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23 SUPERIOR COURT OF THE STATE OF CALIFORNIA

24 FOR THE COUNTY OF RIVERSIDE

25 STATE OF CALIFORNIA,

26 Plaintiff,

27 vs.

28 UNDERWRITERS AT LLOYD'S, LONDON
AND OTHER LONDON MARKET INSURERS;
SEATON INSURANCE COMPANY;
NORTHERN ASSURANCE COMPANY OF
AMERICA, AS SUCCESSOR TO CERTAIN
INTERESTS OF EMPLOYERS SURPLUS LINES
INSURANCE COMPANY; NEW HAMPSHIRE
INSURANCE COMPANY; INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA; AND DOES 1 THROUGH
500,

Defendants.

) Case No. 239784
) Honorable E. Michael Kaiser
) Department 3

) SECOND AMENDED AND
) SUPPLEMENTAL COMPLAINT
) FOR DECLARATORY RELIEF,
) BREACH OF CONTRACT, AND
) BREACH OF THE IMPLIED
) COVENANT OF GOOD FAITH
) AND FAIR DEALING

29 Plaintiff STATE OF CALIFORNIA ("State") complains against each defendant
30 and alleges as follows:

1 1. Defendants UNDERWRITERS AT LLOYD'S, LONDON AND OTHER
2 LONDON MARKET INSURERS ("Lloyd's") are, and at all times herein mentioned
3 have been, unincorporated associations and/or insurance companies transacting
4 business as casualty and liability insurers in the County of Riverside, State of
5 California.

6 2. Defendant SEATON INSURANCE COMPANY ("Seaton"), formerly
7 known as Unigard Security Insurance Company ("Unigard"), is, and at all times herein
8 mentioned has been, an insurance company transacting business as a casualty and
9 liability insurer in the County of Riverside, State of California.

10 3. Defendant NORTHERN ASSURANCE COMPANY OF AMERICA, AS
11 SUCCESSOR TO CERTAIN INTERESTS OF EMPLOYERS SURPLUS LINES
12 INSURANCE COMPANY ("Northern Assurance"), is, and at all times herein
13 mentioned has been, an insurance company transacting business as casualty and liability
14 insurers in the County of Riverside, State of California.

15 4. Defendant NEW HAMPSHIRE INSURANCE COMPANY ("New
16 Hampshire") is, and at all times herein mentioned has been, an insurance company
17 transacting business as a casualty and liability insurer in the County of Riverside, State
18 of California.

19 5. Defendant INSURANCE COMPANY OF THE STATE OF
20 PENNSYLVANIA ("ICSOP") is, and at all times herein mentioned has been, an
21 insurance company transacting business as a casualty and liability insurer in the County
22 of Riverside, State of California.

23 6. State is unaware of the true names and capacities of those defendants sued
24 herein as Does 1 through 500, inclusive, and therefore sues these defendants by
25 fictitious names. State will amend this Complaint to allege their true names and
26 capacities when ascertained.

27 7. Each of the defendants sued herein, including Does 1 through 500,
28 inclusive, is and was in some manner responsible for or a party to the disputes and other

1 acts alleged herein.

2 **FIRST CAUSE OF ACTION**

3 **(For Declaratory Relief Against All Defendants)**

4 8. State realleges and incorporates herein by reference each of the
5 allegations of paragraphs 1 through 7 above, inclusive.

6 9. State has been named and served as a counterclaim defendant in that
7 certain civil action filed in the United States District Court for the Central District of
8 California, Case No. 83-2501 (HLH) (Mx), and entitled United States of America, et.
9 al. v. J.B. Stringfellow, Jr., et. al ("Stringfellow Action").

10 10. State has in full force and effect one or more written insurance policies
11 with the defendants for the respective policy periods listed below. Each of the policies
12 was issued to State as the insured, and each policy insured State against certain
13 liabilities arising out of various risks, including, without limitation, liabilities for bodily
14 injury to persons, damage or destruction to property, loss of use of property, and/or
15 diminution in value of property. The policies listed below do not, it is believed,
16 represent all applicable insurance policies issued by defendants to State, but only those
17 applicable insurance policies of which State is presently aware:

18 a. Lloyd's provided liability insurance coverage to State pursuant to
19 one or more policies in effect for all or a portion of the period from September 20, 1963
20 to May 20, 1978, including, among others, policies numbered 63/10463/1, 64/10463/4,
21 64/10463/5, 67/10463/4, 67/10463/5, 67/10463/14, 67/10463/15, X0666210000,
22 X0666220000, X0666230000, X0666240000, 30666230000, 60666230000,
23 60666240000, and C-2012.

24 b. Seaton, through its predecessor Unigard, provided liability
25 insurance coverage to State pursuant to one or more policies in effect for all or a portion
26 of the period from February 22, 1973 to September 20, 1976 including, among others,
27 policies numbered 1-0615 and 1-1562.

28 c. Northern Assurance, through its predecessor, Employers Surplus

1 Lines Insurance Company, provided liability insurance coverage to State pursuant to
2 one or more policies in effect for all or a portion of the period from September 20, 1967
3 to September 20, 1973, including, among others, policies numbered E 508812, E
4 60457, E 512985 and E 65351.

5 d. New Hampshire provided liability insurance coverage to State
6 pursuant to one or more policies in effect for all or a portion of the period from
7 September 20, 1970 to September 20, 1976, including, among others, policies
8 numbered 510-0099, 5173-0224 and 5175-0404.

9 e. ICSOP provided liability insurance coverage to State pursuant to
10 one or more policies in effect for all or a portion of the period from September 20, 1967
11 to May 20, 1978, including, among others, policy numbered 426-0807, 427-0895,
12 4176-7287, and 4177-7897.

13 11. Defendants Does 1 through 250 are insurance companies that provided
14 liability insurance coverage to State.

15 12. Defendants Does 251 through 500 are underwriters and/or British
16 companies who have underwritten various Lloyd's policies issued to State, and whose
17 identities are currently unknown.

18 13. State has fully performed, or has been excused from performing, all of the
19 terms and conditions to be performed by State with respect to each of the insurance
20 policies referred to above, including, without limitation, the payment of premiums
21 which aggregate millions of dollars. Each of the policies issued to State is, and at all
22 times mentioned herein have been, in full force and effect.

23 14. On September 17, 1998, the District Court in the Stringfellow Action
24 entered a judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure
25 ("Rule 54(b) judgment") holding State 100% liable under state law for all past and
26 future costs of remediating the contamination at and emanating from the Stringfellow
27 site.

28 15. State timely notified each Defendant of the Stringfellow Action and the

1 subsequent judgment against State and, throughout the Stringfellow Action and
2 thereafter, repeatedly demanded that each Defendant indemnify State against any
3 liability arising therefrom. Each Defendant repeatedly denied and/or refused to provide
4 coverage for State's liability.

5 16. On November 10, 1998, State filed an appeal of the District Court's
6 judgment.

7 17. In 2001, the federal government offered to settle State's liability for
8 remediation costs incurred by the federal government for \$99.44 million. This sum
9 represented a substantial discount from the amount actually owed by State under the
10 District Court's judgment, including accrued interest. State requested that each
11 Defendant provide coverage for and contribute to the settlement, but each Defendant
12 again failed and or refused. As a result, on about August 20, 2001, State paid \$99.44
13 million to the federal government from its own funds in full satisfaction of State's
14 liability under the District Court judgment for Stringfellow remediation costs (and
15 accrued interest) incurred by the federal government.

16 18. In or about 2001, the State discovered that perchlorate, a hazardous
17 substance, is emanating from the Stringfellow site. The discovery of perchlorate
18 contamination has substantially enhanced the State's liability under the Stringfellow
19 judgment inasmuch as the current treatment plant and remedial efforts are insufficient
20 to remediate perchlorate contamination.

21 19. In or about March 2002, State notified each Defendant that the
22 counterclaimants in the Stringfellow action were prepared to waive an estimated \$100
23 million in past remediation costs allegedly incurred by them if the State would dismiss
24 its appeal of the District Court's judgment and thereby retain liability under the
25 judgment for: (a) for all past costs incurred by the State in connection with the
26 Stringfellow remediation and (b) all future Stringfellow remediation costs. State asked
27 each Defendant to advise State if such Defendant desired to appeal the judgment.
28 Thereafter, no Defendant advised the State of its desire to appeal the Stringfellow

1 judgment. Accordingly, on or about April 17, 2002, State agreed to dismiss its appeal
2 of the District Court's judgment in exchange for the estimated \$100 million reduction
3 of its liability for the Stringfellow remediation costs. State's appeal was thereafter
4 dismissed by the United States Court of Appeals for the Ninth Circuit on April 29,
5 2002.

6 20. On information and belief, the present day value of the past and future
7 Stringfellow remediation costs for which the State is liable exceeds a half billion
8 dollars.

9 21. An actual controversy exists between State and each Defendant. State
10 contends that, under the terms of their respective policies, each Defendant owes a duty
11 to fully indemnify and pay on behalf of State all sums (up to each Defendant's policy
12 limits) for which State was held liable in the Stringfellow Action, including all past and
13 future costs of remediating the contamination at and emanating from the Stringfellow
14 site. State is informed and believes and based thereon alleges that each Defendant
15 disputes State's contention and denies any duty to indemnify State against said liability.
16 Accordingly, State seeks a judicial declaration of Defendants' obligations under their
17 policies of insurance.

18 **SECOND CAUSE OF ACTION**

19 **(Breach of Contract Against All Defendants)**

20 22. State realleges and incorporates herein by reference each of the
21 allegations of paragraphs 1 through 21 above, inclusive.

22 23. Under the express terms and conditions of its policy(ies), each Defendant
23 owed a duty to fully indemnify and pay on behalf of State all sums (up to each
24 Defendant's policy limits) for which State has been held liable in the Stringfellow
25 Action, including but not limited to all past and future costs of remediating the
26 contamination at and emanating from the Stringfellow site. Notwithstanding such duty,
27 each Defendant denied coverage and failed and/or refused to pay any sum on State's
28 behalf or to indemnify State for any portion of State's Stringfellow liability.

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- that were legally and/or factually invalid;
- c. Placing unduly restrictive interpretations of its policy terms for the purpose of denying coverage due under the policy;
- d. Refusing to pay for or contribute to reasonable settlements that were less than the ultimate judgment against State;
- e. Refusing to pay for or contribute to the judgment entered against State;
- f. Subjecting payment to conditions not included in its policy(ies);
- g. Forcing State to institute litigation to recover amounts due under the policy;
- h. Failing to give State's interests equal consideration with its own;
- i. Failing to modify its coverage position as additional information was provided by State and/or rulings were made by the Court.

28. On information and belief, each Defendant's conduct was unreasonable and was engaged in for the purpose of placing each Defendant's own interests above those of State, its insured, and of withholding from State the rights and benefits to which State is entitled under the policy(ies).

29. As a proximate result of each Defendant's breaches, State has been damaged in that it has been forced to conduct the investigation of the claim at its own expense, has not been reimbursed for past costs it paid for the remediation of the Stringfellow contamination, has been forced to directly pay \$99.44 million to settle its liability under the Rule 54(b) judgment for remediation costs incurred by the federal government and has been forced to directly undertake the cost of past ongoing and future remediation efforts, all without the benefit of the policies of insurance for which State paid valuable premiums. Additionally, State has sustained and will continue to sustain attorneys' fees and costs in prosecuting this coverage action against each Defendant. Each Defendant has thereby caused State to suffer damages in excess of the minimum jurisdictional limits of this Court, subject to proof at trial.

1 30. Each Defendant's conduct as alleged was despicable, oppressive and
2 fraudulent, and was performed with a conscious disregard of State's rights, thereby
3 justifying exemplary and punitive damages against each Defendant in an amount
4 sufficient to punish it for the severity of its conduct, to make an example of it and to
5 deter such conduct in the future.

6
7 **WHEREFORE**, State prays the Court enter judgment in favor of State and
8 against Defendants as follows:

9 1. On the First Cause of Action, for a judicial declaration of the rights,
10 duties and obligations of the parties, including a declaration that each Defendant is
11 obligated to pay on behalf of State all sums (up to each Defendant's policy limits) for
12 which State has been held liable in the Stringfellow Action, including but not limited to
13 all past and future costs of remediating the contamination at and emanating from the
14 Stringfellow site;

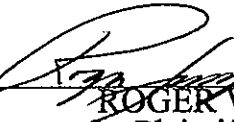
15 2. On the Second and Third Causes of Action, for general and special
16 damages in an amount to be proven at the time of trial;

17 3. On the Third Cause of Action, for attorneys' fees and punitive damages;

18 4. On all causes of action, for prejudgment interest, for costs of suit incurred
19 herein, and for such other and further relief as the Court may deem just and proper.

20
21 DATED: August 10, 2004

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25 By 
26 ROGER W. SIMPSON
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28 State of California

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, CYNTHIA MORRIS, am employed in the aforesaid County, State of
4 California; I am over the age of 18 years and not a party to the within action; my
5 business address is 300 South Grand Avenue, 24th Floor, Los Angeles, California
6 90071-3134.

7 On August 11, 2004, I served the foregoing **SECOND AMENDED AND
8 SUPPLEMENTAL COMPLAINT FOR DECLARATORY RELIEF, BREACH
9 OF CONTRACT, AND BREACH OF THE IMPLIED COVENANT OF GOOD
10 FAITH AND FAIR DEALING** on the interested parties in this action by placing a true
11 copy thereof, enclosed in a sealed envelope, addressed as follows:

12 {Please see attached service list.}

13	<input checked="" type="checkbox"/> BY FIRST CLASS MAIL: I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with first-class postage thereon fully prepaid. I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.
14	<input type="checkbox"/> BY FACSIMILE: I caused the document to be transmitted by a facsimile machine compliant with Rule 2003 of the California Rules of Court to the offices of the addressees at the telephone numbers shown on the service list.
15	<input type="checkbox"/> BY HAND DELIVERY: I caused such envelope/box to be delivered by hand to the offices of counsel for Yosemite Insurance Company.
16	<input type="checkbox"/> BY FEDERAL EXPRESS: I am readily familiar with my employer's practice for the collection and processing of FedEx packages. Under that practice, packages would be deposited with FedEx that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
17	<input type="checkbox"/> (Federal Courts Only) I declare that I am employed in the office of a member of the court at whose direction this service was made.

18 I declare under penalty of perjury under the laws of the State of California
19 that the foregoing is true and correct and that this document was executed on August 11,
20 2004, at Los Angeles, California.

21 
22 Signature of Declarant

SERVICE LIST

STATE v. UNDERWRITERS/ALLSTATE
Riverside Superior Court Case No. 239784, c/w RIC-381555

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