

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION**

Lion Oil Company,

Plaintiff,

v.

National Union Fire Insurance Company of Pittsburgh, PA, Great Lakes Reinsurance UK PLC, ACE American Insurance Company, XL Insurance America, Inc., Certain Underwriters at Lloyds (Talbot Syndicate 1183), Torus Specialty Insurance Company, Certain Underwriters at Lloyds (Navigators Syndicate at Lloyds 1221 and Pembroke Syndicate at Lloyds 4000), Certain Underwriters at Lloyds (SJC 2003/Catlin), Certain Underwriters at Lloyds (Brit Insurance, Syndicate 2987), Certain Underwriters at Lloyds (Chaucer Marine Syndicate 1084), Berkshire Hathaway International Insurance Limited, Arch Insurance Company, Lexington Insurance Company, Ironshore Specialty Insurance Company, Landmark American Insurance Company,

Civil Action No. 1:13-cv-01071

JURY DEMAND

Defendants

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**PLAINTIFF'S AMENDED COMPLAINT**

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Plaintiff Lion Oil Company ("Plaintiff") files this Complaint and would respectfully show:

**I.  
NATURE OF THE ACTION**

1. This is a first party insurance coverage action by Plaintiff seeking recovery of insured losses totaling \$72 million. Defendant insurers have denied Plaintiff's claim for loss of business income and expenses incurred by Plaintiff as a result of the April 28, 2012, rupture of a

pipeline which served as a critical conveyance for crude oil to Plaintiff's oil refinery located in El Dorado, Arkansas. The pipeline, operated by ExxonMobil Pipeline Company, was an expressly insured "contingent property" under the policies purchased by Plaintiff from the Defendants. As a result, Plaintiff is covered for the losses it sustained during the period of time the pipeline was closed, to the extent of the applicable coverages. Plaintiff seeks a declaration of its entitlement to coverage under the policies and recovery of damages incurred as a result of the Defendant insurers' breach of their contractual obligations.

## **II. PARTIES**

### **A. Plaintiff**

2. Plaintiff Lion Oil Company is an Arkansas corporation with its principal place of business in Tennessee.

### **B. Defendants**

3. Defendant National Union Fire Insurance Company of Pittsburgh, PA ("National Union") issued policy number 61628120. It is a Pennsylvania corporation with its principal place of business in New York.

4. Defendant Great Lakes Reinsurance UK PLC ("Great Lakes") issued policy number B0509EI066011. It is an English public limited company with its principal place of business in England.

5. Defendant ACE American Insurance Company ("ACE") issued policy number EPR NO 51 03 34 4. It is a Pennsylvania corporation with its principal place of business in Pennsylvania.

6. Defendant XL Insurance America, Inc. (“XL”) issued policy number US00027204PR11A. It is a Delaware corporation with its principal place of business in Connecticut.

7. Defendant Certain Underwriters at Lloyds identified as Talbot Underwriting Ltd. Syndicate 1183 (“Talbot”) issued policy number AJT088339C11. It is an association of underwriters formed under English law with its principal place of business in England.

8. Defendant Torus Specialty Insurance Company (“Torus”) issued policy number 15996A111AON. It is a Delaware corporation with its principal place of business in New Jersey.

9. Defendant Certain Underwriters at Lloyds identified as Navigators Syndicate 1221 (formerly known as Millennium Syndicate at Lloyds 1221) and Pembroke Syndicate at Lloyds 4000 (“Navigators” and “Pembroke,” respectively) issued policy number 11 NSRO 1338-01. They are associations of underwriters formed under English law with their principal place of business in England.

10. Defendant Certain Underwriters at Lloyds identified as SJC 2003/Catlin (“SJC/Catlin”) issued policy number B0509EI066011. It is an association of underwriters formed under Bermuda law with its principal place of business in England.

11. Defendant Certain Underwriters at Lloyds identified as Brit Insurance, Syndicate 2987 (“Brit”) issued policy number B0509EI066011. It is an association of underwriters formed under English law with its principal place of business in England.

12. Defendant Certain Underwriters at Lloyds identified as Chaucer Marine Syndicate 1084 (“Chaucer”) issued policy number B0509EI066011. It is an association of underwriters formed under Delaware law with its principal place of business in England.

13. Defendant Berkshire Hathaway International Insurance Limited (“Berkshire Hathaway”) issued policy numbers B0509EI066011 and B0509EI046911. It is an English company with its principal place of business in England.

14. Defendant Arch Insurance Company (“Arch”) issued policy number HHP0038715101. It is a Missouri corporation with its principal place of business in New York.

15. Defendant Lexington Insurance Company (“Lexington”) issued policy number 035826015. It is a Delaware corporation with its principal place of business in Massachusetts.

16. Defendant Ironshore Specialty Insurance Company (“Ironshore”) issued policy number 000270201. It is an Arizona corporation with its principal place of business in New York.

17. Defendant Landmark Insurance Company (“Landmark”) issued policy number LHD372952. It is an Oklahoma corporation with its principal place of business in Georgia.

18. The foregoing insurers will collectively be referred to as “Defendants.”

19. The Defendants have contractually agreed that service of process may be made upon the Arkansas Insurance Commissioner, or by serving “any senior partner in the firm of . . . Mendes & Mount (Attorneys), 750 Seventh Avenue, New York, N.Y. 10019-6829.”

20. Defendant Lexington has contractually agreed that service of process may be made on “Counsel, Legal Department, Lexington Insurance Company, 100 Summer Street, Boston Massachusetts, 02110-2103.”

21. Defendant Ironshore has contractually agreed that service of process may be made on “Counsel, Legal Department, Ironshore Specialty Insurance Company, One State Street Plaza, 8<sup>th</sup> Floor, New York, NY 10004.”

### **III. JURISDICTION AND VENUE**

22. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332(a)(1), in that the Complaint is between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

23. This Court has personal jurisdiction over the Defendants as they have each contractually agreed to submit “at the request of the Insured” to “the jurisdiction of a court of competent jurisdiction within the United States of America.”

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the losses giving rise to the claim were sustained principally at Plaintiff’s refinery in El Dorado, Arkansas.

#### **IV. BACKGROUND FACTS**

##### **A. Plaintiff’s Business**

25. Plaintiff has owned and operated an oil refinery in El Dorado, Arkansas since 1985. The refinery has been in existence since the 1920s. At capacity, the refinery processes approximately 80,000 barrels of crude oil per day, producing refined products such as gasoline, diesel fuel and asphalt. At the time of the incident, the refinery relied primarily on a pipeline owned and operated by ExxonMobil Pipeline Company (“EMPCO”), known as the North Line, to obtain delivery of its crude feedstock.

##### **B. The Pipeline Rupture and Restart Process**

26. On or about April 28, 2012, a rupture in the North Line occurred near Torbert, Louisiana (the “Rupture”). The Rupture resulted in EMPCO’s immediate shutdown of the North Line.

27. On information and belief, EMPCO detected the Rupture as a sudden pressure drop and immediately undertook emergency response action, including shutdown of the entire North Line, from St. James, Louisiana, to Longview, Texas, including the segment serving the Lion Oil

El Dorado refinery. Visual inspection of the ruptured segment indicated the presence of an approximately seventeen (17) feet long seam failure. EMPCO commenced other response actions, including locating the affected segment, draining the oil remaining in the line, cleaning up the spilled oil from the surrounding area, removing and replacing the ruptured segment, and transporting that segment for failure analysis.

28. On May 8, 2012, as a direct result of the Rupture, the regulatory entity responsible for pipeline safety, the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued a Corrective Action Order (“CAO”) to EMPCO, a true and correct copy of which is attached hereto as Exhibit A. The CAO required EMPCO to undertake a comprehensive failure analysis, including metallurgical testing, to determine the root cause of the Rupture, and to perform additional testing to determine if there were other ruptures in the system causing the drop in pressure and to rule out the possibility that the Rupture was part of a larger problem in the pipeline system. The CAO ordered EMPCO to prepare and submit a written re-start plan for prior approval of the Director of PHMSA before re-starting operation of the affected pipeline. Completion of a failure analysis, including metallurgical testing, was a prerequisite to EMPCO's restart of service on the North Line. .

29. On information and belief, the metallurgical testing was completed and submitted to PHMSA on or about September 18, 2012.

30. On information and belief, on or about September 19, 2012, EMPCO submitted a request to PHMSA to re-start the North Line pipeline system at a reduced operating pressure and flow.

31. On information and belief, on October 15, 2012, upon receipt of EMPCO's testing results and re-start plan, PHMSA indicated that it had no objection to restarting the pipeline at reduced operating pressure and flow.

32. On information and belief, EMPCO then began the process of accepting "nominations" for shipments of crude oil and filling the line before shipments could restart.

33. Plaintiff finally began to receive shipments of crude oil through the pipeline at the El Dorado refinery on March 19, 2013.

34. The Rupture is a covered cause of loss under the "all risk" insurance policy Plaintiff purchased from the Defendants.

### **C. Plaintiff's Claim and Mitigation Efforts**

35. As a result of the loss of service from the North Line from the date of shutdown on April 28, 2012, until shipments were first received on March 19, 2013, Plaintiff suffered substantial covered losses, in an amount totaling \$72,000,000.

36. As a result of the Rupture, Plaintiff incurred significant expense in attempting to mitigate its losses. These included the cost of:

- Securing additional volume from other pipeline suppliers and making spot purchases of crude oil;
- Arranging storage agreements to store part of Lion Oil's contracted crude oil supply that was intended for delivery into the North Line;
- Reaching agreements with suppliers to defer scheduled May 2012 crude delivery until restart of the North Line;
- Selling stranded crude supply back to suppliers on best-available terms to avoid extended storage fees;
- Expediting the construction and commission, with Rail Tran LLC, of a crude oil rail unloading facility with connection into Lion Oil's crude receiving system;
- Leasing additional rail cars;

- Repurposing existing asphalt rail cars for crude transport;
- Reconfiguring existing land transfer and storage facilities to maximize volumes through alternate supply systems;
- Reducing short term costs by entering into a 4-year railcar unloading contract with RailTran, LLC;
- Increasing purchases of rail-delivered crude from approximately 1,000 BPD in May 2012 to 20,000 BPD in November 2012;
- Purchasing intermediates from Delek Refining, Ltd.'s Tyler, Texas, refinery in order to meet minimum throughput requirements;
- Purchasing asphalt from other suppliers in order to meet customer grade requirements (substitute crude supplies were of inconsistent grade);
- Transporting on-spec asphalt back to El Dorado from outlying terminals to meet customer requirements;
- Purchasing additional acidic and vegetable oil-based additives to meet specifications;
- Selling off-spec asphalt into discounted markets to avoid complete refinery shutdown;
- Operating refinery, inefficiently to avoid shutdown, including recycling crude bottoms; and
- Pressuring EMPCO to restart the pipeline.

37. By undertaking these efforts, Plaintiff was able to avoid a complete shut-down of its refinery, meet its contractual obligations with most of its customers, maintain its skilled workforce and reduce the amount of its losses.

38. Nevertheless, Plaintiff still suffered significant losses, including approximately \$44,000,000 in lost earnings and another \$36,000,000 in expenses incurred as a result of the Rupture.



39. Plaintiff timely and properly filed a claim (“Claim”) under the insurance policies purchased from Defendants.

**D. The Policy**

40. Plaintiff purchased “all risk” insurance policies from Defendants to protect its business against a number of risks, including losses that resulted from the Rupture.

41. The Defendants each severally issued the same or substantially similar versions of the policy form at issue in this action. That policy form will be referred to as the “Policy.” A copy of the Policy is attached hereto as Exhibit B.

42. The Policy period incepted May 1, 2011, and remained in effect until May 1, 2012 (“Policy Period”).

43. The Policy was in effect at the time of the Rupture.

44. The Policy expressly names the EMPCO pipeline as a “named supplier.”

45. The Policy is an “all risk” insurance policy. The Policy reads as follows:

**11. PERILS INSURED AGAINST**

*This policy insures against all risk of direct physical loss of or damage to property described herein, except as hereinafter excluded.*

Policy at pp. 20-21 of 47.

46. The Policy provides coverage for Extra Expense as follows:

**9. COVERAGE**

*Except as hereinafter excluded, this policy covers:*

....

***B. Time Element including***

(2) *Extra Expense*

- (a) *Extra Expense incurred resulting from loss, damage, or destruction covered herein during the term of this policy to real or personal property as insured herein.*
- (b) *Extra Expense means the excess of the total cost chargeable to the operation of the Insured's business over and above the total cost that would normally have been incurred to conduct the business had no loss or damage occurred.*

Policy at pp. 4-6 of 47.

47. The Policy provides several Time Element Extensions, including the following:

(5) *Time Element Extensions*

- (a) *This policy, subject to all provisions and without increasing the limits of this policy, also insures against loss resulting from damage to or destruction by causes of loss insured against, to:*
  - (i) *Service Interruption: [a]ny . . . utility or service, transmission lines and related plants, substations and equipment situated on or outside of the premises;*
  - (ii) *Contingent Time Element: property that wholly or partially prevents any direct supplier of goods and/or services to the Insured from rendering their goods and/or services, or property that wholly or partially prevents any direct receiver of goods and/or services from the Insured from accepting the Insured's goods and/or services, such supplier or receiver to be located anywhere in the Policy Territory;*
- (b) *Interruption by Civil or Military Authority: This policy is extended to cover the loss sustained during the period of time when access to real or personal property is impaired by order or action of civil or military authority issued in connection with or following a peril insured against. This extension of coverage applies only to impairments as described*

*above located within five (5) statute miles of the Premises Described.*

- (c) *Ingress/Egress: This policy is extended to cover the loss sustained during the period of time when, in connection with or following a peril insured against, access to or egress from real or personal property is impaired. This extension of coverage applies only to impairments as described above located within five (5) statute miles of the Premises Described and for up to 30 days.*

.....

- (e) *Authorities Clause: Except as specifically stated in this policy, the company shall not be liable for loss, damage, costs, expenses, fines, or penalties incurred, sustained by or imposed on the Insured at the order of any Government Agency, Court, or other Authority arising from any cause whatsoever.*

*However, if any time element coverage is afforded by this policy or endorsements thereto, the coverage is extended to include any increase in the actual loss sustained by the Insured, resulting directly from an interruption of business covered hereunder, during the length of time not exceeding thirty (30) days, when as a direct result of damage to or destruction of covered property by the peril(s) insured against, access to the premises or commencement of repairs is delayed at the order of any Government Agency, Court, or other Authority.*

Policy at pp. 8-10 of 47.

48. The definition of Time Element specifically includes Contingent Business Interruption and Contingent Extra Expense as follows:

48. **DEFINITIONS**

**H. Time Element**

*The term Time Element means any one or all of the following coverages: Business Interruption, Extra Expense, Contingent Business Interruption, Contingent Extra Expense, Rental Value,*

*Royalties, Service Interruption (Time Element), Ingress/Egress, Interruption by Civil or Military Authority, and all other Time Element extensions provided.*

Policy at p. 40 of 47.

49. The terms Contingent Business Interruption and Contingent Extra Expense are not defined in the Policy, but rather the scope of their coverage is set forth as “Contingent Time Element” as noted above.

50. The Policy contains a Period of Recovery provision applicable only to direct coverages and not to Contingent Time Element coverages. The Period of Recovery provision reads as follows:

(6) *Provisions Applicable to Business Interruption, Extra Expense, Rental Value and Royalties Coverage’s (sic)*

(a) *Period of Recovery: The length of time for which loss may be claimed:*

(i) *shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace the property that has been destroyed or damaged;*

(ii) *and, such additional length of time to restore the Insured’s business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:*

(aa) *the date on which the liability of the Company for loss or damage would otherwise terminate; or*

(bb) *the date on which repair, replacement, or rebuilding of the property that has been damaged is actually completed;*

*but in no event for more than 60 days from said later commencement date;*

- .....
- (iv) *shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this policy or cancellation date.*
- .....
- (c) *Expense to Reduce Loss: This policy also covers such expenses incurred for the purpose of reducing any loss under this policy, including such expenses incurred in replacing any finished stock used by the Insured to reduce loss under this Policy.*
  - (d) *Interdependency: It is and agreed that the Time Element coverage's insured herein apply not only at the locations at which the loss, damage or destruction occurs, but also to any resulting Time Element loss at any other location insured herein.*

Policy at pp. 10-11 of 47.

51. The Policy does not contain a period of recovery clause applicable to contingent coverages.

52. The Policy also includes coverage extensions for Increased Cost of Construction, Expediting Expense and Loss Adjustment Expenses. The extensions read as follows:

**10. COVERAGE EXTENSIONS**

**A. *Demolition and Increased Cost of Construction***

*In the event of loss or damage under this policy that causes the enforcement of any law, ordinance, governmental directive or standard regulating the construction, repair, use, or occupancy of property, and is in force at the time of loss, this Company shall be liable for:*

- (1) *the cost of demolishing the undamaged property including the cost of clearing the site;*
- (2) *the proportion that the value of the undamaged part of the property bore to the value of the entire property prior to loss;*

- (3) *increased cost of repair or reconstruction of the damaged and undamaged property on the same or another site, limited to the cost that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged property on the same site. However, this Company shall not be liable for any increased cost of construction loss unless the damaged property is actually rebuilt or replaced;*
- (4) *any increase in the business interruption, extra expense, rental value or royalties loss arising out of the additional time required to comply with said law or ordinance.*

....

**C. *Expediting Expense***

*This policy covers the reasonable extra cost of temporary repair and/or replacement and of expediting the repair and/or replacement of damaged property insured hereunder, including, but not limited to, overtime and express freight or other rapid means of transportation.*

**D. *Loss Adjustment Expenses***

*This policy is extended to include expenses incurred by the Insured, or by the Insured's representatives for preparing and certifying details of a claim resulting from a loss which would be payable under this policy. However, this Company shall not be liable under this clause for expenses incurred by the Insured in utilizing the services of a public adjuster or an attorney.*

Policy at pp.14-16 of 47.

53. The Policy also contains coverage for Sue and Labor as follows:

**31. SUE AND LABOR**

*In case of actual or imminent loss or damage covered by this policy except imminent loss or damage as respects an "accident", it shall, without prejudice to this insurance, be lawful and necessary for the Insured, their factors, servants, or assigns to sue, labor and travel for, in and about the defense, the safeguard, and the recovery of property or any part of the property insured hereunder; nor, in the event of loss or damage, shall the acts of the Insured or of this*

*Company in recovering, saving, and preserving the insured property be considered a waiver or an acceptance of abandonment. This Company shall pay the expenses so incurred. The necessary expenses so incurred shall be subject to the deductible provisions of this policy.*

Policy at pp. 33-34 of 47.

**D. Defendants' Response and Denial of Coverage**

54. Defendants were notified of Plaintiff's Claim on May 8, 2012.

55. On September 27, 2013, over sixteen months after the Claim, Defendants denied Plaintiff's claim. Defendants' denial is unsupported by the facts, the Policy, or applicable law.

56. Defendants assert that the Claim was the result of a peril excluded under Exclusions B and D of the Policy.

57. Exclusion B states that the Policy does not insure "**against the cost of making good** defective design or specifications, faulty material, or faulty workmanship; however this exclusion does not apply to loss or damage resulting from such defective design or specifications, faulty material, or faulty workmanship." Policy at p. 21 of 47 (emphasis supplied).

58. Plaintiff has never submitted a claim for "the cost of making good" or repairing the ruptured EMPCO pipeline, an expense borne solely by EMPCO.

59. Further, Exclusion B includes an explicit grant of coverage for loss "resulting from" faulty material or faulty workmanship, which would apply to Plaintiff's losses if they had "resulted from" the cost of making good faulty material or faulty workmanship.

60. Exclusion D applies to "ordinary wear and tear, gradual deterioration, dampness or dryness of atmosphere, changed in temperature, smog, shrinkage, evaporation, depletion, termites, moth, vermin, loss of weight, erosion, wet or dry rot, inherent vice, latent defect, rust or corrosion

unless loss or damage not otherwise excluded ensues and then this policy shall cover for such ensuing loss or damage.” Policy at p. 21 of 47.

61. The cause of the Rupture was not a “latent defect” within the meaning of the Policy.

62. Exclusion D also contains an express grant of coverage for the “loss or damage” that ensues from such excluded perils.

63. Defendants also assert that the interruption of the flow of oil beyond the date of physical repair of the pipeline was not caused by the Rupture, but was instead caused by undue delays by EMPCO. However, the losses sustained by Plaintiff following the Rupture fall within the Policy’s Contingent Time Element coverage for all loss “resulting from” damage to insured contingent property such as the EMPCO pipeline.

64. Defendants also incorrectly assert that the “Period of Recovery” clause, Section 9B(6)(a) of the Policy, cuts off Plaintiff’s claim on the theoretical date of repair of the ruptured pipeline. However the Period of Recovery clause does not apply to claims for “Contingent Business Interruption” or “Contingent Extra Expense” coverage. The “Period of Recovery” clause applies only to business interruption losses caused by damage to property in the control of the insured and does not apply where the damage is to contingent property, such as damage to a named supplier property.

65. Defendants also assert other defenses to the various coverage extensions and additional coverages in the Policy. Plaintiffs are entitled to the benefits of all available coverage grants under the Policy that may apply to its claim. These additional coverages and coverage extensions may apply to the extent that the sub-limit for Contingent Business Interruption is exhausted by the claim, or to the extent the Contingent Business Interruption and Contingent Extra Expense coverages are held not to apply to Plaintiff’s losses.



66. Applicable coverage extensions include Expense to Reduce Loss, Service Interruption, Increased Cost of Construction/Delay Due to Government Order, Civil Authority, Sue and Labor, Ingress/Egress, Authorities Clause and Claim Preparation Expense. Plaintiffs have asserted their rights under these as well as any and all other applicable coverages under the Policy.

67. An insurer's duty of good faith and fair dealing includes an obligation to consider all potentially relevant policy provisions in an effort to find coverage for the Claim. Defendants, however, have failed to consider all potentially applicable policy provisions in denying Plaintiff's Claim.

68. As a result of Defendants' conduct, Plaintiff brings this action to pursue and collect its Claim.

## **V. CAUSES OF ACTION**

### **A. Declaratory Judgment**

69. Plaintiff incorporates and re-alleges each of the allegations set forth in paragraphs 1 through 68 above.

70. Plaintiff seeks a declaration, pursuant to 28 U.S.C. § 2201 and Ark. Code Ann. § 16-111-104, that Defendants are obligated, in accordance with the terms of the Policy, to indemnify Plaintiff for its losses resulting from the Rupture.

71. Defendants wrongfully denied coverage based upon Exclusion B, which addresses the "cost of making good . . . faulty workmanship." Exclusion B does not apply to Plaintiff's Claim, among other reasons, because Plaintiff is not seeking the cost to repair the EMPCO pipeline.

72. Defendants wrongfully denied coverage based upon Exclusion D, because the cause of the Rupture was not a "latent defect" within the meaning of the Policy.

73. To the extent either Exclusion B or Exclusion D of the Policy applies, Defendants wrongfully denied coverage because Plaintiff's losses fall within the exceptions to those exclusions, as set forth in the Policy.

74. Defendants wrongfully denied coverage on the theory that Plaintiff's losses were due to delays by EMPCO after the ruptured segment was repaired. All losses claimed by Plaintiff due the interruption of service on the EMPCO North Line were the result of the Rupture, including the losses following the repair of the ruptured segment.

75. The "Period of Recovery" clause in the Policy does not apply to Plaintiff's Contingent Time Element claim, and therefore does not cut off Plaintiff's claim on the theoretical date of repair of the ruptured pipeline.

76. The replacement of the damaged portion of the pipeline before the conclusion of the Policy's deductible period does not preclude coverage as that period operates as a deductible and not a "qualifying period."

77. The Policy provides coverage for Plaintiff's Contingent Extra Expense losses. The Policy contains no sub-limit for Contingent Extra Expense.

78. Defendants wrongfully denied Plaintiff's claim for Service Interruption coverage, which applies to loss of service on the EMPCO North Line.

79. Defendants wrongfully denied Plaintiff's claim for Expense to Reduce Loss, Increased Cost of Construction/Delay Due to Government Order, Civil Authority, Sue and Labor, Ingress/Egress, Authorities Clause, Claim Preparation Expense, as well as any and all other applicable coverages under the Policy.

80. An actual and justifiable controversy exists between the parties with respect to this issue because of the Defendants' refusal to perform its obligations under the Policy. This controversy is ripe and of sufficient immediacy to justify the issuance of a declaratory judgment.

81. Plaintiff's claim for losses is based on the coverages provided in the Policy.

82. No applicable exclusions or limitations bar coverage for Plaintiff's claims.

83. All conditions precedent to Plaintiff's right to coverage have been satisfied to the extent required by law.

84. A declaration of the parties' rights and obligations under the Policy will serve to resolve the dispute between them.

**B. Breach of Contract**

85. Plaintiff incorporates and re-alleges each of the allegations set forth in paragraphs 1 through 84 above.

86. As set forth above, in return for premiums paid, Defendants sold Plaintiff an insurance policy in which Defendants promised to indemnify Plaintiff for all Loss up to the applicable limits of liability.

87. Plaintiff suffered a covered Loss.

88. Plaintiff timely and properly submitted claims under the Policy. By refusing to accept coverage, Defendants breached their contractual obligations to Plaintiff under the Policy.

89. As a result of the breach, Plaintiff was deprived of benefits under the Policy for which Plaintiff has paid substantial premiums, and has suffered substantial damage.

90. Defendants' breach was the proximate cause of loss, liability, damages, expenses and costs to Plaintiff. Plaintiff is entitled to coverage for the Claim.

91. Plaintiff is also entitled to recover its actual damages as well as incidental and consequential damages resulting from Defendants' breach.

92. All conditions precedent to Plaintiff's right to coverage have occurred to the extent required by law.

93. No applicable exclusions or limitations purport to bar coverage for any of Plaintiff's claims.

**VI.  
CONCLUSION AND PRAYER**

Plaintiff respectfully prays that upon trial of this cause the Court enter judgment awarding it:

- a. A judicial declaration clarifying that Plaintiff's understanding of the foregoing policy provisions is correct;
- b. All actual damages suffered by Plaintiff as a result of Defendants' breaches of contract in an amount to be determined at trial;
- c. All compensatory damages Plaintiff suffered as a result of Defendants' breaches of their duty of good faith and fair dealing;
- d. Attorneys' fees and costs of court;
- e. Pre- and post-judgment interest at the highest rate allowed by law; and
- f. Such other further relief to which it may be justly entitled.

**VII.  
JURY DEMAND**

Plaintiff demands a trial by jury on all counts that are triable.

Respectfully submitted,

PPGMR LAW, PLLC

By: /s/ Brian H. Ratcliff

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- and -

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of November, 2015, I filed the foregoing document with the Clerk of the United States District Court for the Western District of Arkansas and that the CM/ECF System will provide notice to all attorneys of record.

*/s/ Brian H. Ratcliff* \_\_\_\_\_

Brian H. Ratcliff