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UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF HAWAII**

American Samoa Power Authority,

Plaintiff,

vs.

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 623 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 1301 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 435 Subscribing to Policy  
Number N09NA02900,

CV 10 00546 ACK KSC  
CV# \_\_\_\_\_

**COMPLAINT;  
DEMAND FOR JURY  
TRIAL; SUMMONS**

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 510 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 1955 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 2000 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 5820 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 318 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 1200 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 4020 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 2623 Subscribing to Policy )  
Number N09NA02900, )  
)

Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 2010 Subscribing to Policy )  
Number N09NA02900, and )  
)

HCC International Insurance Company, PLC, )  
)  
Defendants. )

## **COMPLAINT**

For its Complaint against defendants, Plaintiff American Samoa Power Authority (“ASPA”) states and avers as follows:

### **I. NATURE OF ACTION**

1. American Samoa was rocked by three earthquakes on September 29, 2009, each beginning within a span of three minutes and measuring 8.1, 7.8 and 7.8 at the respective epicenters less than 150 miles away, between American Samoa and Tonga.

2. Within several minutes of the earthquakes, a series of tsunamis battered American Samoa with waves reportedly as high as 20 feet that pushed waters inland as far as a mile and left water marks at upwards of 19 feet above mean sea level in the Satala Power Plant.

3. The earthquakes and tsunamis reportedly caused 34 deaths and untold millions of dollars in damage to homes, businesses, sea going vessels, vehicles and other real and personal property in American Samoa, including critical damage to basic infrastructure. As a result, President Obama declared a “major disaster” in American Samoa under the Stafford Act, authorizing Federal relief and recovery assistance.

4. American Samoa is a Territory of the United States of America composed of a group of islands approximately 2,500 miles Southwest of Hawai‘i in the South Pacific.

5. ASPA, which is a semi-autonomous agency of the American Samoa Government, is a public utility that provides electricity, water, wastewater and solid waste service (collectively “Utility Services”) to the 60,000-plus residents of American Samoa.

6. ASPA is the sole provider of many, and the primary provider of all, Utility Services for American Samoa.

7. ASPA suffered well in excess of \$50 million in losses as a direct result of the September 29, 2010 earthquakes and tsunamis.

8. As a result of those earthquakes and tsunamis, ASPA has struggled to continuously provide Utility Services in a cost-efficient and uninterrupted manner.

9. ASPA’s efforts, in this regard, have been unnecessarily hampered. ASPA bought and paid for insurance coverage under insurance policy number N09NA02900 (the “Policy”), which was underwritten by the severally liable members of the various numbered syndicates of Lloyd’s, London that are defendants in this lawsuit, along with HCC International Insurance Company, PLC (collectively referred to herein as “Underwriter Defendants”).

10. The purpose of the Policy was to respond to ASPA’s needs in circumstances such as those presented by the September 29, 2009 earthquakes and tsunamis. Although ASPA has submitted voluminous information in support of its claim for Policy proceeds, including estimates of necessary repairs prepared by and in connection with the Federal Emergency Management Agency (“FEMA”), the

United States Department of Energy (“DOE”), the American Samoa Department of Public Works and Department of Commerce, engineering firms engaged by ASPA and other unrelated insurers, ASPA’s claim is yet to be adjusted, let alone paid, even as we approach the one-year anniversary of the earthquakes and tsunamis.

11. Paragraph 4.F. of section D of the Policy (the “Policy Limitation Period”), provides that “[n]o suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless: . . . legal action is started within twelve months after inception of the loss.”

12. The Policy Limitation Period should serve as the permissible outer limit for the Underwriter Defendants to adjust and pay ASPA’s claim.

13. Although the Underwriter Defendants should have adjusted and paid ASPA’s claim by now, at a minimum, they should have made a substantial advance payment in recognition of ASPA’s losses in excess of the applicable limits of the Policy.

14. Instead, ASPA has merely been provided a \$5 million advance payment in respect of its losses, without any explanation as to whether further amounts will be forthcoming, or reasons why they may not be.

15. The Underwriter Defendants’ conduct has unduly constrained ASPA in its continuing struggle to provide quality Utility Services in a cost-efficient and uninterrupted manner.

16. ASPA has brought this lawsuit, seeking declaratory judgments as to the amount of coverage available and recovery of damages as a result of the Underwriter Defendants' breach of their contractual and legal obligations.

## **II. ASPA, THE POLICY, AND THE PROCUREMENT OF THE POLICY**

17. ASPA was established, and is maintained, pursuant to the laws of American Samoa, and ASPA maintains its principal place of business in Pago Pago (which is on Tutuila Island), American Samoa.

18. ASPA is one of the "Named Insureds" under the Policy, which provides certain Property Damage and Time Element coverages, as indicated in the Policy, for losses arising from all perils (including without limitation earth movement and flood) occurring during the Policy Period that ran from 12:01 a.m. May 1, 2009, to 12:01 a.m. May 1, 2010.

19. Atlas Insurance ("Atlas") (which is not a party here), located in Honolulu, Hawai'i, has been ASPA's insurance broker for a number of years.

20. Atlas secured the Policy for ASPA, and, for many successive years before May 1, 2009, Atlas secured ASPA's preceding property insurance policies. Within Atlas, Jim Higgins was primarily responsible for Atlas's services to ASPA.

21. Atlas worked directly with ASPA by helping determine ASPA's insurance needs, developing certain general coverage specifications, and gathering appropriate underwriting information for presentation to the insurance market in attempting to secure coverage.

22. Atlas worked with the Honolulu, Hawai'i, office of a wholesale insurance broker, Swett & Crawford (which is not a party here), in placing ASPA's coverage.

23. Swett & Crawford presented ASPA's specifications and underwriting information to Price Forbes Limited ("Price Forbes"), an accredited Lloyd's broker, which secured the subscription of the Underwriter Defendants to, and the issuance of, the Policy.

24. The Underwriter Defendants' offer to bind coverage was facilitated by Price Forbes and made in Hawai'i to Swett & Crawford, which presented the offer to Atlas in Hawaii.

25. Atlas, in Hawai'i, communicated directly with ASPA, in American Samoa, concerning the Underwriter Defendants' offer to bind coverage.

26. ASPA, in American Samoa, communicated directly with Atlas, in Hawai'i, giving the instruction to Atlas to accept the offer to bind coverage.

27. Atlas gave binding instructions to Swett & Crawford to bind coverage, which binding instructions originating in Hawai'i were communicated to Price Forbes in London, and from Price Forbes to the Underwriter Defendants in London.

28. Through Price Forbes, the Underwriter Defendants issued the Policy to Swett & Crawford, and thence to Atlas, on behalf of ASPA, in Hawai'i.

**III. THE UNDERWRITER DEFENDANTS AND THEIR AGENT, CUNNINGHAM LINDSEY INC.**

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29. Underwriter Defendants that are members of Lloyds, London Syndicate 623 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the "Service of Suit Clause (U.S.A.)" endorsement to the Policy (NMA 1998) ("Service Endorsement"), these Underwriter Defendants may be served through Mendes & Mount (Attorneys), 750 Seventh Avenue, New York, N.Y. 10019-6829 ("Mendes & Mount").

30. Underwriter Defendants that are members of Lloyds, London Syndicate 1301 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

31. Underwriter Defendants that are members of Lloyds, London Syndicate 435 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in



American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

32. Underwriter Defendants that are members of Lloyds, London Syndicate 510 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

33. Underwriter Defendants that are members of Lloyds, London Syndicate 1955 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

34. Underwriter Defendants that are members of Lloyds, London Syndicate 2000 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in

American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

35. Underwriter Defendants that are members of Lloyds, London Syndicate 5820 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

36. Underwriter Defendants that are members of Lloyds, London Syndicate 318 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

37. Underwriter Defendants that are members of Lloyds, London Syndicate 1200 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in

American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

38. Underwriter Defendants that are members of Lloyds, London Syndicate 4020 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

39. Underwriter Defendants that are members of Lloyds, London Syndicate 2623 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

40. Underwriter Defendants that are members of Lloyds, London Syndicate 2010 and subscribe to Policy Number N09NA02900 are persons that are not citizens of American Samoa and/or are entities that are neither organized under the laws of American Samoa nor maintain their principal place of business in

American Samoa and/or are citizens or subjects of a foreign state. Pursuant to the terms of the Service Endorsement, these Underwriter Defendants may be served through Mendes & Mount.

41. Defendant HCC International Insurance Company, PLC (“HCC”) subscribes to Policy Number N09NA02900, is organized under the laws of the United Kingdom and maintains its principal place of business in London, England. HCC is a wholly-owned subsidiary of HCC Insurance Holdings, Inc., which is organized under the laws of the State of Delaware and maintains its principal place of business in Houston, Texas. Pursuant to the terms of the Service Endorsement, HCC may be served through Mendes & Mount.

42. Cunningham Lindsey Inc. (“CLI”) (which is not a party here) is a claims adjuster and is the agent of the Underwriter Defendants. Among other things, CLI has been involved in communicating with ASPA concerning its claim for Policy coverage and facilitating and affecting the limited advance payment made to ASPA under the Policy.

#### **IV. JURISDICTION AND VENUE**

43. This Court has subject matter jurisdiction in this case by reason of 28 U.S.C. § 1332. There is complete diversity of citizenship between the ASPA and the Underwriter Defendants, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

44. This Court has personal jurisdiction over each of the Underwriter Defendants, which have agreed under the Service Endorsement to submit to the jurisdiction of a court of competent jurisdiction in the United States.

45. This Court is the proper venue for this action pursuant to 28 U.S.C. § 1391(a)(3).

**V. ASPA'S LOSSES**

46. ASPA has various facilities at "Insured Locations" (as defined in the Policy) throughout American Samoa that are dedicated to providing Utility Services to American Samoa.

47. Various of those Insured Locations suffered direct physical loss and damage due to the September 29, 2009 earthquakes and/or tsunamis, including facilities dedicated to operations and administrative functions, power generation and distribution, water supply and wastewater treatment.

**A. Power Generation Facilities**

48. All utility functions provided by ASPA are critical to the health and welfare of American Samoa and its citizenry, but ASPA's high-voltage baseload generators, switchgear, and transformers require special attention as they are complex and dangerous machinery that must operate in a safe and efficient manner on a 24/7 basis. Damage to these units can be severe given minimal (let alone catastrophic) disturbances, and remediation can be an intricate, difficult and time consuming process that cannot be undertaken casually or haphazardly.

49. ASPA's facilities dedicated to power generation and distribution that suffered direct physical loss and damage due to the September 29, 2009 earthquakes and/or tsunamis include the Satala Power Plant located on Tutuila Island, a power generator located on Aunu'u Island, the switchgear and transformers and all related components to the power generation system, as well as certain damage on Ofu Island ("Power Generation Facilities").

50. The direct physical loss and damage to the Satala Power Plant, in particular, involved damage to the generators and other electrical and related equipment, in addition to repairing or replacing various and sundry tools and other equipment.

51. CLI has alleged that only minimal repairs of the generators at the Satala Power Plant are appropriate, costing only a few million dollars. CLI's proposed repairs, however, are based on erroneous assumptions concerning the nature and extent of the damage, a misunderstanding of the nature of the necessary repairs, a lack of appreciation for the danger inherent in improper repairs, and a desire to minimize the Underwriter Defendants' liability by proposing what could only be, at best, a short-term solution.

52. In reality, appropriate refurbishment of the generators at the Satala Power Plant would likely cost in excess of an estimated \$21.791 million. It is wholly likely that mere refurbishment would not be appropriate and that replacement would cost in excess of an estimated \$32 million

53. Furthermore, the Satala Power Plant is located in an area that the Environmental Protection Agency (“EPA”) has alleged is contaminated, and part of that plant is also located in an area designated as a “VE” flood zone by FEMA. Responding in an appropriate manner to the physical loss and damage to the Satala Power Plant will necessitate a clean-up of the alleged contamination and moving the facility toward higher ground out of the VE flood zone. In addition to the above-described replacement costs for the damage to the generators and related electrical equipment, it will cost in excess of an estimated \$10 million to construct a new facility outside of the VE flood zone to house the generators and related electrical equipment.

54. The direct physical loss and damage to the Satala Power Plant initially required emergency generation services to American Samoa that were paid for by FEMA. Thereafter, and since, that loss and damage has required ASPA to use temporary generation systems provided by Aggreko International until a permanent solution for the Satala Power Plant is accomplished.

55. The cost of power generation by Aggreko is \$760,000 per month for the first 18 months, and \$685,000 per month for the twelve months thereafter, and further additional monthly amounts to be negotiated. To date, Aggreko’s charges have exceeded \$9 million to-date (consisting of the monthly charge and finance-related charges of \$28,500 per quarter) and those charges continue to grow monthly.

56. The direct physical loss and damage to the Satala Power Plant and the power generator located on Aunu'u Island have also resulted in approximately one million dollars of business interruption-related losses to ASPA. The business interruption-related losses to ASPA would have been considerably higher, but for the prompt assistance of FEMA and the U.S. Army Corps of Engineers.

57. The direct physical loss and damage to ASPA's Power Generation Facilities other than the Satala Power Plant amount to in excess of \$50,000 in other insured losses.

58. The direct physical loss and damage to ASPA's Power Generation Facilities have also occasioned other substantial insured losses, including without limitation losses related to overtime, debris removal, fuel costs, and costs due to inefficiencies, temporary relocation expenses, and other items, to name a few.

59. To date, the Underwriter Defendants, through CLI, have only partially adjusted ASPA's claim as it relates to any of the Power Generation Facilities. They have agreed to pay only a minimal amount solely related to the repair of the generators at the Satala Power Plant, as described above. The Underwriter Defendants, however, have neither paid nor agreed to pay ASPA for its substantial losses related to ASPA's Power Generation Facilities.

**B. Transmission and Distribution Feeder Lines**

60. ASPA's transmission and distribution feeder lines across Tutuila Island ("T&D Lines") suffered direct physical loss and damage due to the



September 29, 2009 earthquakes and/or tsunamis amounting to well in excess of an estimated \$200,000 in insured losses.

61. To date, the Underwriter Defendants, through CLI, have not addressed, let alone adjusted and paid, ASPA's claim as it relates to T&D Lines.

**C. Water Supply and Wastewater Treatment Facilities**

62. ASPA's facilities dedicated to water supply and wastewater treatment that suffered direct physical loss and damage due to the September 29, 2009 earthquakes and/or tsunamis include the Pago Pago Booster Station, the Fagatogo Microfiltration Plant, the Faga'alu Booster Station, the Atu'u Pipeline, the Matafao and Fagotogo Reservoirs, the Tafuna Wastewater Treatment Plant, the Malaloa, Korea, Satala and Faga'alu Lift Stations, and water lines and service equipment across Tutuila Island ("Water Supply and Wastewater Treatment Facilities").

63. The direct physical loss and damage to the Water Supply and Wastewater Treatment Facilities is estimated to exceed \$910,000, but ASPA continues to discover damaged water lines and service equipment across Tutuila Island.

64. The direct physical loss and damage to the Water Supply and Wastewater Treatment Facilities also resulted in hundreds of thousands of dollars of business interruption-related losses to ASPA, as well as other substantial losses to ASPA.

65. To date, the Underwriter Defendants, through CLI, have not addressed, let alone adjusted and paid, ASPA's claim as it relates to the Water Supply and Wastewater Facilities.

**D. Other Damaged Facilities**

66. ASPA also suffered direct physical loss and damage due to the September 29, 2009 earthquakes and/or tsunamis at its Operations Center at the Satala Plant and in its Solid Waste Division and Fuel Division ("Other Damaged Facilities").

67. ASPA's insured losses associated with the direct physical loss and damage to the Operations Center is in excess of an estimated \$2 million.

68. ASPA's insured losses associated with the direct physical loss and damage to the Solid Waste Division is in excess of an estimated \$100,000.

69. ASPA's insured losses associated with the direct physical loss and damage to the Fuel Division is in excess of an estimated \$50,000.

70. The direct physical loss and damage to the Other Damaged Facilities also resulted in hundreds of thousands of dollars of certain business interruption-related losses to ASPA, as well as other substantial losses to ASPA.

71. To date, the Underwriter Defendants, through CLI, have not addressed, let alone adjusted and paid, ASPA's claim as it relates to the Other Damaged Facilities.

**VI. TIMING ISSUES WITH THIS LAWSUIT UNDER THE INSURANCE POLICY**

72. The Underwriter Defendants, through CLI, have not adjusted ASPA's claim. As a result, ASPA has not been provided fundamental information related to its claim, such as specifying the available and applicable limits of liability; specifying which, if any, components of the claim do not fall within the Policy's Insuring Clauses; specifying which, if any, components of the claim as to which there is no coverage by virtue of Policy exclusions; and, specifying which, if any, components of the claim are impacted by other limitations or coverage provisions.

73. As indicated above, the Policy Limitation Period provides that "[n]o suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless: . . . legal action is started within twelve months after inception of the loss."

74. The Policy Limitation Period is the effective deadline that the Underwriter Defendants have imposed on themselves for adjusting and paying ASPA's claim.

75. The Underwriter Defendants, however, have unreasonably delayed adjustment and payment of ASPA's claim by failing to act within the time period they unilaterally set for adjustment and payment. The Underwriter Defendants' failure to adjust and pay is not only a breach of their contractual obligations under the Policy, but it also is without proper cause and is in bad faith.

76. ASPA has provided the Underwriter Defendants with all information, assistance and cooperation required under the terms of the Policy, and, otherwise, ASPA has satisfied all conditions precedent to bringing this action.

**COUNT I – DECLARATORY JUDGMENT**  
(Separate Flood and Earth Movement Policy Limits)

77. ASPA incorporates the preceding paragraphs 1-76 of the Complaint as if fully set forth herein.

78. On September 29, 2009, American Samoa was rocked by three separate earthquakes, and within several minutes of the earthquakes, a series of tsunamis battered American Samoa.

79. ASPA suffered well in excess of \$50 million in losses as a direct result of the September 29, 2010 earthquakes and tsunamis.

80. The “Schedule” to the Policy states that the “Sum Insured” under the Policy is “USD 20,000,000 any one occurrence and in the Annual Aggregate in respect of Flood and Earth Movement separately,” connoting that there is a \$20 million limit under the Policy for losses occasioned by Flood and a separate \$20 million limit under the Policy for losses occasioned by Earth Movement.

81. The first paragraph in the “Limits of Liability” section of the Policy, page 2, says that the “maximum limit of liability in a single occurrence regardless of the number of Locations or coverages involved will not exceed the Policy limit

of liability of USD 20 million [with exceptions that are immaterial to this precise issue].”

82. The sixth paragraph indicates that “[e]ach and every loss or series of losses resulting from the same single event are considered one ‘Occurrence’ under this policy.”

83. The seventh paragraph in that section says that “[e]ach loss by Earth Movement, volcanic action, storm, tidal wave, or flood within any period of 72 consecutive hours commencing during the period of this insurance shall constitute a single loss hereunder.”

84. Read in light of the language of the first and sixth paragraphs of the “Limits of Liability” section of the Policy (which are the relevant paragraphs), the language in the seventh paragraph indicates that each loss by “Earth Movement” shall be considered separately from each loss by “Flood” – the 72 hour period just specifies the duration of each loss/occurrence.

85. Because the losses suffered by ASPA occasioned by the September 29, 2009 earthquakes and tsunamis were caused by “Flood” and “Earth Movement” separately, those losses implicate two separate \$20 million limits, at the very least, or \$40 million, at a minimum.

86. Through CLI, the Underwriter Defendants have suggested or implied that their limit of liability under the Policy is only \$20 million for losses

occasioned by the September 29, 2010 events, regardless of the fact that those events included multiple earthquakes, on the one hand, and tsunamis, on the other.

87. The Underwriter Defendants' contention, in this regard, is contrary to the terms of the Policy, without proper cause, and in bad faith.

88. There is an actual and justiciable controversy between the parties concerning the limits of the potential coverage provided under the Policy by the Underwriter Defendants to ASPA for its losses occasioned by the September 29, 2010 earthquakes and tsunamis.

89. To date, the Underwriter Defendants have refused to reimburse ASPA for losses in excess of a \$5 million advance payment, and the Underwriter Defendants' communications and conduct suggest that they will continue to rely on the erroneous assumption that the Policy has a single \$20 million limit for both losses occasioned by Flood and Earth Movement.

90. The Court should declare that the Policy has a \$20 million limit for losses occasioned by Flood and a separate \$20 million limit for losses occasioned by Earth Movement, so that the Underwriter Defendants will be required to adjust ASPA's claim and reimburse ASPA's losses as required by the Policy, providing the benefits for which ASPA bargained and paid.

**COUNT II – DECLARATORY JUDGMENT**  
(Miscellaneous Unnamed Locations Limits)

91. ASPA incorporates the preceding paragraphs 1-90 of the Complaint as if fully set forth herein.

92. ASPA suffered well in excess of \$50 million in losses as a direct result of the September 29, 2010 earthquakes and tsunamis.

93. ASPA's total losses included losses at separate "Miscellaneous Unnamed Locations," as that term is used in the Policy.

94. The first paragraph in the "Limits of Liability" section of the Policy, page 2, provides as follows:

Underwriters's maximum limit of liability in a single occurrence regardless of the number of Locations or coverages involved will not exceed the Policy limit of liability of USD 20,000,000, except as follows. When a limit of liability for a Location or other specified property is shown, such limit will be the maximum amount payable for any loss or damage arising from physical loss or damage as such location or involving such other specified property.

95. Immediately following is the second paragraph: "Miscellaneous Unnamed Locations: USD1,000,000 per Location."

96. Based on the language of these two paragraphs (which are the relevant paragraphs), in addition to the "Policy limit of liability," the Policy provides an additional \$1 million limit of liability for each Miscellaneous Unnamed Location.

97. At the very minimum, because there are two separate \$20 million Policy limits of liability (one for Flood and one for Earth Movement), there are

also two additional \$1 million limits of liability for Miscellaneous Unnamed Locations.

98. Nevertheless, through CLI, the Underwriter Defendants have suggested or implied that the Miscellaneous Unnamed Location limit is a sublimit within a single \$20 million Policy limit of liability.

99. The Underwriter Defendants' contention, in this regard, is contrary to the terms of the Policy, without proper cause, and in bad faith.

100. There is an actual and justiciable controversy between the parties concerning the limits of the potential coverage provided under the Policy by the Underwriter Defendants to ASPA for its losses occasioned by the September 29, 2010 earthquakes and tsunamis.

101. To date, the Underwriter Defendants have refused to reimburse ASPA for losses in excess of a \$5 million advance payment, and the Underwriter Defendants' communications and conduct suggest that they will continue to rely on the erroneous assumption that the Miscellaneous Unnamed Location limit is singular, and is a sublimit within the Policy's overall limits.

102. The Court should declare that the Policy's Miscellaneous Unnamed Location limit of \$1 million separately applies with respect to each such Miscellaneous Unnamed Location and such Miscellaneous Unnamed Location limits are not a sub-limit but are in addition to the Policy's overall limits, so that the Underwriter Defendants will be required to adjust ASPA's claim and reimburse



ASPA's losses as required by the Policy, providing the benefits for which ASPA bargained and paid.

**COUNT III – DECLARATORY JUDGMENT**  
(Other Specified Coverage Limits)

103. ASPA incorporates the preceding paragraphs 1-102 of the Complaint as if fully set forth herein.

104. ASPA suffered well in excess of \$50 million in losses as a direct result of the September 29, 2010 earthquakes and tsunamis.

105. Of ASPA's total losses, it suffered losses falling within the Policy coverages listed on page 3 of the Policy identified below that maintain separate limits of liability as follows:

USD 250,000	PROFESSIONAL FEES
USD 50,000	LAND AND WATER CONTAMINANT OR POLLUTANT CLEANUP, REMOVAL AND DISPOSAL in the Aggregate During Any Policy Year

ASPA also suffered losses associated with reproduction of electronic media, as to which coverage and separate limits are identified in paragraph 2 of the "Electronic Data Endorsement" on page 45 of the Policy (such separate limits of liability referred to in this paragraph to be subsequently referred to collectively as "Other Coverage Limits").

106. The first paragraph in the "Limits of Liability" section of the Policy, page 2, provides as follows:

Underwriters's maximum limit of liability in a single occurrence regardless of the number of Locations or coverages involved will not exceed the Policy limit of liability of USD 20,000,000, except as follows. When a limit of liability for a Location or other specified property is shown, such limit will be the maximum amount payable for any loss or damage arising from physical loss or damage as such location or involving such other specified property.

107. The third paragraph in the "Limits of Liability" section of the Policy, page 2, states that "[i]f a lesser limit of liability is stated below or elsewhere in this Policy, the lesser limit will apply. The limits of liability stated below or elsewhere in this Policy are part of and not in addition to the Policy limit of liability." The Other Coverage Limits are "stated below . . . in this Policy."

108. Based on the language of these two paragraphs (which are the relevant paragraphs), the Policy provides that the Other Coverage Limits are sublimits, that is, included within the "Policy limit of liability."

109. Because there are two separate \$20 million Policy limits of liability (one for Flood and one for Earth Movement), there are also two sets of Other Coverage Limits applicable to ASPA's claim. Nevertheless, through CLI, the Underwriter Defendants have suggested or implied that the Other Coverage Limits are sublimits, and only one set of those sublimits is provided under the Policy.

110. The Underwriter Defendants' contention, in this regard, is contrary to the terms of the Policy, without proper cause, and in bad faith.

111. There is an actual and justiciable controversy between the parties concerning the limits of the potential coverage provided under the Policy by the

Underwriter Defendants to ASPA for its losses occasioned by the September 29, 2010 earthquakes and tsunamis.

112. To date, the Underwriter Defendants have refused to reimburse ASPA for losses in excess of a \$5 million advance payment, and the Underwriter Defendants' communications and conduct suggest that they will continue to rely on the erroneous assumption that the Other Coverage Limits are sublimits, and only one set of those sublimits is provided under the Policy.

113. The Court should declare that the Policy provides that there are two sets of Other Coverage Limits applicable to ASPA's claim, so that the Underwriter Defendants will be required to adjust ASPA's claim and reimburse ASPA's losses as required by the Policy, providing the benefits for which ASPA bargained and paid.

#### **COUNT IV – BREACH OF CONTRACT**

114. ASPA incorporates the preceding paragraphs 1-113 of the Complaint as if fully set forth herein.

115. ASPA suffered well in excess of \$50 million in losses as a direct result of the September 29, 2010 earthquakes and tsunamis.

116. ASPA has provided the Underwriter Defendants with all information, assistance and cooperation required under the terms of the Policy, and, otherwise, ASPA has satisfied all conditions precedent to bringing this action.

117. The Policy Limitation Period is the effective deadline that the Underwriter Defendants have imposed on themselves for adjusting and paying ASPA's claim.

118. The Underwriter Defendants, through CLI, have not adjusted ASPA's claim, and the Underwriter Defendants have not paid ASPA's claim.

119. The Underwriter Defendants' failure to adjust and pay ASPA's claim within the Policy Limitation Period set unilaterally by those Underwriter Defendants is not only a breach of the Underwriter Defendants' contractual obligations under the Policy, but is also without proper cause and in bad faith.

120. As a result of the Underwriter Defendants' breach of its obligations under the Policy, ASPA has suffered damages in excess of \$50 million.

WHEREFORE, ASPA respectfully requests that the Court,

(a) declare that the Policy has a \$20 million limit for losses occasioned by Flood and a separate \$20 million limit for losses occasioned by Earth Movement;

(b) declare that the Policy's Miscellaneous Unnamed Location limit of \$1 million separately applies with respect to each such Miscellaneous Unnamed Location and such Miscellaneous Unnamed Location limits are not a sub-limit but are in addition to the Policy's overall limits;

(c) declare that the Policy provides that there are two sets of Other

Coverage Limits applicable to ASPA's claim;

(d) award ASPA damages to compensate it for all losses sustained as a consequence of the Underwriter Defendants' breach of their obligations under the Policy in an amount to be proven at trial in excess of \$50 million;

(e) award ASPA pre-judgment interest at the rate of ten percent per year, and post-judgment interest, as to all insurance proceeds due but wrongfully withheld by the Underwriter Defendants;

(f) award ASPA its costs and attorneys' fees; and,

(g) grant such other relief as is just and equitable.

DATED: Honolulu, Hawaii, September 24, 2010.



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JAMES J. BICKERTON

NADINE Y. ANDO

Attorneys for Plaintiff

American Samoa Power Authority

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII**

American Samoa Power Authority,

Plaintiff,

vs.

CV# \_\_\_\_\_

**DEMAND FOR JURY**

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 623 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 1301 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 435 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 510 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 1955 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 2000 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 5820 Subscribing to Policy  
Number N09NA02900,

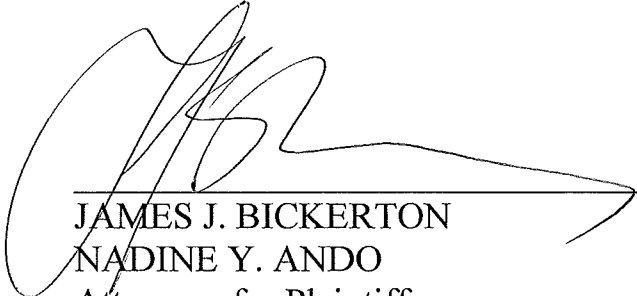
Certain Underwriters at Lloyd's, London that are

Members of Syndicate 318 Subscribing to Policy )  
Number N09NA02900, )  
)  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 1200 Subscribing to Policy )  
Number N09NA02900, )  
)  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 4020 Subscribing to Policy )  
Number N09NA02900, )  
)  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 2623 Subscribing to Policy )  
Number N09NA02900, )  
)  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 2010 Subscribing to Policy )  
Number N09NA02900, and )  
)  
HCC International Insurance Company, PLC, )  
)  
Defendants. )

**DEMAND FOR JURY TRIAL**

Plaintiff, by and through its attorneys, Bickerton Lee Dang & Sullivan,  
hereby demands trial by jury on all issues triable herein.

DATED: Honolulu, Hawaii, September 24, 2010.

  
\_\_\_\_\_  
JAMES J. BICKERTON  
NADINE Y. ANDO  
Attorneys for Plaintiff  
American Samoa Power Authority

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF HAWAII**

American Samoa Power Authority,

Plaintiff,

vs.

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 623 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 1301 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 435 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 510 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 1955 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 2000 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are  
Members of Syndicate 5820 Subscribing to Policy  
Number N09NA02900,

Certain Underwriters at Lloyd's, London that are

CV# \_\_\_\_\_

**SUMMONS IN A  
CIVIL ACTION**



Members of Syndicate 318 Subscribing to Policy )  
Number N09NA02900, )  
) )  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 1200 Subscribing to Policy )  
Number N09NA02900, )  
) )  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 4020 Subscribing to Policy )  
Number N09NA02900, )  
) )  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 2623 Subscribing to Policy )  
Number N09NA02900, )  
) )  
Certain Underwriters at Lloyd's, London that are )  
Members of Syndicate 2010 Subscribing to Policy )  
Number N09NA02900, and )  
) )  
HCC International Insurance Company, PLC, )  
) )  
Defendants. )

**SUMMONS IN A CIVIL ACTION**

**TO THE ABOVE-NAMED DEFENDANTS:**

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Bickerton Lee Dang & Sullivan  
745 Fort Street Tower, Suite 801  
Topa Financial Plaza  
Honolulu, Hawaii 96813

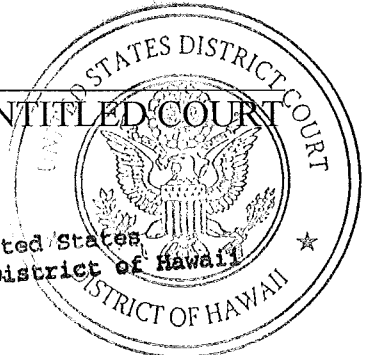
If you fail to respond, judgment by default will be entered against you for the relief demanded in the Complaint. You must also file your answer or motion with the Court.

DATED: Honolulu, Hawaii, SEP 24 2010, 2010.

**SUE BEITIA**

**CLERK OF THE ABOVE-ENTITLED COURT**

*[Signature]*  
Deputy Clerk, United States  
District Court, District of Hawaii



AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

AMERICAN SAMOA POWER AUTHORITY

(b) County of Residence of First Listed Plaintiff Pago Pago, AS

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

James J. Bickerton, Nadine Y. Ando, Bickerton Lee Dang &amp; Sullivan, 745 Fort Street, Ste. 801, Honolulu, HI 96813 Tel: 808.599.3811

**DEFENDANTS**

Certain Underwriters at Lloyd's London that are members of Syndicate 1301 subscribing to Policy Number N09NA02900, et al.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Unknown

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332

Brief description of cause:

Breach of Contract and Declaratory Judgment - Insurance Policy

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ In excess of \$50 million

CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/24/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.