

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PORT OF PORTLAND,

Plaintiff,

vs.

AMERICAN GUARANTEE AND
LIABILITY INSURANCE COMPANY,
ARGONAUT INSURANCE COMPANY,
ARROWOOD INDEMNITY COMPANY,
AXA BELGIUM, CONTINENTAL
INSURANCE COMPANY, FACTORY
MUTUAL INSURANCE COMPANY,
GENERAL CASUALTY INSURANCE
COMPANY, GREAT AMERICAN
ASSURANCE COMPANY, GREAT
AMERICAN E & S INSURANCE
COMPANY, TIG INSURANCE COMPANY,
and ZURICH-AMERICAN INSURANCE
COMPANY,

Defendants.

Case No.

**COMPLAINT
(Declaratory Judgment and Breach of
Contract)**

**(Amount of Claim For Breach of
Contract: Over \$97,500,000)**

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION
(Pursuant to UTCR 13.060)**

Jury Trial Requested

**Filing Fee Under OR Laws 2012, Ch. 48,
sec 2; ORS 21.160(i)(d): \$1,178**

BACKGROUND

1. The Port of Portland (the "Port") brings this action to recover from historic liability insurance companies costs it has been legally obligated to pay in connection with the Portland Harbor Superfund Site (the "Superfund Site"). The Superfund Site is in the lower Willamette River, just south of the Columbia Slough (river mile 1.9) and north of the Broadway

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COMPLAINT

1 Bridge (river mile 11.8) in Portland, Oregon. Portland Harbor has a long history of shipping,
2 industrial, and commercial activity because of its key location on the Willamette River. This area
3 of the Willamette River also has historical, natural and cultural resource significance.

4 2. The Port is a regional government agency responsible for overseeing Portland
5 International Airport, general aviation, and marine activities in the Portland metropolitan area.
6 The Port was established in 1891 by the 16th Oregon Legislative Assembly, and its mission since
7 then has been two-fold: (1) to maintain the navigability of the harbors and channels of the lower
8 Columbia and Willamette Rivers, ORS 778.085; and (2) to promote the maritime, shipping,
9 aviation, and commercial and industrial interests of the region, ORS 778.015. The Port owns four
10 marine terminals, including Oregon's only deep-draft container port, and three airports. The Port
11 manages five industrial parks around the metropolitan area. The Port also owns and operates the
12 Dredge Oregon and is responsible for maintaining a navigation channel on the lower Columbia
13 and Willamette rivers.

14 3. In 1997, a joint study was carried out by The United States Environmental
15 Protection Agency ("EPA") and the Oregon Department of Environmental Quality ("DEQ"). The
16 results of the study showed that river sediments in Portland Harbor are contaminated with toxic
17 chemicals, including DDT, polychlorinated biphenyls, and other pollutants.

18 4. In December 2000, the Environmental Protection Agency ("EPA") placed an
19 approximately 5.5-mile section of the Lower Willamette River on the National Priorities List
20 ("NPL") to further study the extent of contamination. The site expanded so that it currently
21 comprises the Superfund Site and encompasses considerable land owned by the Port.

22 5. Contamination at the Superfund Site has been traced to a number of historical
23 activities, including agricultural and urban development over more than 100 years; activities
24 related to the United States' involvement in World War I, World War II, and the Korean War;
25 postwar ship scrapping; various industrial activities; sewer overflows; and storm water
26 discharges.

27 6. In December 2000, the EPA identified the Port as a potentially responsible party
28 ("PRP") for the investigation and remediation of environmental property damage at the

1 Superfund Site.

2 7. On June 24, 2002, the Trustees for Natural Resource Damages (“NRD Trustees”)
3 demanded that the Port pay natural resource damages (“NRD”) relating to damages to natural
4 resources at or in the vicinity of the Superfund Site. On January 6, 2017, the EPA issued its
5 Record of Decision, which detailed the EPA’s final cleanup plan for the Superfund Site.

6 8. The Port’s ownership of land within the Superfund Site has subjected it to liability
7 in carrying out the clean-up plan set forth in the Record of Decision. The Port’s costs relate
8 largely to sediment remediation of the riverbed and shorelines, the nearly 20-year investigation to
9 determine the best plan to remediate the toxic chemicals at the Superfund Site, and actions taken
10 in response to agency communications or demands. The Port also faces liabilities as a result of
11 claims made by the NRD Trustees.

12 9. The Port alleges that the defendants are liability insurance companies that issued,
13 or are otherwise responsible for, insurance coverage that is responsive to the Port’s legal
14 obligations arising from the Superfund Site. The Port alleges that defendants Factory Mutual and
15 TIG issued insurance coverage directly to the Port from at least 1983 to 1985 that is responsive to
16 the Port’s legal obligations arising from the Superfund Site. Despite several requests, Factory
17 Mutual and TIG have not agreed or acknowledge their coverage obligations to indemnify the Port
18 in connection with its Superfund Site liabilities.

19 10. The Port alleges, on information and belief, that defendants American Guarantee,
20 Argonaut, Arrowood, AXA, Factory Mutual, General Casualty, Great American Assurance, Great
21 American E&S, and Zurich issued insurance coverage that provide coverage to the Port. The Port
22 has evidence insurance coverage was issued by the defendant insurers but does not have copies of
23 the policies. On information and belief, the Port alleges the insurance coverage issued by
24 defendants American Guarantee, Argonaut, Arrowood, AXA, Factory Mutual, General Casualty,
25 Great American Assurance, Great American E&S, and Zurich provides insurance coverage and is
26 responsive to the Port’s obligations arising from the Superfund Site.

27 11. Actual controversies exist between the Port and the insurers on many issues
28 including without limitation whether the Port is, or allegedly is, legally obligated to pay damages

1 for third-party “property damage” during the periods of the insurers policies, whether the Port’s
2 liabilities arise out of an “accident” or “occurrence” under the insurers’ policies, the extent to
3 which the Port is able to access coverage for its losses and whether the Port has established that it
4 is, in fact, covered under certain of the insurers’ policies. Declaratory relief therefore is necessary
5 and appropriate at this time so that the Port and the insurers can ascertain their rights and
6 obligations and so that the parties can avoid the multiplicity of actions that would otherwise result
7 from the disputes comprising this lawsuit.

8 THE PARTIES

9 12. The Port is a regional governmental agency established by the Oregon Legislature.
10 See also Paragraph 2, above.

11 13. Defendant American Guarantee and Liability Insurance Company (“American
12 Guarantee”) is a corporation organized under the laws of Illinois, with its principal place of
13 business in New York.

14 14. Defendant Argonaut Insurance Company (“Argonaut”) is a corporation organized
15 under the laws of Illinois, with its principal place of business in Texas.

16 15. Defendant Arrowood Indemnity Company (“Arrowood”) is a corporation
17 organized under the laws of Delaware, with its principal place of business in North Carolina.
18 Arrowood is responsible for the obligations under insurance policies issued in favor of the Port by
19 Royal Indemnity Company and Royal Globe Insurance Company.

20 16. Defendant AXA Belgium (“AXA”) is a corporation organized under the laws of
21 Belgium, with its principal place of business located in Belgium. AXA was known formerly as
22 Royale Belge Re.

23 17. Defendant Factory Mutual Insurance Company (“Factory Mutual”) is a
24 corporation organized under the laws of Rhode Island, with its principal place of business in
25 Rhode Island. Factory Mutual is responsible for the obligations under insurance policies issued in
26 favor of the Port by Arkwright Mutual Insurance Company, Arkwright-Boston Manufacturers
27 Mutual Insurance Company, Allendale Mutual Insurance Company and Protection Mutual
28 Insurance Company.

1 18. Defendant General Casualty Insurance Company (“General Casualty”) is a
2 corporation organized under the laws of Wisconsin, with its principal place of business in
3 Wisconsin.

4 19. Defendant Great American Assurance Company (“Great American Assurance”) is
5 a corporation organized under the laws of Ohio, with its principal place of business in Ohio. Great
6 American Assurance was known formerly as Agricultural Insurance Company.

7 20. Defendant Great American E & S Insurance Company (“Great American E&S”) is
8 a corporation organized under the laws of Ohio, with its principal place of business in Ohio. Great
9 American E&S was known formerly as Agricultural Excess & Surplus Insurance Company.

10 21. Defendant TIG Insurance Company (“TIG”) is a corporation organized under the
11 laws of California, with its principal place of business in New Hampshire. TIG is responsible for
12 the obligations under policies issued in favor of the Port by Ranger Insurance Company.

13 22. Defendant Zurich-American Insurance Company (“Zurich”) is a corporation
14 organized under the laws of Illinois, with its principal place of business in New York. Zurich is
15 responsible for the obligations under policies it issued in favor of the Port, and under policies
16 issued in favor of the Port by Zurich General Accident & Liability Company.

17 23. Each of the defendants identified in paragraphs 12 through 22 are subject to
18 personal jurisdiction in this Court, either because they transacted business in Oregon at all
19 pertinent times, because their policies contain “service of suit” clauses under which they agreed to
20 submit to the personal jurisdiction of any court in the United States chosen by the insured, or
21 both.

22 24. Venue is appropriate in this Court because the Port’s address is 7200 NE Airport
23 Way, Portland, OR 97218, within this judicial district.

24 **POLICIES AT ISSUE**

25 25. American Guarantee is the insurer under the following policy issued in favor of the
26 Port:
27
28

Policy Period			Insurer	Policy Number
1/13/1984	-	1/13/1985	American Guarantee & Liability Ins. Co.	TOP 7098830

26. Argonaut is the insurer under the following policy issued in favor of the Port:

Policy Period			Insurer	Policy Number
2/2/1966	-	2/2/1969	Argonaut Insurance Company	CL 80-211-800558

27. Arrowood is responsible for the obligations under the following policies issued in favor of the Port:

Policy Period			Insurer	Policy Number
8/25/1928	-	8/25/1929	Royal Indemnity Co.	tbd
8/25/1929	-	8/25/1930	Royal Indemnity Co.	tbd
8/25/1930	-	6/25/1931	Royal Indemnity Co.	tbd

Policy Period			Insurer	Policy Number
5/1/1975	-	5/1/1976	Royal Globe Insurance Co.	PTG 350011
5/1/1976	-	5/1/1977	Royal Globe Insurance Co.	PTG 350012
5/1/1977	-	5/1/1978	Royal Globe Insurance Co.	PTG 350013
5/1/1978	-	5/1/1979	Royal Globe Insurance Co.	PTG 350014

28. AXA Belgium is responsible for the obligations under the following policy issued in favor of the Port:

Policy Period			Insurer	Policy Number
10/13/1978	-	9/19/1979	Royale Belge Re	RBX 003504

29. Factory Mutual is responsible for the obligations under the following policies issued in favor of the Port:

Policy Period			Insurer	Policy Number
10/1/1983	-	10/1/1984	Arkwright Mutual Insurance Co.	PDB-14118
10/1/1984	-	10/1/1985	Arkwright Mutual Insurance Co.	PDB-15012
10/1/1985	-	10/1/1986	Arkwright Mutual Insurance Co.	PDB-15457
10/1/1985	-	10/1/1986	Arkwright Mutual Insurance Co.	PDB-15458

Policy Period			Insurer	Policy Number
9/24/1981	-	6/1/1984	Allendale Mutual Ins. Co.	89846
6/1/1984	-	6/1/1985	Allendale Mutual Ins. Co.	89846
6/1/1985	-	6/1/1986	Allendale Mutual Ins. Co.	89846
6/1/1967	-	7/1/1972	Protection Mutual Ins. Co.	3759
1/1/1969	-	1/1/1974	Protection Mutual Ins. Co.	tbd
1/1/1974	-	1/1/1977	Protection Mutual Ins. Co.	tbd
1/1/1977	-	1/1/1980	Protection Mutual Ins. Co.	tbd
1/1/1977	-	1/1/1980	Protection Mutual Ins. Co.	tbd
1/1/1980	-	1/1/1983	Protection Mutual Ins. Co.	tbd

30. The insurance policies issued by Arkwright Mutual are alleged to have policy limits of \$90,000,000.

31. General Casualty is responsible for the obligations under the following policies issued in favor of the Port:

Policy Period			Insurer	Policy Number
10/1/1951	-	8/1/1954	General Casualty Ins. Co.	tbd
8/1/1954	-	8/1/1957	General Casualty Ins. Co.	tbd

32. Great American Assurance is responsible for the obligations under the following policy issued in favor of the Port:

Policy Period			Insurer	Policy Number
7/1/1982	-	7/1/1983	Agricultural Ins. Co.	GL-000-3655

33. Great American E & S is responsible for the obligations under the following policies issued in favor of the Port:

Policy Period			Insurer	Policy Number
7/1/1980	-	7/1/1981	Agricultural Excess & Surplus Ins. Co.	SL-000-5754
7/1/1981	-	7/1/1982	Agricultural Excess & Surplus Ins. Co.	GL-000-3655

34. TIG is responsible for the obligations under the following policies issued in favor of the Port:

Policy Period			Insurer	Policy Number
10/1/1983	-	10/1/1984	Ranger Insurance Co.	PDB-14118
10/1/1984	-	10/1/1985	Ranger Insurance Co.	PDB-15012
10/1/1985	-	10/1/1986	Ranger Insurance Co.	PDB-15458

35. The policies issued by Ranger Insurance Company provide \$7,500,000 in policy limits.

36. Zurich is responsible for the obligations under the following policies issued in favor of the Port:

Policy Period			Insurer	Policy Number
1924	-	6/10/1925	Zurich General Accident & Liability Company, Ltd.	tbd

37. Zurich is responsible for the obligations under the following policies issued in favor of the Port:

Policy Period			Insurer	Policy Number
1/13/1984	-	1/13/1985	Zurich American Ins. Co.	TOP 31 25 895-01

38. A copy of the foregoing insurance policies, or related secondary evidence, has been or will be provided to the defendants, but such voluminous documentation is not attached to this complaint. Nevertheless, defendants are or should be aware of the liability policies identified herein, have copies of policies, and are aware of the terms and conditions of the alleged insurance contracts.

FIRST CLAIM FOR RELIEF

Declaratory Judgment
Against All Defendants

39. The Port incorporates the allegations in paragraphs 1 through 37 by this reference.

40. The Port has incurred, and will continue to incur, substantial costs in addressing and resolving its liability to pay damages for third-party property damage during the periods of the insurers' policies at the Superfund Site.

41. The Port asserts that it has rights to coverage under each of the policies identified in paragraphs 25 through 37.

42. The Port asserts that its liability to pay damages for third-party property damage arises out of an "accident" or an "occurrence" under the defendants' policies.

1 43. The Port asserts that no exclusion under the defendants' policies bars coverage for
2 the Port's liability for property damage at the Superfund Site.

3 44. The defendants disagree with the Port's assertions. They disagree that they are
4 obligated to pay defense or indemnify the Port against its liabilities arising from the Superfund
5 Site. They disagree that the Port's liability arises out of an "accident" or an "occurrence" under
6 their policies. They disagree that at least some of the Port's liability concerns "damages" covered
7 under their policies. They assert that one or more exclusions bar coverage. Some of the insurers
8 dispute that the Port has established its right to pursue coverage under their policies.

9 45. Consequently, actual controversies exist between the Port and the insurers
10 concerning whether, and the extent to which, the Port's liability at the Superfund Site is covered
11 under the insurers' policies.

12 46. The Port therefore seeks declaratory relief so that it can ascertain its rights to
13 coverage under defendants' policies for its Superfund Site. The court's issuance of declaratory
14 relief would avoid the multiplicity of actions that would otherwise result from the disputes at
15 issue in this lawsuit.

16 **SECOND CLAIM FOR RELIEF**

17 (Breach of Contract – Against Defendants Factory Mutual and TIG)

18 47. The Port incorporates the allegations in paragraphs 1 through 12, 17, 21, 29, 30 34,
19 35 and 39 to 46 by this reference.

20 48. The Port has incurred, and will continue to incur, substantial costs in addressing
21 and resolving its liability to pay damages for third-party property damage during the periods of
22 the insurers' policies at the Superfund Site.

23 49. The Port asserts that it has established its right to coverage under each of the
24 policies identified in paragraphs 29, 30, 34 and 35.

25 50. The Port has tendered claims to the policies issued by Factory Mutual and on TIG
26 and requested that each insurer acknowledge its coverage obligations and make the policy limits
27 available to the Port for liabilities arising from the Superfund Site, which the Port alleges to be
28 \$97,500,000 (\$90,000,000 by Factory Mutual and \$7,500,000 by TIG), available to the Port.

51. The Insurers, including its agents, have failed to acknowledge coverage or make their policy limits available in breach of the insurer's obligation.

52. The Port has complied fully with all of the applicable and necessary terms and conditions of the insurance policies issued by Factory Mutual and TIG, and have fulfilled each obligation on its part to be performed, except those which have been excused or waived.

53. Factory Mutual and TIG have breached and continue to breach their contractual obligations under the insurance policies, including without limitation making its policy limits available to pay the Port's liabilities and to pay for the Port's ongoing defense and indemnity costs.

54. As a direct and proximate result of the breaches of contract by Factory Mutual and TIG, the Port has been injured and damaged in an amount exceeding the jurisdictional minimum of this Court and to be proven at trial.

55. As a result of the conduct of Defendants, and each of them, the Port seeks all available legal and equitable remedies, including but not limited to, compensation damages in the amount of the policy limits under the insurance contracts issued by the Defendants Factory Mutual and TIG to the Port, and equitable relief.

56. The Port reserves the right to amend the Complaint as required by ORS 31.725.

57. The Port requests a jury trial on issues and causes of action in accordance with Article I, Section 17 of the Oregon Constitution and ORCP 51.

PRAYER FOR RELIEF

WHEREFORE, the Port prays for the following relief:

1. A declaration that the Port has established its right to coverage under defendants' policies alleged in paragraph 25 to 37;

2. A declaration that the insurers' whose policies contain a duty to defend are required to defend the Port against any actions arising from the Superfund Site;

3. A declaration that the insurers whose policies contain an obligation to reimburse defense costs are required to pay the ongoing defense costs of the Port relating to the Superfund

1 Site;

2 4. A declaration that the Port's liabilities relating to the Superfund Site, including
3 defense, investigation, indemnity and settlement, are covered under defendants' policies up to the
4 policies' respective limits of liability;

5 5. An award of damages proven at trial based on breaches of contract by Factory
6 Mutual and TIG.

7 6. Attorneys' fees under ORS 742.061;

8 7. Costs of suit;

9 8. Any other relief that is just, equitable and proper under the circumstances.

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11 Dated: May 2, 2023

PORT OF PORTLAND

12 DocuSigned by:
13 *Angie St. Clair*
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L. Ansley St. Clair

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