

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CIVIL ACTION NO.

DEFENDANT

COMPLAINT

JURY TRIAL IS DEMANDED

COMES NOW (hereinafter " "), by and through its attorneys, and files this its Complaint against the , and in support thereof would show unto the Court the following:

PARTIES

1. Plaintiff, , is a corporation with its principal place of business in the State of , and either directly or through its predecessor in interest, at all relevant times, was or is authorized to do business in the State of Mississippi.

2. Defendant, , (formerly known as ) is a nonprofit unincorporated legal entity created by virtue of the laws of the State of . The Defendant may be served with process by service upon the Commissioner of Insurance, Honorable , Floor, State Office Building, , Mississippi, pursuant to Section 83-5-11 and/or Section 83-21-29 and/or Section 83-21-35, et seq. of the Mississippi Code of 1972, as amended. The mailing address of the Defendant's principal place of business is .

VENUE

3. The loss for which the Plaintiff seeks insurance coverage has occurred in County, Mississippi. Miss. Code Ann. Section 11-11-7 provides that actions against insurance companies may be brought in any county in which the loss occurred. Venue, therefore, is proper in the Circuit Court of County.

NATURE OF THE ACTION

4. Effective , , issued to , a corporation, its comprehensive general liability insurance policy No. , a complete copy of which is attached hereto as Exhibit " ", and the provisions thereof are incorporated herein by reference, as though it were set forth in full (the policy).

5. Effective , , Insurance Company issued to , a corporation, its Commercial Catastrophe Liability Policy No. , a complete copy of which is attached hereto as Exhibit " ", and the provisions thereof are incorporated herein by reference, as though it were set forth in full (the policy).

6. On or about \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, the \_\_\_\_\_ corporation, was merged with and into \_\_\_\_\_, a \_\_\_\_\_ corporation, and the assets of the \_\_\_\_\_ corporation were transferred to the \_\_\_\_\_ corporation. \_\_\_\_\_, the \_\_\_\_\_ corporation, subsequently changed its name by charter amendment to \_\_\_\_\_.

7. On or about \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ filed its Proof of Claim in the matter of the liquidation of \_\_\_\_\_ Insurance Company with the Insurance Department of the State of \_\_\_\_\_ and with the \_\_\_\_\_, a complete copy of said Proof of Claim is attached hereto as Exhibit " \_\_\_\_\_", and the provisions thereof are incorporated herein by reference as though it were set forth in full.

8. On or about \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ filed its Proof of Claim in the matter of the liquidation of \_\_\_\_\_ Insurance Company with \_\_\_\_\_, Deputy Liquidator, and with the Insurance Guaranty Association, a complete copy of said Proof of Claim is attached hereto as Exhibit " \_\_\_\_\_", and the provisions thereof are incorporated herein by reference as though it were set forth in full.

9. Under the pertinent provisions of \_\_\_\_\_ law, and subject to certain statutory limitations, the Defendant is deemed the insurer to the extent of its obligations on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent."

10. Both \_\_\_\_\_ Insurance Company and \_\_\_\_\_ Insurance Company were amenable to the process and jurisdiction of this court and thus the Defendant is likewise amenable to such process and jurisdiction.

11. In this action, \_\_\_\_\_ seeks declaratory relief pursuant to Rule 57 of the Mississippi Rules of Civil Procedure adjudicating the rights and obligations of the parties under the \_\_\_\_\_ and \_\_\_\_\_ policies, and under the pertinent provisions of \_\_\_\_\_ law.

#### UNDERLYING ACTION

12. From \_\_\_\_\_ to present, \_\_\_\_\_, either directly or through its predecessor in interest, has owned and operated a \_\_\_\_\_ manufacturing plant located in \_\_\_\_\_, \_\_\_\_\_, County, Mississippi.

13. The United States Environmental Protection Agency (hereinafter referred to as "EPA") has notified \_\_\_\_\_ that \_\_\_\_\_ is a potentially responsible party for contamination at a site designated "the \_\_\_\_\_ Site" under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter referred to as "CERCLA"), 42 U.S.C. Section 9601, et seq. The \_\_\_\_\_ Site includes the \_\_\_\_\_ facility and property adjacent to and in the vicinity thereof.

14. Investigations of the environmental conditions at the \_\_\_\_\_ Site have evidenced the existence of contamination.

15. As a result of the contamination, has become liable pursuant to CERCLA to conduct investigations and remediation of certain environmental conditions.

16. At the direction of EPA, is carrying out remedial activities with respect to contamination detected at and emanating from the Site.

#### BACKGROUND OF CLAIMS

17. The policy provides that is obligated to defend and indemnify the insured, subject to a \$ self-insured retention, for all property damage caused by an "occurrence" in the amount of \$ .

18. The policy provides that is obligated to defend and indemnify the insured for all property damage caused by an "occurrence" to the extent not covered by an underlying comprehensive general liability policy in the amount of \$ each occurrence, \$ aggregate. The limits of liability under the Integrity policy are \$ each occurrence, \$ annual aggregate.

19. The contamination at and emanating from the Site was neither expected nor intended from the standpoint of and occurred in part during the periods of the and policies.

20. The contamination at and emanating from the Site constitutes property damage as defined by the and policies.

21. expended substantial premiums to purchase the and policies.

22. has expended, and continues to expend, substantial expenses relating to property damage to the site.

23. The damages claimed by the United States and all sums expended to date in connection with such damage are within the coverage of the policy, and within the coverage of the policy, to the extent not covered by the underlying coverage.

24. To the extent provided by pertinent law, the Defendant is obligated to pay in full the costs and expenses of in defense of the underlying action, and is obligated to indemnify in full for such liability arising from the underlying action by way of settlement, compromise, or adjudication.

#### DECLARATORY JUDGMENT

25. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 24 as if fully set forth herein.

26. An actual controversy exists between Plaintiff and the Defendant as to whether Plaintiff is entitled to the costs of its defense, including, but not limited to, all amounts expended in defense costs to date, and between Plaintiff and Defendant as to whether Plaintiff is entitled to indemnification for all losses incurred in connection with proceedings commenced and claims

made by the United States with respect to property damage at and emanating from the Site, to the extent covered by the \_\_\_\_\_ and \_\_\_\_\_ policies.

27. To protect its rights and interests, Plaintiff requires a declaration that the Defendant, subject to statutory limitations of pertinent \_\_\_\_\_ law, is obligated to pay on behalf of \_\_\_\_\_ all sums which \_\_\_\_\_ shall be obligated to pay because of the property damage resulting from an "occurrence" which was unintended and unexpected by \_\_\_\_\_ during the policy periods covered by the \_\_\_\_\_ and \_\_\_\_\_ policies.

WHEREFORE, Plaintiff requests judgment as follows:

1. That this Court determine and declare that the Defendant is liable to pay and indemnify Plaintiff for all damages, costs and payments incurred or to be incurred by Plaintiff with respect to any and all claims related to contamination of the \_\_\_\_\_ Site or for which it is otherwise liable with respect to contamination at the \_\_\_\_\_ Site, subject to the coverage limits of the \_\_\_\_\_ and \_\_\_\_\_ policies and the pertinent provisions of \_\_\_\_\_ law; and
2. Grant to \_\_\_\_\_ its costs and attorney's fees incurred herein; and
3. Grant such other and further relief as may be just and proper; and
4. Plaintiff demands a jury trial on all issues.

Respectfully submitted,

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Attorney for

Of counsel:

Telephone:  
MSB #  
Attorney for