

**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No:[PCO-036-0066]

D-40

06/08/2012 2:28 PM Page 1 of 7

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

Close Dt: 06/03/2009

DOL: 08/03/1982

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

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/03/2009 **Type:** User **User ID:** igfjdd

**Subject:** CLOSED FILE

CLOSED FILE

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

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

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

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0066]

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

Close Dt: 06/03/2009

DOL: 08/03/1982

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

BAR DATE

**Date:** 04/08/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0066]

06/08/2012 2:28 PM

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---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0066]

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

Close Dt: 06/03/2009

DOL: 08/03/1982

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

BAR DATE

Date: 03/10/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/10/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance  
www.id.state.az.us

March 10, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE: } Long Island Water Company v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT: t Long Island Water Company
- CLAIM NUMBER:  PCO-036-0065 and PCO-036-0066

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 26, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0066]

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No: [PCO-036-0066]

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

Close Dt: 06/03/2009

DOL: 08/03/1982

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

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/27/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0065 and PCO-036-0066.

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

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

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0066]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No. [PCO-036-0067]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0067	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0068

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc  
 lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/03/2009 **Type:** User **User ID:** igfjdd

**Subject:** CLOSED FILE  
 CLOSED FILE

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0067]

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Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0068

BAR DATE

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**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

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**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0067]

06/08/2012 2:29 PM

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---

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**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0067]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0067	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0068

BAR DATE

Date: 03/10/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/10/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

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

March 10, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

r STYLE OF CASE: d New Jersey American Water Company v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

J CLAIMANT:  New Jersey American Water Company

J CLAIM NUMBER: PCO-036-0067 and PCO-036-0068

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 26, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0067]

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0067]

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Close Dt: 06/03/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0068

BAR DATE

Date: 03/10/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

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There are two files set up for this loss, one for each policy: PCO-036-0067 and PCO-036-0068.

This loss relates to suit in US District Court in NY, 04CV1726, filed by 16 water companies, the lead being New Jersey American Water Company. The Plaintiffs are various water distribution corporations, assigned with the preservation and distribution of groundwater to residents in NJ. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the New Jersey Spill Compensation and Containment Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages, to be proven at trial.

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

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1. BOP 8816174 (8/3/80-81) and extended by endorsement through 8/3/82
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**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No: [PCO-036-0068]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0068	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0067

BAR DATE

**Date:** 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg  
**Subject:** icfileloc\_state Reassigned from {AZ} to {NY} icfileloc  
 icfileloc\_state Reassigned from {AZ} to {NY} icfileloc Reassigned from {10} to {1} icfileloc\_sub Reassigned from {In House} to {} icfileloc\_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/03/2009 **Type:** User **User ID:** igfjdd  
**Subject:** CLOSED FILE  
 CLOSED FILE

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

**Date:** 06/09/2008 **Type:** User **User ID:** igfidh  
**Subject:** Adjuster & management notes will be maintained in master file  
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim.

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0068]

06/08/2012 2:29 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0068	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0067

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0068]

06/08/2012 2:29 PM

Page 2 of 7

---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0068]

06/08/2012 2:29 PM

Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0068	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0067

BAR DATE

Date: 03/10/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/10/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 10, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

r STYLE OF CASE: d New Jersey American Water Company v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

J CLAIMANT:  New Jersey American Water Company

J CLAIM NUMBER: PCO-036-0067 and PCO-036-0068

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 26, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0068]

06/08/2012 2:29 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

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

Claim No:[PCO-036-0068]

06/08/2012 2:29 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0068	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0067

BAR DATE

**Date:** 03/10/2008**Type:** User**User ID:** igfjdd**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/27/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0067 and PCO-036-0068.

This loss relates to suit in US District Court in NY, 04CV1726, filed by 16 water companies, the lead being New Jersey American Water Company. The Plaintiffs are various water distribution corporations, assigned with the preservation and distribution of groundwater to residents in NJ. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the New Jersey Spill Compensation and Containment Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages, to be proven at trial.

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0068]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No [PCO-036-0069]

D-43

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0069	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0070

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/03/2009 **Type:** User **User ID:** igfjdd

**Subject:** CLOSED FILE

CLOSED FILE

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

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

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

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0069]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0069	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0070

BAR DATE

**Date:** 04/08/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

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They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and **does** not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0069]

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Page 2 of 7

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**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0069]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0069	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0070

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/10/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance  
[www.id.state.az.us](http://www.id.state.az.us)

March 10, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE:  Northampton Bucks County Municipal Authority v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT:  Northampton Bucks County Municipal Authority
- CLAIM NUMBER:  PCO-036-0069 and PCO-036-0070

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 26, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0069]

06/08/2012 2:29 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0069]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0069	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0070

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/25/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0067 and PCO-036-0068.

This loss relates to suit in US District Court in NY, 04CV6993, filed by the Northampton Bucks County Authority ("The Authority"). The Authority is a public water provider, assigned with the preservation and distribution of groundwater to residents in Pennsylvania. The Authority filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act and Civil Conspiracy. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Authority is requesting compensatory damages as well as punitive damages, to be proven at trial.

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0069]

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Page 4 of 7

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No: [PCO-036-0070]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0070	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0069

BAR DATE

**Date:** 04/19/2011

**Type:** File Loc Cha

**User ID:** igftlg

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/27/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/03/2009

**Type:** User

**User ID:** igfjdd

**Subject:** CLOSED FILE

CLOSED FILE

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

**Date:** 06/09/2008

**Type:** User

**User ID:** igfldn

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

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

**Date:** 04/11/2008

**Type:** User

**User ID:** igfldn

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0070]

06/08/2012 2:29 PM						Page 2 of 7	
<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>	
36	PCO-036-0070	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed	

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0069

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0070]

06/08/2012 2:29 PM

Page 2 of 7

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**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0070]

06/08/2012 2:29 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0070	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0069

BAR DATE

Date: 03/10/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/10/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS  
 Governor  Phoenix, Arizona 85007  Director of Insurance  
[www.id.state.az.us](http://www.id.state.az.us)

March 10, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE: Northampton Bucks County Municipal Authority v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT:  Northampton Bucks County Municipal Authority
- J CLAIM NUMBER:  PCO-036-0069 and  PCO-036-0070

Dear Mr. Chandler:

We are in receipt of your letter dated February 26, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 26, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0070]

06/08/2012 2:29 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0070]

06/08/2012 2:29 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0070	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/03/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0069

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/25/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0067 and PCO-036-0068.

This loss relates to suit in US District Court in NY, 04CV6993, filed by the Northampton Bucks County Authority ("The Authority"). The Authority is a public water provider, assigned with the preservation and distribution of groundwater to residents in Pennsylvania. The Authority filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act and Civil Conspiracy. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Authority is requesting compensatory damages as well as punitive damages, to be proven at trial.

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0070]

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Page 4 of 7

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No. [PCO-036-0071]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0071	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0072

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc  
 lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

---

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

**Subject:** CLOSED FILE  
 CLOSED FILE

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

---

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

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

---

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0071]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0071	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0072

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0071]

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Page 2 of 7

---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0071]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0071	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0072

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/10/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS  
 Governor  Phoenix, Arizona 85007  Director of Insurance  
[www.id.state.az.us](http://www.id.state.az.us)

March 10, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE: q The Town of East Hampton v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT:  The Town of East Hampton
- CLAIM NUMBER:  PCO-036-0071 and PCO-036-0072

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0071]

06/08/2012 2:29 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0071]

06/08/2012 2:29 PM						Page 4 of 7
<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0071	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0072

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0071 and PCO-036-0072.

This loss relates to suit in US District Court in NY, 04CV1720, filed by the Town of East Hampton ("The Town"). The Town is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in Connecticut. The Town filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Trespass, Violation of the Toxic Substances Control Act, Fraud, Civil Conspiracy, Violation of the CT Unfair Trade Practices Act, Violation of the CT Products Liability Act, Damages - Unreasonable Pollution and Action - Unreasonable Pollution. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Town is requesting compensatory damages as well as punitive damages to be proven at trial.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces. It is alleged that the Town controls two wells, both of which are either contaminated or have a high likelihood of exposure. There is a leaking UST within 2,000 feet of the contaminated well. There have been four gasoline spills within one mile of the other well.

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0071]

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

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

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

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

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

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

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

LIABILITY: Unknown at this time.

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

PLAN:

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Date: 03/10/2008

Type: New Claim

User ID: igftlg

Subject: Posted from Notice to Claim

Posted from Notice to Claim





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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0072	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0071

BAR DATE

**Date:** 04/19/2011 **Type:** File Loc Cha **User ID:** igftlg  
**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc  
 lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/05/2009 **Type:** User **User ID:** igfjdd  
**Subject:** CLOSED FILE  
 CLOSED FILE

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

**Date:** 06/09/2008 **Type:** User **User ID:** igfldn  
**Subject:** Adjuster & management notes will be maintained in master file  
 Adjuster & management notes will be maintained in master file #PCO-036-0027, unless specifically pertinent to this claim,

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0072]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0072	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0071

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

- National Union (AIG)
- Illinois National (AIG)
- American Home (AIG)
- American International Specialty (AIG)
- Omaha Indemnity
- Fireman's Fund
- USF&G
- Assicurazioni Generali
- The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0072]

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**Date:** 04/04/2008

**Type:** User

**User ID:** igfidn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0072]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0072	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0071

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/10/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

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

March 10, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

STYLE OF CASE: q The Town of East Hampton v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  The Town of East Hampton

CLAIM NUMBER:  PCO-036-0071 and PCO-036-0072

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0072]

06/08/2012 2:30 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0072]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0072	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0071

BAR DATE

**Date:** 03/10/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0071 and PCO-036-0072.

This loss relates to suit in US District Court in NY, 04CV1720, filed by the Town of East Hampton ("The Town"). The Town is a municipal corporation, assigned with the preservation and distribution of groundwater to residents in Connecticut. The Town filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Trespass, Violation of the Toxic Substances Control Act, Fraud, Civil Conspiracy, Violation of the CT Unfair Trade Practices Act, Violation of the CT Products Liability Act, Damages - Unreasonable Pollution and Action - Unreasonable Pollution. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Town is requesting compensatory damages as well as punitive damages to be proven at trial.

It is alleged that the defendants knowingly used MTBE, a chemical only created through the refining of petroleum, as a fuel oxygenator despite knowing its propensity to be highly water soluble and being a known carcinogen. MTBE has been found to spread further, faster and last longer than any other petroleum by-product, up to 24 times faster. It is not naturally found in gasoline and is only found as an additive. It also lasts much longer due to its resistance to natural and chemical forces. It is alleged that the Town controls two wells, both of which are either contaminated or have a high likelihood of exposure. There is a leaking UST within 2,000 feet of the contaminated well. There have been four gasoline spills within one mile of the other well.

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

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

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

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

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No: [PCO-036-0073]

D-47

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0073	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0074

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc  
 lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

**Subject:** CLOSED FILE  
 CLOSED FILE

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0073]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0073	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0074

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

- National Union (AIG)
- Illinois National (AIG)
- American Home (AIG)
- American International Specialty (AIG)
- Omaha Indemnity
- Fireman's Fund
- USF&G
- Assicurazioni Generali
- The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0073]

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**Date:** 04/04/2008

**Type:** User

**User ID:** igfidn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0073]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0073	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0074

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund 03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANO 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor Phoenix, Arizona 85007 Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE: Home Insurance Company, in Liquidation

STYLE OF CASE: The Town of Duxbury v. Amerada Hess Corporation et al.

INSURED: Giant Industries

CLAIMANT: The Town of Duxbury

CLAIM NUMBER: PCO-036-0073 and PCO-036-0074

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0073]

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0073]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0073	BOP8816174	GIANT INDUSTRIES	OTHER	igjidd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0074

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igjidd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0073 and PCO-036-0074.

This loss relates to suit in US District Court in NY, 04CV1725, filed by 58 plaintiffs, the lead being the Town of Duxbury. The Plaintiffs are public water providers, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0073]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim  
Posted from Notice to Claim





## Notes - Claim and Loss

Claim No:[PCO-036-0074]

D-48

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0074	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0073

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

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

Date: 06/09/2008

Type: User

User ID: igfldn

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

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

Date: 04/11/2008

Type: User

User ID: igfldn

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

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

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

Claim No:[PCO-036-0074]

06/08/2012 2:30 PM

Page 2 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0074	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0073

BAR DATE

**Date:** 04/08/2008**Type:** User**User ID:** igfjdd**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0074]

06/08/2012 2:30 PM

Page 2 of 7

---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfdn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0074]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0074	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0073

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund 03/11/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANO 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

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

March 11, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE:  The Town of Duxbury v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT:  The Town of Duxbury
- CLAIM NUMBER:  PCO-036-0073 and PCO-036-0074

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

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Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0074]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0074	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0073

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0073 and PCO-036-0074.

This loss relates to suit in US District Court in NY, 04CV1725, filed by 58 plaintiffs, the lead being the Town of Duxbury. The Plaintiffs are public water providers, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

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

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

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

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

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No. [PCO-036-0075]

D-49

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0075	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0076

BAR DATE

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

**Subject:** lcfilereloc\_state Reassigned from {AZ} to {NY} lcfilereloc  
 lcfilereloc\_state Reassigned from {AZ} to {NY} lcfilereloc Reassigned from {10} to {1} lcfilereloc\_sub Reassigned from  
 {In House} to {} lcfilereloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by  
 {igftlg}

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

**Subject:** CLOSED FILE  
 CLOSED FILE

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

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

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

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

**Subject:** Reviewed claim on mgr's diary. Handled appropriately. Thanks,  
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# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0075]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0075	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0076

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0075]

06/08/2012 2:30 PM

Page 2 of 7

---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0075]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0075	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0076

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/11/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance  
www.id.state.az.us

March 11, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE:  The Town of Huntington/Dix Hills v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT:  The Town of Huntington/Dix Hills Water District
- CLAIM NUMBER:  PCO-036-0075 and PCO-036-0076

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0075]

06/08/2012 2:30 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0075]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0075	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0076

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0075 and PCO-036-0076.

This loss relates to suit in US District Court in NY, 07CV2405, filed by the Town of Huntington/Dix Hills Water District (Dix Hills). Dix Hills is a municipal corporation, assigned with the preservation and distribution of groundwater to over 34,000 residents in Long Island, NY. Dix Hills filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, Dix Hills is requesting \$480 million in compensatory damages as well as \$1.75 billion in punitive damages.

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0075]

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

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No. [PCO-036-0076]

D-50

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0076	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0075

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

**Subject:** CLOSED FILE

CLOSED FILE

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

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

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

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

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

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

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

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

Claim No:[PCO-036-0076]

06/08/2012 2:30 PM

Page 2 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0076	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0075

BAR DATE

**Date:** 04/08/2008**Type:** User**User ID:** igfjdd**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0076]

06/08/2012 2:30 PM

Page 2 of 7

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**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0076]

06/08/2012 2:30 PM Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0076	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0075

BAR DATE

Date: 03/11/2008 Type: User User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/11/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872
- JANET NAPOLITANO e 1110 W. Washington, Suite 270 CHRISTINA URIAS
- Governor  Phoenix, Arizona 85007  Director of Insurance
- www.id.state.az.us

March 11, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE: x The Town of Huntington/Dix Hills v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT:  The Town of Huntington/Dix Hills Water District
- CLAIM NUMBER:  PCO-036-0075 and PCO-036-0076

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0076]

06/08/2012 2:30 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0076]

06/08/2012 2:30 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0076	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0075

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0075 and PCO-036-0076.

This loss relates to suit in US District Court in NY, 07CV2405, filed by the Town of Huntington/Dix Hills Water District (Dix Hills). Dix Hills is a municipal corporation, assigned with the preservation and distribution of groundwater to over 34,000 residents in Long Island, NY. Dix Hills filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are: Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Strict Liability for Design Defect, Strict Liability for Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Violation of NY Business Law and Violation of NY Navigation Law. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, Dix Hills is requesting \$480 million in compensatory damages as well as \$1.75 billion in punitive damages.

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0076]

06/08/2012 2:30 PM

Page 4 of 7

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

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No: [PCO-036-0077]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0077	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0078

BAR DATE

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

**Subject:** lcfiloloc\_state Reassigned from {AZ} to {NY} lcfiloloc  
 lcfiloloc\_state Reassigned from {AZ} to {NY} lcfiloloc Reassigned from {10} to {1} lcfiloloc\_sub Reassigned from {In House} to {} lcfiloloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

**Subject:** CLOSED FILE  
 CLOSED FILE

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0077]

06/08/2012 2:30 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0077	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0078

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0077]

06/08/2012 2:30 PM

Page 2 of 7

---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0077]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0077	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0078

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

STYLE OF CASE:  The Town of Billerica et al. v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  The Town of Billerica et al.

CLAIM NUMBER:  PCO-036-0077 and PCO-036-0078

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0077]

06/08/2012 2:30 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0077]

06/08/2012 2:30 PM

Page 4 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0077	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0078

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0077 and PCO-036-0078.

This loss relates to suit in US District Court in NY, 06CV01381, filed by 12 plaintiffs, the lead being the Town of Billerica. The Plaintiffs, either towns or water districts, are public water providers, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0077]

06/08/2012 2:30 PM

Page 4 of 7

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





D-52

06/08/2012 2:31 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0078	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0077

BAR DATE

Date: 04/19/2011

Type: File Loc Cha

User ID: igftlg

Subject: lcfiloc\_state Reassigned from {AZ} to {NY} lcfiloc

lcfiloc\_state Reassigned from {AZ} to {NY} lcfiloc Reassigned from {10} to {1} lcfiloc\_sub Reassigned from {In House} to {} lcfiloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

Date: 06/05/2009

Type: User

User ID: igfjdd

Subject: CLOSED FILE

CLOSED FILE

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

Date: 06/09/2008

Type: User

User ID: igfldn

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

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

Date: 04/11/2008

Type: User

User ID: igfldn

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0078]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0078	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0077

BAR DATE

**Date:** 04/08/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0078]

06/08/2012 2:31 PM

Page 2 of 7

---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfidn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfidd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0078]

06/08/2012 2:31 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0078	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0077

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

- Arizona Property and Casualty
- Insurance Guaranty Fund  03/11/08
- Arizona Department of Insurance
- Telephone: (602) 364-3863
- Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance  
www.id.state.az.us

March 11, 2008

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

- RE:  Home Insurance Company, in Liquidation
- STYLE OF CASE:  The Town of Billerica et al. v. Amerada Hess Corporation et al.
- INSURED:  Giant Industries
- CLAIMANT:  The Town of Billerica et al.
- CLAIM NUMBER:  PCO-036-0077 and PCO-036-0078

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0078]

06/08/2012 2:31 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0078]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0078	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0077

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0077 and PCO-036-0078.

This loss relates to suit in US District Court in NY, 06CV01381, filed by 12 plaintiffs, the lead being the Town of Billerica. The Plaintiffs, either towns or water districts, are public water providers, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0078]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim  
Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No. [PCO-036-0079]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0079	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0080

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

**Subject:** CLOSED FILE

CLOSED FILE

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

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

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

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0079]

06/08/2012 2:31 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0079	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0080

BAR DATE

**Date:** 04/08/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0079]

06/08/2012 2:31 PM

Page 2 of 7

---

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

---

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0079]

06/08/2012 2:31 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0079	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0080

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

L STYLE OF CASE: o Port Washington Water District v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

u CLAIMANT: f Port Washington Water District

k CLAIM NUMBER:  PCO-036-0079 and PCO-036-0080

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0079]

06/08/2012 2:31 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0079]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0079	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0080

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0079 and PCO-036-0080.

This loss relates to suit in US District Court in NY, 04CV0381, filed by the Port Washington Water District (PWWD). The PWWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 35,000 residents in Long Island, NY. The PWWD filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0079]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No:[PCO-036-0080]

D-54

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0080	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0079

BAR DATE

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

**Subject:** lcfiloloc\_state Reassigned from {AZ} to {NY} lcfiloloc

lcfiloloc\_state Reassigned from {AZ} to {NY} lcfiloloc Reassigned from {10} to {1} lcfiloloc\_sub Reassigned from {In House} to {} lcfiloloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

**Subject:** CLOSED FILE  
CLOSED FILE

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

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

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No: [PCO-036-0080]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0080	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0079

BAR DATE

**Date:** 04/08/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0080]

06/08/2012 2:31 PM

Page 2 of 7

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

**Date:** 04/02/2008

**Type:** User

**User ID:** igfjdd

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0080]

06/08/2012 2:31 PM Page 3 of 7

IGA	Claim No	Policy No	Insured	LOB	Examiner	Status
36	PCO-036-0080	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0079

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

STYLE OF CASE:  Port Washington Water District v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  Port Washington Water District

CLAIM NUMBER:  PCO-036-0079 and PCO-036-0080

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim.No:[PCO-036-0080]

06/08/2012 2:31 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0080]

06/08/2012 2:31 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0080	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0079

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/28/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0079 and PCO-036-0080.

This loss relates to suit in US District Court in NY, 04CV0381, filed by the Port Washington Water District (PWWD). The PWWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 35,000 residents in Long Island, NY. The PWWD filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0080]

06/08/2012 2:31 PM

Page 4 of 7

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/10/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No. [PCO-036-0081]

D-55

06/08/2012 2:31 PM Page 1 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0081	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0082

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/28/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

**Subject:** CLOSED FILE

CLOSED FILE

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

**Date:** 06/10/2008 **Type:** User **User ID:** igfldn

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

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

**Date:** 04/10/2008 **Type:** User **User ID:** igfldn

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0081]

06/08/2012 2:31 PM

Page 2 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0081	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0082

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

- National Union (AIG)
- Illinois National (AIG)
- American Home (AIG)
- American International Specialty (AIG)
- Omaha Indemnity
- Fireman's Fund
- USF&G
- Assicurazioni Generali
- The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0081]

06/08/2012 2:31 PM

Page 2 of 7

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0081]

06/08/2012 2:31 PM

Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0081	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0082

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 11, 2008

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

RE:  Home Insurance Company, in Liquidation

i STYLE OF CASE: n Roslyn Water District v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT: a Roslyn Water District

k CLAIM NUMBER:  PCO-036-0081 and PCO-036-0082

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0081]

06/08/2012 2:31 PM

Page 3 of 7

would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0081]

06/08/2012 2:31 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0081	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0082

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/25/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0081 and PCO-036-0082.

This loss relates to suit in US District Court in NY, 04CV5422, filed by the Roslyn Water District (RWD). The RWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 17,000 residents in Long Island, NY. The RWD filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0081]

06/08/2012 2:31 PM

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/11/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim







Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0082]

06/08/2012 2:31 PM

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0082	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0081

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0082]

06/08/2012 2:31 PM

Page 2 of 7

**Date:** 04/04/2008

**Type:** User

**User ID:** igfidn

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0082]

06/08/2012 2:31 PM

Page 3 of 7

<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0082	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0081

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

i STYLE OF CASE: n Roslyn Water District v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT: a Roslyn Water District

k CLAIM NUMBER:  PCO-036-0081 and PCO-036-0082

Dear Mr. Chandler:

We are in receipt of your letter dated February 27, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 27, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance - Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0082]

06/08/2012 2:31 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0082]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0082	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0081

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/25/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0081 and PCO-036-0082.

This loss relates to suit in US District Court in NY, 04CV5422, filed by the Roslyn Water District (RWD). The RWD is a municipal corporation, assigned with the preservation and distribution of groundwater to over 17,000 residents in Long Island, NY. The RWD filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

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

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

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0082]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/11/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No:[PCO-036-0083]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0083	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0084

BAR DATE

**Date:** 04/19/2011

**Type:** File Loc Cha

**User ID:** igftlg

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/05/2009

**Type:** User

**User ID:** igfjdd

**Subject:** CLOSED FILE

CLOSED FILE

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

**Date:** 06/10/2008

**Type:** User

**User ID:** igfldn

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

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

**Date:** 04/10/2008

**Type:** User

**User ID:** igfldn

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0083]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0083	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0084

BAR DATE

**Date:** 04/08/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0083]

06/08/2012 2:31 PM

Page 2 of 7

**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0083]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0083	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0084

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

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

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

STYLE OF CASE: } Town of Lakeville et al. v. Atlantic Richfield Company et al.

INSURED:  Giant Industries

CLAIMANT:  Town of Lakeville et al.

CLAIM NUMBER:  PCO-036-0083 and PCO-036-0084

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0083]

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0083]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0083	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0084

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0083 and PCO-036-0084.

This loss relates to suit in US District Court in MA, 07CA11244, filed by 3 plaintiffs, the lead being the Town of Lakeville. The Plaintiffs are public water providers under MA law, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0083]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

---

**Date:** 03/11/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No. [PCO-036-0084]

D-58

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0084	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0083

BAR DATE

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

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

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

**Subject:** CLOSED FILE

CLOSED FILE

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

**Date:** 06/10/2008 **Type:** User **User ID:** igfldn

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

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

**Date:** 04/10/2008 **Type:** User **User ID:** igfldn

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0084]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0084	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0083

BAR DATE

Date: 04/08/2008

Type: User

User ID: igfjdd

Subject: Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

- National Union (AIG)
- Illinois National (AIG)
- American Home (AIG)
- American International Specialty (AIG)
- Omaha Indemnity
- Fireman's Fund
- USF&G
- Assicurazioni Generali
- The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0084]

06/08/2012 2:31 PM

Page 2 of 7

**Date:** 04/04/2008

**Type:** User

**User ID:** igfidn

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

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

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

**Arizona Property & Casualty Insurance Guaranty Fund**

Notes - Claim and Loss

Claim No:[PCO-036-0084]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>	
36	PCO-036-0084	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed	

Close Dt: 06/05/2009

DOL: 08/03/1982

**Claim Description:** ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0083

BAR DATE

**Date:** 03/11/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

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

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

' STYLE OF CASE: } Town of Lakeville et al. v. Atlantic Richfield Company et al.

INSURED:  Giant Industries

CLAIMANT:  Town of Lakeville et al.

CLAIM NUMBER:  PCO-036-0083 and PCO-036-0084

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

The Fund must honor the bar dates established by receivership courts. In a resolution adopted on April 16, 1998, the Fund has specifically stated that "... any and all claims against the FUND, whether liquidated or unliquidated, not filed with the receiver or the FUND within four months from the date of the notice to creditors by the receiver, or on or before the claims bar date established by the receiver, whichever is later, shall be barred as to the FUND;" Notice of this claim was not provided prior to the bar date established. For that reason, we will not be able to extend coverage for this matter under the Fund.

The Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter. The Fund reserves its rights to modify its coverage position at any time upon receipt of additional information. Should you have any additional information regarding the notice of this claim that you

**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No:[PCO-036-0084]

06/08/2012 2:31 PM

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would like for us to consider, please contact me.

Sincerely,

John Draftz  
Senior Claims Adjuster  
(602) 364-3869

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0084]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0084	BOP8931246	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1982

Claim Description: ALLEGED MTBE CONTAMINATION - SEE X-CLAIM #PCO-036-0083

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Reviewed new claim from the Home insolvency.

Reviewed new claim from the Home insolvency.

This is a first notice claim filed after the bar date and has been deemed late. Western Refining claims to have purchased all of Giant Industries stock as of 5/31/07, and is requesting the Fund review this matter for possible coverage as Giant was domiciled in AZ. The notice letter was received 2/29/08 and Home's bar date was 6/13/04. As such, a denial letter citing the bar date will be sent.

There are two files set up for this loss, one for each policy: PCO-036-0083 and PCO-036-0084.

This loss relates to suit in US District Court in MA, 07CA11244, filed by 3 plaintiffs, the lead being the Town of Lakeville. The Plaintiffs are public water providers under MA law, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are: Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

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

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

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0084]

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

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

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

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

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

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

**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/11/2008

**Type:** New Claim

**User ID:** igftlg

**Subject:** Posted from Notice to Claim

Posted from Notice to Claim





**Arizona Property & Casualty Insurance Guaranty Fund**

**Notes - Claim and Loss**

Claim No [PCO-036-0085]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0085	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0086

BAR DATE

**Date:** 04/19/2011

**Type:** File Loc Cha

**User ID:** igftlg

**Subject:** lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc

lcfileloc\_state Reassigned from {AZ} to {NY} lcfileloc Reassigned from {10} to {1} lcfileloc\_sub Reassigned from {In House} to {} lcfileloc\_date Reassigned from {02/29/2008} to {03/23/2011} boxno Reassigned from {} to {2} by {igftlg}

**Date:** 06/05/2009

**Type:** User

**User ID:** igfjdd

**Subject:** CLOSED FILE

CLOSED FILE

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

**Date:** 06/10/2008

**Type:** User

**User ID:** igfldn

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

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

**Date:** 04/10/2008

**Type:** User

**User ID:** igfldn

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

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

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0085]

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<u>IGA</u>	<u>Claim No</u>	<u>Policy No</u>	<u>Insured</u>	<u>LOB</u>	<u>Examiner</u>	<u>Status</u>
36	PCO-036-0085	BOP8816174	GIANT INDUSTRIES	OTHER	igfjdd	Closed

Close Dt: 06/05/2009

DOL: 08/03/1980

**Claim Description:** ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0086

BAR DATE

**Date:** 04/08/2008

**Type:** User

**User ID:** igfjdd

**Subject:** Received and reviewed Summons and Complaint.

Received and reviewed Summons and Complaint.

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

National Union (AIG)  
Illinois National (AIG)  
American Home (AIG)  
American International Specialty (AIG)  
Omaha Indemnity  
Fireman's Fund  
USF&G  
Assicurazioni Generali  
The Fund

The AIG companies are the focus of the litigation. The Breach of Contract and Breach of Implied Covenant of Good Faith are only pled against AIG. The other named defendants are solely involved in the Declaratory Relief action.

The Complaint alleges that AIG has been involved in a factually similar matter in the same US District Court that is handling the MTBE litigation, referred to as the Sunco matter, where in it was found to owe a duty to defend under its CGL policies. AIG's position, and that which appears to have been upheld by the court, is that MTBE is not a pollutant, but a product as it is not harmful until an intervening cause leads to a spill or release. Thus, they have specifically excluded their excess insurers and pollution policies and are focusing on a products-liability claim. They claim the court has already ruled that joint and several does not apply and that a possible market-share allocation may apply, should liability be found against the manufacturers/distributors. The court also dismissed the punitive damage aspects of the claims stating they cannot apply on a market-share allocation claim.

They list all pending lawsuits against Giant in their factual scenario and are seeking coverage for all of the claims.

The Complaint does not name Home. It does note the insolvency and bar date. It glosses over the bar date and talks about the Fund owing them duties to the insured as the insolvent insurer would. This is incorrect and does not continue on to cite the "in accordance with the statutes" language in the Dickey case. They also claim the Fund has refused to supply them with copies of the policies. They fail to note that the policies were never requested from the Fund.

# Arizona Property & Casualty Insurance Guaranty Fund

## Notes - Claim and Loss

Claim No:[PCO-036-0085]

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**Date:** 04/04/2008

**Type:** User

**User ID:** igfldn

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

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

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

Arizona Property & Casualty Insurance Guaranty Fund

Notes - Claim and Loss

Claim No:[PCO-036-0085]

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Close Dt: 06/05/2009

DOL: 08/03/1980

Claim Description: ALLEGED MTBE CONTAMINATION - X-FILE #PCO-036-0086

BAR DATE

Date: 03/11/2008

Type: User

User ID: igfjdd

Subject: Arizona Property and Casualty

Arizona Property and Casualty

Insurance Guaranty Fund  03/11/08

Arizona Department of Insurance

Telephone: (602) 364-3863

Facsimile: (602) 364-3872

JANET NAPOLITANOe 1110 W. Washington, Suite 270 CHRISTINA URIAS

Governor  Phoenix, Arizona 85007  Director of Insurance

www.id.state.az.us

March 11, 2008

W. Brent Chandler - Vice President

Western Refining

123 West Mills Avenue

STE 200

El Paso, TX 79901

RE:  Home Insurance Company, in Liquidation

STYLE OF CASE:  Town of Middleborough et al. v. Amerada Hess Corporation et al.

INSURED:  Giant Industries

CLAIMANT:  Town of Middleborough et al.

CLAIM NUMBER:  PCO-036-0085 and PCO-036-0086

Dear Mr. Chandler:

We are in receipt of your letter dated February 28, 2008, requesting the Fund review the above captioned matter for possible coverage under Giant's liability policies with the now insolvent Home Insurance Company. Pursuant to the Home Liquidation Order, the court has established a filing deadline, or "bar date," for claims against Home of June 13, 2004, and no new claims will be accepted for coverage under the receivership estate after that date. The receivership had to receive notice of the claim prior to June 13, 2004 in order for coverage via the cancelled Home policy to apply. The first notice of the above claim was your letter of February 28, 2008. The Fund in turn forwarded a copy to the Receiver. As notice of this loss was not received prior to the bar date, it is deemed late.

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There are two files set up for this loss, one for each policy: PCO-036-0085 and PCO-036-0086.

This loss relates to suit in US District Court in NY, 06CV3741, filed by 6 plaintiffs, the lead being the Town of Middleborough. The Plaintiffs, either towns or cities, are public water providers, assigned with the preservation and distribution of groundwater to over residents in Massachusetts. The Plaintiffs filed suit against numerous defendants, all dealing with the extraction, exploration, refining, design, manufacture, distribution or marketing of petroleum, specifically the creation and utilization of Methyl Tertiary Butyl Ether (MTBE). Included in the list of defendants are; Shell, Exxon, Chevron, Texaco, Mobil etc... as well as the insured, Giant Industries. Giant is actually named as Giant Yorktown, Inc., and is listed to be domiciled out of Scottsdale, AZ, the same corporate location as Giant Industries.

The Complaint lists causes of action to include: Public Nuisance, Private Nuisance, Design Defect, Failure to Warn, Negligence, Trespass, Violation of the Toxic Substances Control Act, Civil Conspiracy and Violation of the MA Oil and Hazardous Materials Release Prevention and Response Act. They are seeking to have the defendants clean the water and install early warning MTBE detectors at the water tables. In addition, the Plaintiffs are requesting compensatory damages as well as punitive damages to be proven at trial.

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Arizona Property & Casualty Insurance Guaranty Fund

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**LIABILITY:** Unknown at this time.

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

**PLAN:**

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**Date:** 03/11/2008

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