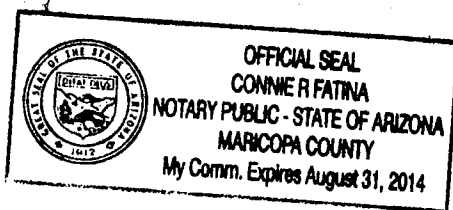
Subscribed and sworn to before me,

this 12TH day of October, 2012.



Notary Public

My commission expires: 8-31, 20 14.



Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0027]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0027	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: 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-036-0027]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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]

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IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
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 Fund 03/07/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO 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]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0027]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0027	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 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-036-0027]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

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

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

Notes - Claim and Loss

Claim No:[PCO-036-0027]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0027	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: 03/04/2008

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0028	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]

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

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

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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0028	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.

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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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0028	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 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:, 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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/03/2009

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-036-0028]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0028	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: 04/18/2011 **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 {2} 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: 06/03/2009 **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: All adjuster & mgmt notes will be found in master file

All adjuster & mgmt notes will 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-036-0029]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0029	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:

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0029]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0029	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

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-036-0029]

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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0029	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]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

Type: Claim No Cf

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]

06/08/2012 2:22 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0030	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.

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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

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Type: User

User ID: igfldn

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Type: User

User ID: igfjdd

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

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0030]

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

DOL: 08/03/1982

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

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

INSURED: Giant Industries

RECLAIMANT:n City of Glen Cove Water District

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

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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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0030	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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

Type: Claim No Cr

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]

06/08/2012 2:22 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0031	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: 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-036-0031]

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-036-0031	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

F CLAIMANT: City of Lowell

k 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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0031	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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0032	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 Che

User ID: igftlg

Subject: lcfiloloc_date Reassigned from {02/22/2008} to {03/23/2011} by lcfiloloc_date Reassigned from {02/22/2008} to {03/23/2011} by {igftlg}

Date: 04/18/2011

Type: File Loc Che

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: 06/05/2009

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]

06/08/2012 2:22 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0032	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: 04/08/2008

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-036-0032]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0032	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 NAPOLITANO e 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

FCLAIMANT: City of Lowell

k 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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0032]

06/08/2012 2:22 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0032]

06/08/2012 2:22 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0032	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]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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-036-0033]

06/08/2012 2:23 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0033	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: 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-036-0033]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0033	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 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-036-0033]

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0033	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]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0033]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0033	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]

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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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-036-0034]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0034	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: 04/18/2011 **Type:** File Loc Cha **User ID:** igftlg

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/22/2008} to {03/21/2011} 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-036-0034]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0034	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]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0034	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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0034	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]

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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0035	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: 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: 06/03/2009 **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-036-0035]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0035	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]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0035	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

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]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0035]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0035	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: 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]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0036	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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0036	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]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0036]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0036	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: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

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There are two files set up for this loss, one for each policy: PCO-036-0035 and PCO-036-0036.

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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.

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

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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]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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]

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 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-036-0037]

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

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-036-0037]

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

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

DOL: 08/03/1980

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]

06/08/2012 2:24 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0038	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: 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,

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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>
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Close Dt: 06/05/2009

DOL: 08/03/1982

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

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User ID: igfjdd

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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.

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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

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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

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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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0038	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

RECLAIMANT: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.

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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

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

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06/08/2012 2:24 PM

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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]

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/22/2008} 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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0039	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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0039	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

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

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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]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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]

06/08/2012 2:24 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0040	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: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/22/2008} to {03/23/2011} boxno Reassigned from {} to {1} by {igftlg}

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Arizona Property & Casualty Insurance Guaranty Fund

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06/08/2012 2:24 PM

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Arizona Property & Casualty Insurance Guaranty Fund

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0040]

06/08/2012 2:24 PM

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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

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0040]

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Page 3 of 7

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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

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DOL: 08/03/1982

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User ID: igfjdd

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0040]

06/08/2012 2:24 PM

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0041	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: 04/18/2011 **Type:** File Loc Cha **User ID:** igftlg
Subject: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc
lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/22/2008} 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-036-0041]

06/08/2012 2:24 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0041	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

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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0041	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: 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-036-0042]

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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 Che

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: 06/05/2009

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

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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

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DOL: 08/03/1982

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User ID: igfjdd

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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

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Type: User

User ID: igfldn

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

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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

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0042]

06/08/2012 2:24 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0042	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

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.

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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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0042	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.

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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.

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0042]

06/08/2012 2:24 PM

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0043	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: 04/19/2011 Type: File Loc Cha User ID: igftlg

Subject: lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc

lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc Reassigned from {10} to {1} lcfiloloc_sub Reassigned from {In House} to {} lcfiloloc_date Reassigned from {02/22/2008} 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-036-0043]

06/08/2012 2:25 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0043	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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0043	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]

06/08/2012 2:25 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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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]

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Page 4 of 7

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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0044	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: lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/22/2008} 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-036-0044]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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User ID: igfjdd

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0044]

06/08/2012 2:25 PM

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

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0044]

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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

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

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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

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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

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Close Dt: 06/05/2009

DOL: 08/03/1982

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0044]

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2. BOP 8931246 (8/3/82-83)

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/05/2008

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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0045	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: 04/19/2011

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_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-036-0045]

06/08/2012 2:25 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0045	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

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	igjdd	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: 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 2/25/08 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]

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/25/2008} 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]

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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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0046	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: 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

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0046	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]

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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-036-0047]

06/08/2012 2:25 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0047	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0048

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 {02/02/2008} 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-036-0047]

06/08/2012 2:25 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0047	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0048

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-036-0047]

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-036-0047]

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-036-0047	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0048

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: Incorporated Village of Sands Point v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: Incorporated Village of Sands Point
- CLAIM NUMBER: PCO-036-0047 and PCO-036-0048

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-036-0047]

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-036-0047]

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-036-0047	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0048

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-036-0047 and PCO-036-0048.

This loss relates to suit in US District Court in NY, 04CV3416, filed by the Incorporated Village of Sands Point (IVSP). The IVSP is a municipal corporation, assigned with the preservation and distribution of groundwater to over 2,800 residents in Nassau County, NY. The IVSP filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0047]

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: 03/06/2008

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-036-0048]

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-036-0048	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0047

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-036-0048]

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-036-0048	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0047

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-036-0048]

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

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

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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-036-0048]

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-036-0048	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0047

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: Incorporated Village of Sands Point v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Incorporated Village of Sands Point

CLAIM NUMBER: PCO-036-0047 and PCO-036-0048

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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0048]

06/08/2012 2:25 PM

Page 3 of 7

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Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0048]

06/08/2012 2:25 PM

Page 4 of 7

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DOL: 08/03/1982

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BAR DATE

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Type: User

User ID: igfjdd

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0048]

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:

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0049]

06/08/2012 2:26 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-036-0049	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0050

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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0049]

06/08/2012 2:26 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-036-0049]

06/08/2012 2:26 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-036-0049	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0050

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: Z Hicksville Water District v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: t Hicksville Water District
- CLAIM NUMBER: PCO-036-0049 and PCO-036-0050

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-036-0049]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0049]

06/08/2012 2:26 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0049	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0050

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-036-0049 and PCO-036-0050.

This loss relates to suit in US District Court in NY, 04CV5421, filed by the Hicksville Square Water District (HWD). The HWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 17,000 residents in Long Island, NY. 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, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the HWD is requesting \$480 million in compensatory damages as well as \$2 billion in punitive damages.

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0049]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0050]

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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-036-0050	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0049

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 {2} 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-036-0050]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0050	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0049

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-036-0050]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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-036-0050]

06/08/2012 2:26 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
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Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0049

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
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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0050]

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Page 3 of 7

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Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

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06/08/2012 2:26 PM

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0050]

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LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0051]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0051	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0052

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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0051]

06/08/2012 2:26 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-036-0051]

06/08/2012 2:26 PM Page 3 of 7

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36	PCO-036-0051	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0052

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: o Franklin Square Water District v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: f Franklin Square Water District
- CLAIM NUMBER: PCO-036-0051 and PCO-036-0052

Dear Mr. Chandler:

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Notes - Claim and Loss

Claim No:[PCO-036-0051]

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Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0051]

06/08/2012 2:26 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0051	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0052

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-036-0051 and PCO-036-0052.

This loss relates to suit in US District Court in NY, 04CV5423, filed by the Franklin Square Water District (FSWD). The FSWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 17,000 residents in Long Island, NY. The FSWD filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0051]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0052]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0052	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0051

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 {2} by {igftlg}		
Date: 06/05/2009	Type: User	User ID: igfjdd
Subject: .		
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 will be maintained in master file Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.		
Date: 04/08/2008	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-036-0052]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0052	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0051

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-036-0052]

06/08/2012 2:26 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-036-0052]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0052	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0051

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 NAPOLITANO e 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
- ESTYLE OF CASE: o Franklin Square Water District v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- YCLAIMANT: f Franklin Square Water District
- k CLAIM NUMBER: PCO-036-0051 and PCO-036-0052

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-036-0052]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0052]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0052	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0051

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-036-0051 and PCO-036-0052.

This loss relates to suit in US District Court in NY, 04CV5423, filed by the Franklin Square Water District (FSWD). The FSWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 17,000 residents in Long Island, NY. The FSWD filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0052]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0053]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0053	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0054

BAR DATE

Date: 04/19/2011	Type: File Loc Cha	User ID: igftlg
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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 {2} by {igftlg}

Date: 06/05/2009	Type: User	User ID: igfjdd
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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
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Subject: Adjuster & management notes will be maintained in master file

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

Date: 04/08/2008	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-036-0053]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0053	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0054

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

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Illinois National (AIG)
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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-036-0053]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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-036-0053]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0053	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0054

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: Home Insurance Company, in Liquidation

STYLE OF CASE: q The County of Nassau v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: The County of Nassau

CLAIM NUMBER: PCO-036-0053 and PCO-036-0054

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-036-0053]

06/08/2012 2:26 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0053]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0053	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0054

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-036-0053 and PCO-036-0054.

This loss relates to suit in US District Court in NY, 03CV9543, filed by the County of Nassau ("The County"). The County is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in NY. The County filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0053]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0054]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0054	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0053

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc

lcfiloloc_state Reassigned from {AZ} to {NY} lcfiloloc Reassigned from {10} to {1} lcfiloloc_sub Reassigned from {In House} to {} lcfiloloc_date Reassigned from {02/25/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

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

Date: 06/05/2008

Type: User

User ID: igfldn

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

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

Date: 04/08/2008

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-036-0054]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0054	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0053

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-036-0054]

06/08/2012 2:26 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-036-0054]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0054	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0053

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 e 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: Home Insurance Company, in Liquidation

STYLE OF CASE: q The County of Nassau v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: The County of Nassau

CLAIM NUMBER: PCO-036-0053 and PCO-036-0054

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-036-0054]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0054]

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0054]

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LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0055]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0055	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0056

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)
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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.

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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-036-0055]

06/08/2012 2:27 PM

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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-036-0055]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0055	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0056

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 e 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: Home Insurance Company, in Liquidation

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

INSURED: Giant Industries

CLAIMANT: I City of Tampa Bay Water District

CLAIM NUMBER: PCO-036-0055 and PCO-036-0056

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-036-0055]

06/08/2012 2:27 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0055]

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36	PCO-036-0055	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0056

BAR DATE

Date: 03/07/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

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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-036-0055 and PCO-036-0056.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the City of Tampa Water District (TWD). The TWD is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The TWD 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 AWD is requesting \$360 million in compensatory damages as well as \$1.5 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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0055]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0056]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0056	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0055

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/25/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

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

Date: 06/05/2008

Type: User

User ID: igfldn

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

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

Date: 04/08/2008

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-036-0056]

06/08/2012 2:27 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-036-0056	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0055

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-036-0056]

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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-036-0056]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0056	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0055

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 e 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: Home Insurance Company, in Liquidation

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

INSURED: Giant Industries

CLAIMANT: I City of Tampa Bay Water District

CLAIM NUMBER: PCO-036-0055 and PCO-036-0056

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-036-0056]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0056]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0056	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0055

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 2/25/08 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-036-0055 and PCO-036-0056.

This loss relates to suit in US District Court in FL, no case number assigned, filed by the City of Tampa Water District (TWD). The TWD is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in FL. The TWD 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 AWD is requesting \$360 million in compensatory damages as well as \$1.5 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-036-0056]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/06/2008

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-036-0057]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0057	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0058

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/25/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

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

Date: 06/06/2008

Type: User

User ID: igfldn

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

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

Date: 04/08/2008

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-036-0057]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0057	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0058

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-036-0057]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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-036-0057]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0057	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0058

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 270wCHRISTINA 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: Home Insurance Company, in Liquidation
 STYLE OF CASE: Greenville County Water & Sewer Authority v. Amerada Hess Corporation et al.
 INSURED: Giant Industries
 a CLAIMANT: 0 Greenville County Water & Sewer Authority
 k CLAIM NUMBER: PCO-036-0057 and PCO-036-0058

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-036-0057]

06/08/2012 2:27 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-036-0057]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0057	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0058

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 2/25/08 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-036-0057 and PCO-036-0058.

This loss relates to suit in US District Court in NY, 04CV0854, filed by the Greenville County Water and Sewer Authority (GWSA). The GWSA is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in Virginia. The GWSA 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, Breach of Warranty, Strict Liability for Failure to Warn, Negligence, Trespass, Civil Conspiracy and Violation of the Toxic Substances Containment Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the GWSA is requesting \$210 million in compensatory damages as well as \$2.45 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 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-036-0057]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/07/2008

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-036-0058]

06/08/2012 2:27 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-036-0058	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0057

BAR DATE

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

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/25/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

Subject: CLOSED FILE

CLOSED FILE

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

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

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

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

Date: 04/08/2008 **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-036-0058]

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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-036-0058	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0057

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-036-0058]

06/08/2012 2:27 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: igjdd

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-036-0058]

06/08/2012 2:27 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-036-0058	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0057

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 270w 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: Home Insurance Company, in Liquidation

STYLE OF CASE: Greenville County Water & Sewer Authority v. Amerada Hess Corporation et al.

INSURED: Giant Industries

a CLAIMANT: 0 Greenville County Water & Sewer Authority

k CLAIM NUMBER: PCO-036-0057 and PCO-036-0058

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-036-0058]

06/08/2012 2:27 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-036-0058]

06/08/2012 2:27 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0058	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - X-CLAIM #PCO-036-0057

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 2/25/08 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-036-0057 and PCO-036-0058.

This loss relates to suit in US District Court in NY, 04CV0854, filed by the Greenville County Water and Sewer Authority (GWSA). The GWSA is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in Virginia. The GWSA 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, Breach of Warranty, Strict Liability for Failure to Warn, Negligence, Trespass, Civil Conspiracy and Violation of the Toxic Substances Containment Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the GWSA is requesting \$210 million in compensatory damages as well as \$2.45 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 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-036-0058]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/07/2008

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-036-0059]

06/08/2012 2:27 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-036-0059	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0060

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 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-036-0059]

06/08/2012 2:27 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-036-0059]

06/08/2012 2:27 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-036-0059	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0060

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 NAPOLITANO e 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: Patrick County School Board v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: Patrick County School Board

CLAIM NUMBER: PCO-036-0059 and PCO-036-0060

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0059]

06/08/2012 2:27 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-036-0059]

06/08/2012 2:27 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-036-0059	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0060

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 2/27/08 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-036-0059 and PCO-036-0060.

This loss relates to suit in US District Court in NY, 04CV2070, filed by the Patrick County School Board (PCSB). The PCSB is a Virginia school board, assigned with the duty of providing clean drinking water to students and staff in Patrick County schools. The PCSB 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, Breach of Warranty, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act and Civil Conspiracy. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the PCSB is requesting \$210 million in compensatory damages as well as \$2.45 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 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-036-0059]

06/08/2012 2:27 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: 03/10/2008

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-036-0060]

06/08/2012 2:28 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-036-0060	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM PCO-036-0059

BAR DATE

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

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

Subject: CLOSED FILE
CLOSED FILE

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

Date: 06/09/2008 **Type:** User **User ID:** igfldn

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0060]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0060	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM PCO-036-0059

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-036-0060]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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-036-0060]

06/08/2012 2:28 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0060	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM PCO-036-0059

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 NAPOLITANO e 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: Patrick County School Board v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: Patrick County School Board
- CLAIM NUMBER: PCO-036-0059 and PCO-036-0060

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0060]

06/08/2012 2:28 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-036-0060]

06/08/2012 2:28 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0060	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM PCO-036-0059

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 2/27/08 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-036-0059 and PCO-036-0060.

This loss relates to suit in US District Court in NY, 04CV2070, filed by the Patrick County School Board (PCSB). The PCSB is a Virginia school board, assigned with the duty of providing clean drinking water to students and staff in Patrick County schools. The PCSB 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, Breach of Warranty, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act and Civil Conspiracy. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the PCSB is requesting \$210 million in compensatory damages as well as \$2.45 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 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-036-0060]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/10/2008

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-036-0061]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0061	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0062
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 {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} 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: 06/09/2008 **Type:** User **User ID:** igfidn
Subject: Adjuster & management notes will be maintained in master file
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0061]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0061	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0062

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)
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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-036-0061]

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Date: 04/04/2008

Type: User

User ID: igfldn

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

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

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

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-036-0061]

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IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0061	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0062

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 NAPOLITANO e 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: New Jersey Dept. of Env. Protection v. Atlantic Richfield Company et al.

INSURED: Giant Industries

ACLAIMANT: New Jersey Department of Environmental Protection

J CLAIM NUMBER: PCO-036-0061 and PCO-036-0062

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0061]

06/08/2012 2:28 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-036-0061]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0061	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0062

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 2/27/08 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-036-0061 and PCO-036-0062.

This loss relates to suit in Mercer County Superior Court in NJ, MER-L-1622-07, filed by the New Jersey Department of Environmental Protection (DEP). The DEP is a municipal corporation, assigned with the duty to verify potability of groundwater to residents in New Jersey. The DEP filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Strict Liability for Design Defect, Strict Liability for Violation of the New Jersey Spill Compensation and Control Act (NJSA), Negligence, Trespass and Joint and Several Liability for Violation of the NJSA. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the DEP is requesting compensatory damages as well as punitive damages to be determined at trial. It is claimed that 15% of all NJ water supplies have been contaminated, 93% of all wells in the Cranberry Lake area, 43% of the wells in the Highlands area and 29% of wells in the Piedmont area.

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0061]

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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/10/2008

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-036-0062]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0062	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0061

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 {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} 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: 06/09/2008 Type: User User ID: igfldn

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0062]

06/08/2012 2:28 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0062	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0061

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

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

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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-036-0062]

06/08/2012 2:28 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: 04/02/2008

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-036-0062]

06/08/2012 2:28 PM Page 3 of 8

IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0062	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0061

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 NAPOLITANO e 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: New Jersey Dept. of Env. Protection v. Atlantic Richfield Company et al.
- INSURED: Giant Industries
- ACLAIMANT: I New jersey Department of Environmental Protection
- J CLAIM NUMBER: PCO-036-0061 and PCO-036-0062

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0062]

06/08/2012 2:28 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-036-0062]

06/08/2012 2:28 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0062	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0061

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 2/27/08 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-036-0061 and PCO-036-0062.

This loss relates to suit in Mercer County Superior Court in NJ, MER-L-1622-07, filed by the New Jersey Department of Environmental Protection (DEP). The DEP is a municipal corporation, assigned with the duty to verify potability of groundwater to residents in New Jersey. The DEP filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Strict Liability for Design Defect, Strict Liability for Violation of the New Jersey Spill Compensation and Control Act (NJSA), Negligence, Trespass and Joint and Several Liability for Violation of the NJSA. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the DEP is requesting compensatory damages as well as punitive damages to be determined at trial. It is claimed that 15% of all NJ water supplies have been contaminated, 93% of all wells in the Cranberry Lake area, 43% of the wells in the Highlands area and 29% of wells in the Piedmont area.

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0062]

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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/10/2008

Type: Policy Reas

User ID: igftlg

Subject: effective date Reassigned from {08/03/1982} to {08/03/1980} by
effective date Reassigned from {08/03/1982} to {08/03/1980} by {igftlg}

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0062]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0062	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0061

BAR DATE

Date: 03/10/2008 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-036-0063]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0063	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0064

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-036-0063]

06/08/2012 2:28 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-036-0063]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0063	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0064

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 NAPOLITANO e 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
- L STYLE OF CASE: o Our Lady of the Rosary Chapel v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- u CLAIMANT: f Our Lady of the Rosary Chapel
- k CLAIM NUMBER: PCO-036-0063 and PCO-036-0064

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0063]

06/08/2012 2:28 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-036-0063]

06/08/2012 2:28 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0063	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0064

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 2/27/08 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-036-0063 and PCO-036-0064.

This loss relates to suit in US District Court in NY, 04CV1718, filed by the Our Lady of the Rosary Chapel ("The Chapel"). The Chapel is a religious institution that supplies water to at least 25 persons in Connecticut, and is therefore considered a "water company" under CT law. The Chapel's well has been determined to be contaminated by MTBE. The Chapel 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, CT Products Liability, Fraud, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy, Violation of the CT Unfair Trade Practices Act, Relief - Unreasonable Pollution and Damages - Unreasonabl Pollution. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water table. In addition, the Chapel is requesting compensatory damages as well as 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.

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-036-0063]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/10/2008

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-036-0064]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0064	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0063

BAR DATE

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

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

Subject: CLOSED FILE

CLOSED FILE

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

Date: 06/09/2008 Type: User User ID: igfldn

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0064]

06/08/2012 2:28 PM

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

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0063

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0064]

06/08/2012 2:28 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-036-0064]

<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-036-0064	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0063

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 NAPOLITANO e 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
- L STYLE OF CASE: o Our Lady of the Rosary Chapel v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- u CLAIMANT: f Our Lady of the Rosary Chapel
- k CLAIM NUMBER: PCO-036-0063 and PCO-036-0064

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0064]

06/08/2012 2:28 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-036-0064]

06/08/2012 2:28 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-036-0064	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0063

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 2/27/08 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-036-0063 and PCO-036-0064.

This loss relates to suit in US District Court in NY, 04CV1718, filed by the Our Lady of the Rosary Chapel ("The Chapel"). The Chapel is a religious institution that supplies water to at least 25 persons in Connecticut, and is therefore considered a "water company" under CT law. The Chapel's well has been determined to be contaminated by MTBE. The Chapel 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, CT Products Liability, Fraud, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy, Violation of the CT Unfair Trade Practices Act, Relief - Unreasonable Pollution and Damages - Unreasonabl Pollution. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water table. In addition, the Chapel is requesting compensatory damages as well as 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.

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-036-0064]

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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: 03/10/2008

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-036-0065]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0065	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0066

BAR DATE

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

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} 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: 06/09/2008 **Type:** User **User ID:** igfldn

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0065]

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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-036-0065	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0066

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-036-0065]

06/08/2012 2:28 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-036-0065]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0065	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0066

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 NAPOLITANO e 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: } Long Island Water Company v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- m CLAIMANT: t Long Island Water Company
- k CLAIM NUMBER: PCO-036-0065 and PCO-036-0066

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0065]

06/08/2012 2:28 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-036-0065]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0065	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0066

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 2/27/08 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-036-0065 and PCO-036-0066.

This loss relates to suit in US District Court in NY, 04CV2068, filed by the Long Island Water Corporation (LIWC). The LIWC is a privately owned water company distributing water to over 248,000 residents in Long Island, NY. The LIWC filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0065]

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/10/2008

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-036-0066]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0066	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0065

BAR DATE

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

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

lcfiloc_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc_sub Reassigned from {In House} to {} lcfiloc_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} 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: 06/09/2008 **Type:** User **User ID:** igfldn

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0066]

06/08/2012 2:28 PM

Page 2 of 7

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Close Dt: 06/03/2009

DOL: 08/03/1982

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BAR DATE

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Type: User

User ID: igfjdd

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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.

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Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0066]

06/08/2012 2:28 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-036-0066]

06/08/2012 2:28 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0066	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0065

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 NAPOLITANOe 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: } Long Island Water Company v. Amerada Hess Corporation et al.
- INSURED: Giant Industries
- CLAIMANT: t Long Island Water Company
- CLAIM NUMBER: PCO-036-0065 and PCO-036-0066

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 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 26, 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-036-0066]

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would like for us to consider, please contact me.

Sincerely,

John Draftz
Senior Claims Adjuster
(602) 364-3869

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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 2/27/08 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-036-0065 and PCO-036-0066.

This loss relates to suit in US District Court in NY, 04CV2068, filed by the Long Island Water Corporation (LIWC). The LIWC is a privately owned water company distributing water to over 248,000 residents in Long Island, NY. The LIWC filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

Date: 03/10/2008

Type: New Claim *

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim

