



3. Defendant Leisa Hutcheson is an individual resident of Lubbock County, Texas and is a citizen of the State of Texas. Ms. Hutcheson may be served at 5707 88th Street, Lubbock, Texas 79424, 1625 13th Street, Lubbock, Texas 79401, or wherever she may be found.

4. Defendant LeeAnn Dumbauld is an individual resident of Ector County, Texas and is a citizen of the State of Texas. Ms. Dumbauld is currently the City Manager for the City of Lubbock and may be served at 1625 13th Street, Lubbock, Texas 79401, her residence, 4639 89th Street, Lubbock, Texas 79423, or wherever she may be found.

5. Defendant Scott Snider is an individual resident of Lubbock County, Texas and is a citizen of the State of Texas. Mr. Snider may be served at 8202 Dover Avenue, Lubbock, Texas 79424, 1625 13th Street, Lubbock, Texas 79401, or wherever he may be found.

6. Defendant David Miller is an individual resident of Lubbock County, Texas and is a citizen of the State of Texas. Mr. Miller may be served at 4202 78th Street, Lubbock, Texas 79423, or wherever he may be found.

7. Defendant Icon Benefit Administrators II, LP ("ICON") is a Texas limited partnership with its principal place of business at 222 W. La Colinas Blvd., Irving, Texas, and is a citizen of Texas. ICON may be served through its registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

8. Defendant American Administrative Group, Inc. ("AAG") is an Illinois corporation and is a citizen of Illinois, who may be served with process through its registered agent, Prentice Hall Corporation System, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

9. Defendant HealthSmart Preferred Care II, LP ("HealthSmart") is a Texas limited partnership and is a citizen of Texas, which may be served through its registered agent,

Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

**II.**  
**JURISDICTION AND VENUE**

10. The Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(a)(1) because Plaintiff and Defendants are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

11. The Court also has jurisdiction over this declaratory judgment action pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201. An actual and substantial controversy exists between the parties. By this action Travelers seeks a declaration that it does not owe either a defense or indemnity in relation to an arbitration filed against the City and a lawsuit filed against Hutcheson, Snider, Dumbauld and Miller in Dallas County, Texas, and a declaration that there is no coverage under the applicable Travelers Policy for the damages being sought by ICON/AAG and HealthSmart in such actions.

12. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391(a).

**III.**  
**FACTUAL BACKGROUND**

**The Relationship Between the City and ICON/AAG**

13. The City had a contract with ICON effective December 2004 to provide TPA services for its integrated health care plans. The contract was to expire on December 31, 2006. AAG was to seek the 2007 term. AAG apparently stepped into the shoes of ICON at some point.

14. In June 2006, while the ICON contract was still in force, the City advertised a request for proposal (RFP) for health benefits consulting services. Wachovia Insurance Services presented a proposal and was ultimately selected for the contract, thereby replacing ICON. During the course of the selection process, various city officials and employees accused

ICON/AAG of overcharging and inappropriately paying higher rates than were necessary to health care providers. This dispute became public and was waged in the media. The City ultimately accused ICON/AAG of misappropriating funds and diverting money from the health benefit plan.

**The Underlying Arbitration**

15. On March 5, 2007, the City filed suit in Lubbock County, Cause No. 2007-538,383 against ICON/AAG alleging that ICON/AAG had misappropriated funds and seeking an audit and certain discovery because ICON/AAG had allegedly failed to provide information as requested under their contractual obligations.

16. On July 19, 2007, ICON/AAG, HealthSmart and The Parker Group filed a Rule 202 Petition seeking pre-suit discovery to identify the proper employee parties for various claims (the "Rule 202 Lawsuit").

17. On February 12, 2008, ICON/AAG made a demand for arbitration. On March 12, 2008, both Cause No 2007-583,383 and the Rule 202 Lawsuit were ordered to a combined arbitration (the "Arbitration").

18. On March 24, 2008, ICON/AAG and HealthSmart filed a Supplement to Demand to Arbitration which sets forth the factual basis of their claims against the City. The sole cause of action is titled "Breach of Contract" though the pleading includes allegations of trade secret infringement and disparagement. The City asserted counterclaims seeking to recover damages of \$15 million.

**The Underlying Dallas Lawsuit**

19. On February 8, 2008, ICON and AAG filed a lawsuit styled "*Icon Benefit Administrators II, L.P. and American Administrative Group, Inc. v. Joella Mullin, Stanley Self,*

*Andrea Davenport, LeeAnn Dumbauld, Scott Snider, Leisa Hutcheson and Unknown Others*” pending as Cause No. CC-08-01067-B in the County Court at Law No. 2, Dallas County, Texas (the “Dallas Lawsuit”). In the Dallas Lawsuit, ICON/AAG asserted causes of action against employees of Wachovia Insurance and three employees of the City for civil conspiracy, misappropriation, tortious interference, violations of the Texas Insurance Code, business disparagement and defamation.

20. On October 24, 2008, ICON/AAG filed Plaintiffs’ First Amended Petition in which they joined David Miller, the former Mayor of the City, as a Defendant.

21. On March 20, 2009, ICON/AAG filed a Second Amended Petition. ICON/AAG alleged that Hutcheson, Dumbauld and Snider “intentionally, knowingly and willfully” engaged in a civil conspiracy and had reached a meeting of the minds to “obtain and use the Plaintiffs’ proprietary information to unlawfully obtain a competitive advantage in the bid process . . . and to interfere with the Contract and relationship AAG/ICON” had with another party. ICON/AAG also asserted causes of action for tortious interference, business disparagement, and defamation.

22. ICON/AAG alleged as follows regarding Miller:

Miller’s wrongful conduct, did not occur in his public service capacity, but rather in his personal capacity. Miller’s wrongful conduct was intended to enhance his chances [sic] of re-election as mayor and for purely personal and business benefits.

23. ICON/AAG alleged as follows regarding Hutcheson, Dumbauld and Snider:

Dumbauld, Hutcheson and Snider’s actions, were done intentionally, maliciously and outside the course and scope of their employment for the purpose of divesting AGG of its contract and broker of record position and to use AAG as a scapegoat in order to justify their plan to raise taxes, hide salaries, and as political pay back to their allies. Dumbauld, Hutcheson, and Snider’s actions were also done for the purpose of venting their own personal hubris, animosity and vendettas against Plaintiffs.

**Denial of Coverage**

24. On August 1, 2007, Travelers received notice of the City's dispute with ICON/AAG. Because there was no pending lawsuit against the City, there was no claim or suit to defend or indemnify. Travelers received no further information regarding the City's dispute with ICON/AAG until January 2009 when various pleadings and other papers filed in the Arbitration were provided to Travelers.

25. In December 2008, Travelers was notified that it was the insured's position that the \$500,000 self-insured retention applicable under the Travelers Policy would soon be eroded by defense costs in the Arbitration and Dallas Lawsuit and Travelers was asked to assume the defense of Hutcheson, Dumbauld, Snider and Miller in the Dallas Lawsuit.

26. On February 3, 2009, Travelers denied coverage to Miller and, despite its strong belief there was no coverage for these claims, conditionally tendered a defense under reservation of rights to Hutcheson, Dumbauld and Snider.

27. Hutcheson, Dumbauld and Snider rejected the conditional tender of defense from Travelers.

28. After considering all of the coverage issues raised by the Arbitration and Dallas Lawsuit, Travelers has determined a complete denial coverage is appropriate.

29. ICON/AAG and Health Smart are potential judgment creditors under the Travelers Policy and have been named in this lawsuit to ensure that any declaration of no coverage is binding on them as well as the purported insureds under the Travelers Policy.

**The Travelers' Policy**

30. Travelers issued a Public Sector policy, Policy No. GP06301452 to the City of Lubbock effective from October 1, 2006 to October 1, 2007 (the "Policy"). The Policy contains

a variety of different insuring agreements, including the Public Entity General Liability Protection (PEGL), the Public Entity Management Liability Protection – Claims-Made (PEMLP) and the Public Entity Employment Practices Liability Protection – Claims Made (PEEPL). Additionally, the Policy contains an Umbrella Excess Liability Protection.

31. The provisions of the PEGL applicable to this dispute are set forth below.

**What This Agreement Covers**

**Bodily injury and property damage liability.** We'll pay amounts any protected person is legally required to pay as damages for covered bodily injury or property damage . . .

\*\*\*

*Bodily injury* means any physical harm, including sickness or disease, to the physical health of other persons.

\*\*\*

*Property damage* means:

- Physical damage to tangible property of others, including all resulting loss of use of that property; or
- Loss of use of tangible property of others that isn't physically damaged.

\*\*\*

**Personal injury liability.** We'll pay amounts any protected person is legally required to pay as damages for covered personal injury that:

- results from your operations; and
- is caused by a personal injury offense committed while this agreement is in effect.

*Personal injury* means injury, other than bodily injury or advertising injury, that's caused by a personal injury offense.

*Personal injury offense* means any of the following offenses:

- False arrest, detention or imprisonment;

- Malicious prosecution;
- Wrongful entry into, or wrongful eviction from, a room, dwelling, or premises that a person occupies, if such entry or eviction is committed by or for the landlord, lessor, or owner of that room, dwelling or premises.
- Invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, if such entry or eviction is committed by or for the landlord, lessor, or owner of that room, dwelling, or premises.
- Libel, or slander, in or with covered material.
- Making known to any person or organization covered material that disparages the business, premises, products, services, work, or completed work of others.
- Making known to any person or organization covered material that violates a person's right of privacy.

*Covered material* means any material in any form of expression, including material made known in or with any electronic means of communication, such as the Internet.

But we won't consider the following to be covered material:

- Any website, part of a website, or content of a website, that's designed, built, maintained or determined for others by or for any protected person whose business is designing, building or maintaining, or determining the content of, websites for others.
- Any material made known in an electronic chatroom or bulletin board over which any protected person exercises control, or that any protected person hosts or owns.

\*\*\*

### **Who Is Protected Under this Agreement**

\*\*\*

**Elected or appointed official and members.** Your [the City's] lawfully elected or appointed officials, directors or executive officers, or members of any of your agencies, boards, or commissions, are protected persons only for the conduct of their

duties as your lawfully elected or appointed officials, directors, executive officers, or members.

\*\*\*

**Employees and volunteer workers.** Your employees are protected persons only for:

- work done within the scope of their employment by you;
- their performance of duties related to the conduct of your operations; or
- their acts as good Samaritans in response to an accident or public emergency.

**Exclusions – What This Agreement Won't Cover**

\*\*\*

**Breach of contract.** We won't cover personal injury or advertising injury that results from the failure of a protected person to do what is required by a contract or agreement.

\*\*\*

**False material.** We won't cover personal injury or advertising injury that results from false material that:

- was made known by or for the protected person; and
- the protected person knew was false when it was made known.

\*\*\*

**Intellectual property.** We won't cover injury or damage or medical expenses that result from any actual or alleged infringement or violation of any of the following rights or laws:

- Copyright.
- Patent.
- Trade dress.
- Trade name.
- Trade secret.

- Trademark.
- Other intellectual property rights or laws.

Nor will we cover any other injury or damage that's alleged in any claim or suit which also alleges any such infringement or violation.

32. The PEGL also contains a Public Entity General Liability Self-Insured Retentions Endorsement – Retentions Apply to Damages and Defense Expenses which provides in pertinent part:

2. The following replaces the Right and duty to defend a protected person section. This change
  - Reduces our obligation under this agreement by removing our duty to defend a protected person; and
  - Explains our right to settle a claim or suit for covered injury or damage.

**Right to defend a protected person.** We'll have the right, but not the duty, to defend any protected person against a claim or suit for injury or damage covered by this agreement.

\*\*\*

However, we have no duty to defend any claim or suit, even if the amount of damages or defense expenses exceeds the self-insured retention that applies.

33. Similar provisions are included in the Self-Insured Retention Endorsement – Public Entity Employment Practices Liability and the Public Entity Management Liability Self-Insured Retention Endorsement.

34. The provisions of the PEMLP applicable to this dispute are set forth below.

**Public entity management liability.** We'll pay amounts any protected person is legally required to pay as damages for covered loss that:

- results from the conduct of duties by or for a public entity;

- is caused by a wrongful act committed on or after the retroactive date and before the ending of this agreement; and
- results in a claim first made or brought while this agreement is in effect, or during the limited reporting period or the extended reporting period, if either one applies.

\*\*\*

*Wrongful act* means any act, error or omission.

### **Who Is Protected Under this Agreement**

\*\*\*

**Elected or appointed official.** Your [the City's] lawfully elected or appointed officials are protected persons only for the conduct of their duties for you.

\*\*\*

**Employees.** Your employees are protected persons only for:

- work done within the scope of their employment by you; or
- their performance of duties related to the conduct of your operations.

### **Exclusions – What This Agreement Won't Cover**

\*\*\*

**Breach of contract.** We won't cover loss that results from the failure of a protected person to do what is required by any contract or agreement, other than a mutual aid agreement.

\*\*\*

**Criminal, dishonest, fraudulent or intentionally wrongful acts.** We won't cover loss that results from any criminal, dishonest, fraudulent, or intentionally wrongful act or omission committed:

- by the protected person; or
- with the consent or knowledge of the protected person.

However, we won't apply this exclusion to our duty to defend that protected person until it has been determined by legal processes that such act or omission was committed:

- by the protected person; or
- with the consent or knowledge of the protected person.

\*\*\*

**Injury or damage.** We won't cover loss resulting from injury or damage.

*Injury or damage* means:

- bodily injury, personal injury, or advertising injury; or
- property damage.

\*\*\*

*Personal injury* means injury, other than bodily injury or advertising injury, caused by a personal injury offense.

*Personal injury offense* means:

- False arrest, detention or imprisonment;
- Malicious prosecution;
- Wrongful entry into, or wrongful eviction from, a room, dwelling, or premises that a person occupies, if such entry or eviction is committed by or for the landlord, lessor, or owner of that room, dwelling or premises.
- Invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, if such entry or eviction is committed by or for the landlord, lessor, or owner of that room, dwelling, or premises.
- Libel, or slander.
- Making known to any person or organization written or spoken material that disparages the business, premises, products, services, work, or completed work of others.
- Making known to any person or organization written or spoken material that violates a person's right of privacy.

35. The provisions of the PEELP applicable to this dispute are set forth below.

**What This Agreement Covers**

**Employment practices liability.** We'll pay amounts any protected person is legally required to pay as damages for covered employment injury that:

- results from a wrongful employment practice offense first committed on or after the retroactive date and before the ending date of this agreement; and
- results in a claim first made or brought against a protected person and reported to us while this agreement is in effect, or during the extended reporting period, if it applies.

We'll consider each wrongful employment practice offense in a series of related wrongful employment practice offenses to be committed on the date the first wrongful employment practice offense in the series of related wrongful employment practice offenses is committed.

\*\*\*

*Employment injury* means employment-related harm to:

- any of your employees;
- any of your prospective or former employees; or
- an independent contractor.

\*\*\*

*Independent contractor* means any person who is not your employee, but who performs duties related to the conduct of your operations in the course of their independent employment in accordance with a contract between you and the independent contractor for specified services.

*Wrongful employment practices offense* means any of the following offenses:

- Employment discrimination.
- Wrongful employment termination.
- Employment-related harassment.
- Retaliatory action against any of your employees.

- Wrongful, excessive, or unfair discipline of any of your employees.
- Wrongful hiring, supervision, or demotion of, or failure to promote, any of your employees; or
- Employment-related misrepresentation, defamation, libel, slander, disparagement, or invasion of privacy.

**Who Is Protected Under this Agreement**

\*\*\*

**Elected or appointed officials.** Your [the City's] lawfully elected or appointed officials, directors or executive officers, are protected persons only for the conduct of their duties as your elected or appointed officials, directors or executive officers.

\*\*\*

**Employees and volunteer workers.** Your employees are protected persons only for:

- work done within the scope of their employment by you;
- their performance of duties related to the conduct of your operations.

**Exclusions – What This Agreement Won't Cover**

**Breach of contract.** We won't cover personal injury or advertising injury that results from the failure of a protected person to do what is required by a contract or agreement.

\*\*\*

**Criminal, dishonest, fraudulent or malicious acts.** We won't cover employment injury that results from any criminal, dishonest, fraudulent, or malicious act or omission committed:

- by the protected person; or
- with the consent or knowledge of the protected person.

However, we won't apply this exclusion to our duty to defend that protected person until it has been determined by legal processes that such act or omission was committed:

- by the protected person; or
- with the consent or knowledge of the protected person.

36. The provisions of the Umbrella Excess Liability Protection applicable to this dispute are set forth below.

**Coverage above Basic Insurance limits other than total limits.**

We'll pay damages that:

- are covered by this agreement;
- are covered by your Basic Insurance; and
- exceed you Basic Insurer's payment of the limits of coverage in your Basic Insurance, other than your total limits.

37. In addition, the Umbrella Excess Liability Protection contains provisions that are substantively similar to the provisions of the PEGL quoted at length above, including a similar insuring agreement, who is a protected person provision, breach of contract, false material and intellectual property exclusions.

**IV.  
DECLARATORY JUDGMENT**

**Count One: No Coverage for Arbitration**

38. Plaintiff Travelers incorporates by reference the allegations stated above.

39. The Travelers Policy does not provide coverage for any of the claims asserted in the Arbitration. Specifically, coverage is not afforded under the Travelers Policy because:

- a. The Arbitration does not assert claims for bodily injury, property damage or personal injury, as those terms are defined by the Travelers Policy, and therefore does not come within the insuring agreement of the PEGL or the Umbrella Excess Liability Protection.

- b. The breach of contract exclusion in the PEGL, PEMLP, PEELP and Umbrella Excess Liability Protection precludes coverage.
- c. The intellectual property exclusion in the PEGL and Umbrella Excess Liability Protection precludes coverage.
- d. The false material exclusion in the PEGL and Umbrella Excess Liability Protection precludes coverage.
- e. The bodily injury, property damage, personal injury, advertising injury exclusion in the PEMLP precludes coverage.
- f. The criminal, dishonest, fraudulent or intentionally wrongful acts exclusion in the PEMLP precludes coverage.
- g. The criminal, dishonest, fraudulent or malicious acts exclusion in the PEELP precludes coverage.
- h. The Arbitration does not assert claims for a wrongful employment practice, as defined by the Travelers Policy, so there is no coverage under the PEELP.
- i. There is no coverage under the Basic Insurance and as a result, there is likewise no coverage under the Umbrella Excess Liability Protection.

40. Therefore, Plaintiff Travelers seeks a declaratory judgment by this Court that no coverage was provided by the Travelers Policy for the claims asserted in the Arbitration.

**Count Two: No Coverage for Dallas Lawsuit**

- 41. Plaintiff Travelers incorporates by reference the allegations stated above.
- 42. The Travelers Policy does not provide coverage for any of the claims asserted in the Dallas Lawsuit. Specifically, coverage is not afforded under the Travelers Policy because:

- a. Miller, Hutcheson, Dumbauld and Snider are not protected persons under the Travelers Policy.
- b. The Dallas Lawsuit does not assert claims for bodily injury, property damage or personal injury, as those terms are defined by the Travelers Policy, and therefore do not come within the insuring agreement of the PEGL or the Umbrella Excess Liability Protection.
- c. The breach of contract exclusion in the PEGL, PEMLP, PEELP and Umbrella Excess Liability Protection precludes coverage.
- d. The intellectual property exclusion in the PEGL and Umbrella Excess Liability Protection precludes coverage.
- e. The false material exclusion in the PEGL and Umbrella Excess Liability Protection precludes coverage.
- f. The bodily injury, property damage, personal injury, advertising injury exclusion in the PEMLP precludes coverage.
- g. The criminal, dishonest, fraudulent or intentionally wrongful acts exclusion in the PEMLP precludes coverage.
- h. The criminal, dishonest, fraudulent or malicious acts exclusion in the PEELP precludes coverage.
- i. The Dallas Lawsuit does not assert claims for a wrongful employment practice, as defined by the Travelers Policy, so there is no coverage under the PEELP.
- j. There is no coverage under the Basic Insurance and as a result, there is likewise no coverage under the Umbrella Excess Liability Protection.

43. Therefore, Plaintiff Travelers seeks a declaratory judgment by this Court that no coverage was provided by the Travelers Policy for the claims asserted in the Dallas Lawsuit.

**Count Three: Multiple Self-Insured Retentions Under PEGL**

44. Plaintiff Travelers incorporates by reference the allegations stated above.

45. In the unlikely event it is determined that there is coverage under the PEGL (which, as set forth above, Travelers asserts there is not), Plaintiff Travelers seeks a declaratory judgment by this Court that the PEGL provides for multiple \$500,000 self-insured retentions, on a per person/organization basis.

**V.  
PRAYER**

WHEREFORE, for the foregoing reasons, Plaintiff St. Paul Travelers respectfully requests judgment against Defendants as follows:

1. A declaration that Travelers has no obligation to defend the City in the Arbitration or provide indemnity for any judgment or settlement which is reached in the Arbitration;
2. A declaration that Travelers has no obligation to defend the City in the Dallas Lawsuit or provide indemnity for any judgment or settlement which is reached in the Dallas Lawsuit;
3. Should the Court determine there is coverage under the PEGL, a declaration that multiple self-insured retentions apply; and
4. Such other and further relief as to which Plaintiff may show itself justly entitled.

Respectfully submitted,



GREG K. WINSLETT

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**ATTORNEYS FOR PLAINTIFF**

**ST. PAUL FIRE & MARINE INSURANCE**

**COMPANY**

CIVIL COVER SHEET

ORIGINAL

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

I. (a) PLAINTIFFS: St. Paul Fire & Marine Insurance Company; (b) County of Residence of First Listed Plaintiff: Dallas; (c) Attorneys: GREG K. WINSLETT/MARCIE SCHOUT QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C. DEFENDANTS: City of Lubbock, Leisa Hutcheson, Lee Ann Dumbauld, Scott Snider and David Miller, Icon Benefit Administrators II, L.P., American Administrative Group, Inc., Healthsmart Preferred Care, II,LP; County of Residence of First Listed Defendant: Camp; NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known):

RECEIVED BY JUL 29 2009 CLERK U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS

09 CV 1400 - P

II. BASIS OF JURISDICTION (Place An "X" in One Box Only); III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff And One Box for Defendant); PTF DEF; 1 1 Incorporated or Principal Place of Business In This State; 2 2 Incorporated and Principal Place of Business In Another State; 3 3 Foreign Nation; 4 4; 5 5; 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only); CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise; REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All other Real Property; TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury; PERSONAL INJURY: 362 Personal Injury - Med. Malpractice, 365 Personal Injury - Product Liability, 368 Asbestos Personal Injury Product Liability; PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability; FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Law, 640 R.R. & Truck, 650 Airline Regs., 660 Occupational Safety/Health, 690 Other; LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Empl. Ref. Inc. Security Act; BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157; SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)); FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS - Third Party 26 USC 7609; OTHER STATUTES: 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 890 Other Statutory Actions, 891 Agricultural Acts, 892 Economic Stabilization Act, 893 Environmental Matters, 894 Energy Allocation Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only); 1 Original Proceeding; 2 Removed from State Court; 3 Remanded from Appellate Court; 4 Reinstated or Reopened; 5 Transferred from another district (specify); 6 Multidistrict litigation; 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Diversity; 28 USC §1332; 28 U.S.C. § 2201; Brief description of cause: Plaintiff seeks declaratory judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23; DEMAND \$ NOT SPECIFIED; CHECK YES only if demanded in complaint; JURY DEMAND: X YES NO

VIII. RELATED CASE(S) IF ANY: (See instructions); JUDGE; DOCKET NUMBER

DATE: July 29 2009; SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY: RECEIPT #, AMOUNT, APPLYING IFF, JUDGE, MAG. JUDGE