

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Axiall Corporation and  
Westlake Chemical Corporation,  
Plaintiff(s),



Marshall County Circuit Court  
Civil Action No. 19-C-59

vs.

National Union Fire Insurance Co. of  
Pittsburgh, Pa.,

Defendant.

TO: THE HONORABLE CHIEF JUSTICE

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Honorable David W. Hummel, Jr.  
respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

There are no known related actions.

**X The following related actions could be the subject of consolidation, and are**

**X now pending**

or

may be filed in the future. (Please list case style, number, and Court if any)

**Covestro v. Alltranstek, LLC et al. 18-C-202 (Marshall County)**

**Axiall Corporation v. Alltranstek, LLC et al. 18-C-203 (Marshall County)**

This action involves: (Please check all that apply)

**X Breach of Contract;**

Sale or Purchase of Commercial Entity;

Sale or Purchase of Commercial Real  
Estate;

Sale or Purchase of Commercial Products  
Covered by the Uniform Commercial  
Code;

Terms of a Commercial Lease;

Commercial Non-consumer debts;

Internal Affairs of a Commercial Entity;

Trade Secrets and Trademark Infringement;

Non-compete Agreements;

Intellectual Property, Securities, Technology  
Disputes;

Commercial Torts;

(continued on next)

**X Insurance Coverage Disputes in Commercial Insurance Policies;**

Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;

Anti-trust Actions between Commercial Entities;

Injunctive and Declaratory Relief Between Commercial Entities;

Liability of Shareholders, Directors, Officers, Partners, etc.;

Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;

Shareholders Derivative Claims;

Commercial Bank Transactions;

Franchisees/Franchisors;

Internet, Electronic Commerce and Biotechnology

**X Disputes involving Commercial Entities; or Other (Describe) \_\_\_\_\_**

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: The related case involves a dispute concerning a chlorine leak at the Axiall facility in Marshall County, West Virginia. This case will involve insurance coverage disputes over the related action currently pending in the Business Court.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet.

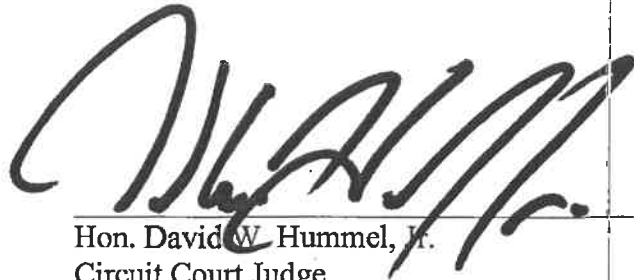
In regard to expedited review, this Court:

**X DOES NOT** request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so

**WHEREFORE**, the undersigned Judge hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this May 29, 2019,



Hon. David W. Hummel, Jr.  
Circuit Court Judge  
600 Seventh Street  
Moundsville, WV 26041

CERTIFICATE OF SERVICE

I, David W. Hummel, Jr., do hereby certify that on this 29th day of May, 2019, I have served the foregoing "Judicial Motion to Refer Case to Business Court Division," with attachments by either hand delivery or first class mail to with attachments by either hand delivery or first class mail to all counsel of record; the Marshall County Circuit Clerk's Office; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.



Sender Signature

AXIALL CORPORATION

VS. NAT'L. UNION FIRE INS CO OF PI

LINE DATE ACTION

1 04/10/19 COMPLAINT & CCIS FORM FILED; COPY OF CCIS TO JUDGE; SERVICE  
2 FORTHCOMING (SLM)  
3 04/11/19 SUMMONS REQ ---- ISSUED TO COUNSEL FOR SERVICE (SLM)  
4 04/11/19 SUMMONS REQ ---- ISSUED TO COUNSEL FOR SERVICE (SLM)  
5 04/12/19 SUMMONS REQ --- ISSUED TO COUNSEL FOR SERVICE (SLM)  
6 04/15/19 SUMMONS REQ----ISSUED TO COUNSEL FOR SERVICE./MHM  
7 04/18/19 PROOF OF SERVICE OF SUM AND COMP ON MOUND COTTON WOLLAN  
8 04/26/19 PROOF OF SERVICE./MHM  
9 04/30/19 NOTICE OF APPEARANCE, JEFFREY V.KESSLER,ESQ. AS CO-COUNSEL FOR  
10 PLAINTIFFS AXIALL CORP. & WESTLAKE CHEMICAL CORP.; CERT.OF SERV.  
11 05/01/19 FAXED IN STIPULATION TO EXTEND TIME TO MAY 23, 2019.CERT OF SER.  
12 05/08/19 FAXED IN PROOF OF SERVICE,CERT OF SERVICE./MHM  
13 05/08/19 PROOF OF SERVICE, CERT OF SERVICE. FAXED IN./MHM  
14 05/17/19 MOTION/APPLICATION FOR THE PRO HAC VICE ADMISSION OF PAUL C  
15 FUENER, SARAH M CZYPINSKI, JOHN M SYLVESTER, AND DAVID OSIPOVICH  
16 PROPOSED ORDERS, CERTIFICATES OF SERVICE./MHM  
17 05/22/19 ORDER: ORDER GRANTING ADMISSION PRO HACE VICE FOR SARAH M.  
18 CZYPINSKI, COPIES ISSUED (DLC)  
19 05/22/19 ORDER: ORDER GRANTING ADMISSION PRO HAC VICE FOR JOHN M.  
20 SYLVESTER, COPIES ISSUED (DLC)  
21 05/22/19 ORDER: ORDER GRANTING ADMISSION PRO HAC VICE FOR PAUL C. FEUNER,  
22 COPIES ISSUED (DLC)  
23 05/22/19 ORDER: ORDER GRANTING ADMISSION PRO HAC VICE FOR DAVID R.  
24 OSIPOVICH, COPIES ISSUED (DLC)  
25 05/23/19 DEF'S ANSWER & DEFENSES TO COMPLAINT FILED. (CB)  
26 05/30/19 ORDER: JUDICIAL MOTION TO REFER CASE TO THE BUISNESS COURT  
27 DIVISION, COPIES ISSUED TO ALL COUNSEL OF RECORD (DLC)  
28 06/21/19 DEF'S MEMORANDUM IN RESPONSE TO JUDICIAL MOTION TO REFER CASE  
29 TO THE BUSINESS COURT DIVISION.  
30 06/21/19 PLFS AXIALL CORPORATIONS & WESTLAKE CHEMICAL CORPS REPLY TO THE  
31 SUA SPONTE JUDICAL MOTION TO REFER CASE TO THE BUISNESS COURT  
32 DIVISION, CERT OF SERV  
33 06/21/19 DEF'S MEMORANDUM IN RESPONSE TO JUDICIAL MOTION TO REFER TO THE  
34 BUISNESS COURT DIVISION, CERT OF SERV (DLC)  
35 06/28/19 DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR STAY  
36 IN FAVOR OF FIRST-FILED FOREIGN ACTION,DEFENDANTS MEMORANDUM  
37 IN SUPPORT OF MOTION TO DISMISS OR STAY IN FAVOR OF FIRST FILED  
38 FOREIGN ACTION,CERT OF SERVICE./MHM  
39 06/28/19 CERTS OF SERVICE FOR PL FIRST SET OF REQ FOR PRODUCTION OF DOCS  
40 X 12  
41 07/01/19 DEFENDANTS MOTION TO DISMISS OR STAY IN FAVOR OF 1ST FILED  
42 FOREIGN ACTION, DEF MEMORANDUM IN SUPPORT OF MOTION TO DISMISS  
43 OR STAY IN FAVOR OF 1ST FILED FOREIGN ACTION,CERT OF SERV..  
44 EXHIBITS NOT SCANNED./MHM  
45 07/08/19 FAXED IN DEFENDANTS MOTION TO STAY DISCOVERY,DEFENDANTS  
46 MEMORANDUM IN SUPPORT OF THEIR MOTION TO STAY DISCOVERY, CERT  
47 OF SERVICE./MHM

FILED

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

2019 APR 10 PM 3:00

AXIALL CORPORATION and  
WESTLAKE CHEMICAL CORPORATION,

Plaintiffs,

vs.

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.; ALLIANZ  
GLOBAL RISKS US INSURANCE COMPANY;  
ACE AMERICAN INSURANCE COMPANY;  
ZURICH AMERICAN INSURANCE COMPANY;  
GREAT LAKES INSURANCE SE; XL  
INSURANCE AMERICA, INC.; GENERAL  
SECURITY INDEMNITY COMPANY OF  
ARIZONA; ASPEN INSURANCE UK LIMITED;  
NAVIGATORS MANAGEMENT  
COMPANY, INC.; IRONSHORE SPECIALTY  
INSURANCE COMPANY; VALIDUS  
SPECIALTY UNDERWRITING SERVICES,  
INC.; and HDI-GERLING AMERICA  
INSURANCE COMPANY

Defendants.

JOSEPH L. HUMMEL  
Civil Action No. 19-C-59

Judge Hummel

**Jury Trial Demanded**

**COMPLAINT**

Plaintiffs Axiall Corporation ("Axiall") and Westlake Chemical Corporation (collectively with Axiall, "Westlake"), by their attorneys, allege as follows:

**Introduction**

1. Westlake brings this insurance coverage action to enforce and protect its rights under insurance policies issued by Defendants covering loss and expense for damage to Westlake's property in connection with the rupture of a railroad tank car containing chlorine that occurred at Westlake's Natrium plant in Marshall County, West Virginia.

### **Parties**

2. Axiall Corporation has its principal place of business in Texas and is incorporated in Delaware. Axiall is the named insured on the insurance policies at issue.

3. Westlake Chemical Corporation has its principal place of business in Texas and is incorporated in Delaware. On August 31, 2016, Axiall was acquired by, and became a wholly-owned indirect subsidiary, of Westlake Chemical Corporation.

4. Defendant National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") is an insurance company incorporated and existing under the laws of Pennsylvania with its principal place of business in New York at 175 Water Street, 18th Floor, New York, NY 10038. National Union is licensed and/or is doing business in the state of West Virginia. In its policy, National Union agreed that its agent for service of process is Jeffrey Weinstein, Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004. In addition, National Union agreed in its policy that service of process may be made on Counsel, Legal Department, Lexington Insurance Company, 100 Summer Street, Boston, MA 02110.

5. Defendant Allianz Global Risks US Insurance Company ("Allianz") is an insurance company incorporated and existing under the laws of Illinois with its principal place of business in Illinois at 225 W. Washington Street, Suite 1800, Chicago, IL 60606. Allianz is licensed and/or is doing business in the state of West Virginia. In its policy, Allianz agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

6. Defendant ACE American Insurance Company ("ACE") is an insurance company incorporated and existing under the laws of Pennsylvania with its principal place of business in Pennsylvania at 436 Walnut Street, Philadelphia, PA 19106. ACE is licensed and/or is doing business in the state of West Virginia. In its policy, ACE agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

7. Defendant Zurich American Insurance Company ("Zurich") is an insurance company incorporated and existing under the laws of New York with its principal place of business in Illinois at 1299 Zurich Way, Schaumburg, IL 60196. Zurich is licensed and/or is doing business in the state of West Virginia. In its policy, Zurich agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

8. Defendant Great Lakes Insurance SE (f/k/a Great Lakes Reinsurance (UK) SE f/k/a Great Lakes Reinsurance (UK) Plc.) ("Great Lakes") is a foreign insurance company incorporated and existing under the laws of Germany with its principal place of business in Germany. Great Lakes is licensed and/or is doing business in the state of West Virginia. In its policy, Great Lakes agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

9. Defendant XL Insurance America, Inc. ("XL") is an insurance company incorporated and existing under the laws of Delaware with its principal place of business in Connecticut at 70 Seaview Avenue, Stamford, CT 06902. XL is licensed and/or is doing business in the state of West Virginia. In its policy, XL agreed that its agent for service of

process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

10. Defendant General Security Indemnity Company of Arizona ("General Security") is an insurance company incorporated and existing under the laws of Arizona with its principal place of business in New York at 199 Water Street, Suite 2100, New York, NY 10038. General Security is licensed and/or is doing business in the state of West Virginia. In its policy, General Security agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

11. Defendant Aspen Insurance UK Limited ("Aspen") is a foreign insurance company incorporated and existing under the laws of the United Kingdom with its principal place of business in the United Kingdom. Aspen is licensed and/or is doing business in the state of West Virginia. In its policy, Aspen agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

12. Defendant Navigators Management Company, Inc. ("Navigators") is an underwriting management company designated to underwrite policies on behalf of Certain Underwriters at Lloyd's, London. Navigators is considered to be the service company coverholder under the Certificate of Insurance evidencing placement of insurance with Lloyd's Syndicates 1221, 1897, and 4000 subscribing to Policy No. 15NMNY1422-01. Navigators is a domestic business entity organized and existing under the laws of the State of New York with its principal place of business in Connecticut, at 400 Atlantic St, Stamford, CT 06901. Navigators is licensed and/or is doing business in the state of West Virginia. Navigators agreed that its



agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

13. Defendant Ironshore Specialty Insurance Company ("Ironshore") is an insurance company incorporated and existing under the laws of Arizona with its principal place of business in Massachusetts, at 175 Berkeley, Boston, MA 02116. Ironshore is licensed and/or is doing business in the state of West Virginia. In its policy, Ironshore agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

14. Defendant Validus Specialty Underwriting Services, Inc. (f/k/a Talbot Underwriting Services (US) Ltd.) ("Validus") is a Managing General Agent designated to underwrite policies on behalf of Certain Underwriters at Lloyd's, London. Validus is considered to be the service company coverholder under the Certificate of Insurance evidencing placement of insurance with Lloyd's Syndicate 1183, subscribing to Policy No. AJC096910G15. Validus is a domestic business entity organized and existing under the laws of the State of Delaware with its principal place of business in New York, at 4 World Trade Center, 150 Greenwich Street, 47 Floor, New York, NY 10007. Validus is licensed and/or is doing business in the state of West Virginia. Validus agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

15. Defendant HDI-Gerling America Insurance Company ("HDI") is an insurance company incorporated and existing under the laws of Illinois with its principal place of business in Illinois, at 161 N Clark St, Chicago, IL 60601. HDI is licensed and/or is doing business in the

state of West Virginia. In its policy, HDI agreed that its agent for service of process is Jeffrey Weinstein of the law firm Mound Cotton Wollan and Greengrass, LLP. Mr. Weinstein may be served at New York Plaza, 44th Floor, New York, NY 10004.

### **Jurisdiction and Venue**

16. This action at law is within the subject matter jurisdiction of this Court pursuant to West Virginia Code § 51-2-2 because the amount in controversy exceeds \$7,500.

17. This Court has personal jurisdiction over Defendants pursuant to West Virginia Code § 56-3-33 because, among other things, Defendants have transacted insurance business in this state, including issuing insurance policies that insured property and risks located within this state at the time of contracting, and the causes of action asserted by Westlake in this insurance coverage matter arise from and grow out of Defendants' failure to honor its contractual obligations to provide coverage for property damage at the Natrium plant.

18. In addition, National Union, Allianz, ACE, Zurich, XL, General Security, Aspen, Navigators, Ironshore, Validus, and HDI agreed in their policy(ies) that "[a]ny disputes between the Assured and this company over the terms of this Policy shall be subject to the United States of America jurisdiction" and that "in the event of the failure of this company hereon to pay any amount claimed to be due hereunder, this company hereon, at the request of the Assured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States." Great Lakes agreed in its policy that "[a]ny disputes between Named Insured and Insurers over the terms of this policy shall be subject to the exclusive jurisdiction of the Courts of: the United States of America."

19. In addition, Defendants' policies include a "Choice of Law" provision that provides that "[a]ny dispute concerning or related to this insurance will be determined in accordance with the laws of the State of Georgia."

20. Venue for this property insurance coverage action is proper in the Circuit Court of Marshall County pursuant to West Virginia Code § 56-1-1(a)(5) because, among other things, the insured property that is the subject of this action is located in this County.

### **Background**

#### **A. The Policies**

21. In exchange for substantial premiums, Axiall purchased a commercial property insurance program for the period from November 19, 2015 to November 19, 2016, comprised of thirteen separate insurance policies issued by Defendants, each of whom subscribed to various "quota shares" of the insurance program. The multiple policies that make up the program are referred to collectively herein as the "Policies."

22. National Union issued to Axiall a property insurance policy, numbered 20786808, subscribing to a quota share of 14.5%.

23. Allianz issued to Axiall a property insurance policy, numbered CLP 3016295, subscribing to a quota share of 12.5%.

24. ACE issued to Axiall a property insurance policy, numbered PGL N09175325, subscribing to a quota share of 12.5%.

25. National Union issued to Axiall a property insurance policy, numbered 27015349, subscribing to a quota share of 11.5%.

26. Zurich issued to Axiall a property insurance policy, numbered OGR 8342756-19, subscribing to a quota share of 9.5%.

27. Great Lakes issued to Axiall a property insurance policy, numbered B080110429J15, subscribing to a quota share of 8.5%.
28. XL issued to Axiall a property insurance policy, numbered US00011825PR15A, subscribing to a quota share of 7.5%.
29. General Security issued to Axiall a property insurance policy, numbered 10F149909-2015-1, subscribing to a quota share of 7.5%.
30. Aspen issued to Axiall a property insurance policy, numbered OGADFE315, subscribing to a quota share of 5.0%.
31. Navigators issued to Axiall a property insurance policy, numbered 15NMNY1422-01, subscribing to a quota share of 3.0%.
32. Ironshore issued to Axiall a property insurance policy, numbered 001843502, subscribing to a quota share of 3.0%.
33. Validus issued to Axiall a property insurance policy, numbered AJC096910G15, subscribing to a quota share of 2.5%.
34. HDI issued to Axiall a property insurance policy, numbered XPD12642-02, subscribing to a quota share of 2.5%.
35. A chart summarizing the Policies is set forth below:

INSURER	POLICY NO.	QUOTA SHARE
National Union	20786808	14.5%
Allianz	CLP 3016295	12.5%
ACE	PGL N09175325	12.5%
National Union	27015349	11.5%
Zurich	OGR 8342756-19	9.5%
Great Lakes	B080110429J15	8.5%
XL	US00011825PR15A	7.5%

General Security	10F149909-2015-1	7.5%
Aspen	OGADFE315	5.0%
Navigators	15NMNY1422-01	3.0%
Ironshore	001843502	3.0%
Validus	AJC096910G15	2.5%
HDI	XPD12642-02	2.5%

**B. Westlake's Claims Under the Policies**

36. Westlake owns and operates a chemical plant in Proctor, West Virginia (the "Natrium Plant"). The Natrium Plant is located in the southwest corner of Marshall County, along the banks of the Ohio River. The Natrium Plant manufactures chlorine, hydrogen, liquid caustic soda, PELS dry caustic soda, calcium hypochlorite, and muriatic acid.

37. Under the Policies, Defendants agreed to insure real and personal property against all risks of direct physical loss or damage occurring anywhere during the period of the Policies, unless otherwise excluded by the Policies.

38. Among the locations covered under the Policies is the Natrium Plant.

39. On August 27, 2016, a chlorine tank car ruptured at the Natrium Plant, releasing a large chlorine gas cloud that moved across the plant. The resulting cloud forced the evacuation of the Natrium Plant and the surrounding area.

40. As a result of the ruptured tank car and chlorine release (the "Incident"), Westlake has incurred substantial losses, damages, and other expenses. Among other things, the Incident caused or resulted in physical loss or damage to insured property at the Natrium Plant, which is covered under the Policies, and for which Westlake is seeking payment from Defendants.

41. Any and all alleged conditions precedent to Westlake's claims under the Policies with respect to the Incident-related losses, damages, and expenses have either been satisfied,

waived, excluded, or do not need to be performed because Defendants would not be prejudiced by such non-performance.

42. Westlake provided timely notice to Defendants of its Incident-related losses, damages, and expenses, and requested coverage in accordance with the terms of the Policies.

43. Westlake submitted to Defendants voluminous and detailed documentation and financial information supporting its claims of physical loss, damages, and expenses, and repeatedly pressed Defendants for an adjustment of its loss and payment of its claims. Westlake regularly communicated with Defendants and their representatives concerning their losses, damages, and expenses.

44. For nearly a year and a half following the August 27, 2016 Incident, the claim adjustment process proceeded, and Defendants never issued any reservation of rights letters, never asserted that any exclusions to coverage might apply, nor raised any contention that the Policies did not cover Westlake's losses.

45. Rather, Defendants' representatives who visited the Natrium Plant on multiple occasions consistently agreed with, and approved of, Westlake's proposed course of action in responding to the loss. Westlake engaged in good faith with Defendants, their adjusters and consultants, and at significant burden and expense to Westlake, to identify, evaluate and quantify the damage at the Natrium Plant.

46. On December 13, 2017, at a meeting between Westlake and Defendants' representatives regarding the claim, Westlake presented an estimate of the significant repair/replacement costs required to remedy the substantial damage caused by the Incident.

47. Following the meeting, Defendants' approach to Westlake's claims suddenly and dramatically changed. On January 18, 2018, Defendants sent a "reservation of rights" letter to

Westlake that for the first time raised purported coverage defenses with respect to Westlake's claims and pointed to exclusionary language in the Policies that Defendants contended could apply to Westlake's claims.

48. The coverage defenses raised by Defendants were based on facts regarding the Incident and Westlake's losses that were known to Defendants from the outset of the claim adjustment process, but which were never raised by Defendants at any time prior to January 2018 -- more than a year and a half after Defendants began adjusting the claims.

49. Defendants gave no explanation for why they had not raised these purported coverage defenses earlier, after having led Westlake to believe that its claims would be covered under the Policies. On information and belief, Defendants' decision to assert purported coverage defenses for the first time more than a year and a half into the process of adjusting Westlake's claims was not based on any good faith interpretation or application of the Policies to the loss, but rather was driven by an effort to avoid coverage obligations after learning of the significant costs required for repair/replacement.

50. Defendants also retained a new set of consultants, purportedly to assist in Defendants' continued "investigation" of Westlake's claims. Defendants' representatives proceeded to issue voluminous additional requests for information and documentation, and demanded to inspect, sample, test and analyze various types of equipment and damaged property at the Natrium Plant. Defendants' purported "investigation" activities resulted in significant delay in the claim adjustment process and unnecessary burden and expense incurred by Westlake.

51. Notwithstanding that Defendants' actions effectively "restarted" the adjustment process, Westlake continued to attempt to work with Defendants and their representatives to

secure coverage for the claims, including by providing voluminous information in response to numerous and duplicative requests, and engaging with Defendants' consultants and adjusters in multiple visits to the Natrium Plant for the purposes of inspection, sampling, testing and analysis.

52. Westlake has submitted to Defendants proofs of loss and claims for physical loss, damages, and expenses caused by or directly resulting from the Incident in excess of \$278,000,000, including a proof of loss submitted to Defendants on March 20, 2019.

53. In response to Westlake's March 20, 2019 proof of loss, Defendants sent a letter on April 9, 2019 denying any obligation to provide coverage for Westlake's claims under the Policy. At the same time, and without any prior notice to Westlake, Defendants initiated a lawsuit against Westlake in Delaware.

54. Defendants' denial of coverage for Westlake's Incident-related losses, damages, and expenses is without reasonable justification and is in breach of Defendants' obligations under the Policies.

55. Accordingly, Westlake seeks an immediate and definite declaratory judgment of its rights and Defendants' obligations under the Policies, damages for breach of contract, and bad faith damages and penalties, as set forth in more detail herein.

### **COUNT I** **DECLARATORY JUDGMENT**

56. Westlake repeats and incorporates herein by reference the averments of paragraphs 1 through 55.

57. An actual controversy currently exists between Westlake and Defendants with respect to the duties and obligations under the Policies. Specifically, Westlake contends that the Policies are responsible to cover and pay for all of its losses, damages, and expenses as a result



of the Incident, up to the Policies' limits of liability, and that any exclusions raised by Defendants do not apply.

58. Defendants dispute Westlake's contentions regarding the extent of Westlake's covered losses, damages, and expenses, and/or the extent of Defendants' obligations under the Policies, and Defendants contend that all of Westlake's losses, damages, and expenses are not covered.

59. Pursuant to West Virginia Code § 55-13, a declaration by this Court finding that the losses, damages, and expenses Westlake sustained from the Incident are covered under the Policies is necessary to resolve the controversy between the parties. Moreover, a declaration by this Court is necessary to determine the rights of Westlake and the duties and obligations of Defendants under the Policies.

## **COUNT II** **BREACH OF CONTRACT**

60. Westlake repeats and incorporates herein by reference the averments of paragraphs 1 through 59.

61. Defendants have failed to indemnify Westlake in full with respect to the losses, damages, and expenses incurred as the result of the Incident, and have failed expeditiously to adjust and pay Westlake's claims.

62. Defendants' refusal and failure to indemnify Westlake for these losses, damages, and expenses, and to expeditiously adjust Westlake's claims, constitute a breach of the Policies.

63. As a direct and proximate result of Defendants' breach of the Policies, Westlake has suffered losses, damages, and expenses in an amount to be determined at trial, together with the costs of this action, including but not limited to pre- and post-judgment interest, for which Westlake is entitled to judgment against Defendants as is reasonable under the circumstances.

64. Westlake is further entitled to all direct, indirect, consequential, special, compensatory and other damages, including attorneys' fees, damages for net economic loss, and damages for aggravation and inconvenience, pursuant to *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W. Va. 323, 352 S.E.2d 73 (W. Va. 1986), and any other applicable legal or equitable grounds, resulting from the aforesaid breaches by Defendants.

**COUNT III**  
**BAD FAITH - VIOLATION OF GEORGIA CODE § 33-4-6**

65. Westlake repeats and incorporates herein by reference the averments of paragraphs 1 through 64.

66. Westlake has provided Defendants with satisfactory proofs of loss in support of their Incident-related claims, and has demanded payment thereof.

67. On March 20, 2019, Westlake submitted to Defendants a proof of loss that summarized its Incident-related claims as a whole through that date. This proof of loss in part restated detailed and documented claim submissions previously made by Westlake and demanded immediate payment of all unpaid amounts of Westlake's claims in accordance with the terms of the Policies.

68. On or about April 9, 2019, Defendants issued a letter denying any obligation to pay any part of Westlake's claims.

69. On the same day, Defendants filed a lawsuit against Westlake in Delaware seeking a declaration that they have no obligation to provide coverage to Westlake for its claims.

70. Defendants' denials of coverage and failures to pay Westlake's claims after receiving satisfactory proofs of loss are frivolous, unfounded, arbitrary, capricious, without good cause, and made in bad faith.

71. By filing a declaratory judgment action against Westlake seeking to relieve themselves of any liability under the Policies, Defendants have waived the 60-day pre-suit notice requirement applicable to bad faith claims brought under Georgia Code § 33-4-6.

72. Under Georgia Code § 33-4-6, Westlake is entitled to a judgment against Defendants of 50% damages on any amounts of Westlake's claims not paid by Defendants, as well as reasonable attorneys' fees and costs.

**COUNT IV**  
**BAD FAITH - WEST VIRGINIA COMMON LAW**

73. Westlake repeats and incorporates by reference the averments of paragraphs 1 through 72.

74. Defendants owe a duty of good faith and fair dealing to Westlake, and the Policies issued by Defendants contain, *inter alia*, an implied covenant of good faith and fair dealing.

75. Defendants have failed to indemnify Westlake in full with respect to the losses, damages, and expenses incurred as the result of the Incident, and have failed expeditiously to adjust and pay Westlake's claims.

76. These failures of Defendants have been unreasonable, untimely and in bad faith. The bases for the failures of Defendants to provide coverage, to investigate fully, or to acknowledge their obligations to Westlake are without merit.

77. Defendants knew that Westlake's claims were proper but instead willfully, maliciously, and intentionally utilized unfair business practices to fail or refuse to provide coverage to Westlake.

78. Defendants acted with actual malice in utilizing unfair business practices to fail or refuse to provide coverage to Westlake.

79. As a direct and proximate result of the conduct of Defendants, Westlake was forced to retain attorneys and file this Complaint in order to obtain the insurance coverage to which it is entitled.

80. As a direct and proximate result of the conduct of Defendants, Westlake has sustained damages in an amount to be determined at trial.

81. As a direct and proximate result of the conduct of Defendants, Westlake is entitled to all direct, indirect, consequential, special, compensatory, punitive, exemplary and other damages, including attorneys' fees, damages for economic loss, and damages for aggravation and inconvenience, in an amount to be determined at trial.

**COUNT V**  
**UNFAIR TRADE PRACTICES - VIOLATION OF W. VA. CODE § 33-11-4**

82. Westlake repeats and incorporates by reference the averments of paragraphs 1 through 81.

83. Defendants knew or should have known that they were governed by the West Virginia Unfair Trade Practices Act ("UTPA"), W.Va. Code § 33-11-4, and all insurance regulations promulgated thereunder.

84. Defendants violated the West Virginia UTPA, West Virginia Code § 33-11-4, and/or the insurance regulations promulgated thereunder in handling the claim for coverage made Westlake.

85. West Virginia Code § 33-11-4(9) precludes a number of practices consistent with insurance law, including but are not limited to:

(1) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(2) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(3) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(4) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(5) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and

(6) Such other violations as the facts and evidence developed in discovery may show.

86. Upon information and belief, Defendants violated the West Virginia UTPA, West Virginia Code § 33-11-4, and/or the insurance regulations promulgated thereunder with such frequency as to indicate a general business practice.

87. Defendants knew that Westlake's claims were proper but instead willfully, maliciously, and intentionally utilized unfair business practices to fail or refuse to provide coverage to Westlake.

88. Defendants acted with actual malice in utilizing unfair business practices to fail or refuse to provide coverage to Westlake.

89. As a direct and proximate result of the unfair business practices of Defendants, Westlake was forced to retain attorneys and file this Complaint in order to obtain the insurance coverage to which it is entitled.

90. As a direct and proximate result of the unfair business practices of Defendants, Westlake has sustained damages in an amount to be determined at trial.

91. As a direct and proximate result of the unfair business practices of Defendants, Westlake is entitled to all direct, indirect, consequential, special, compensatory, punitive,

exemplary and other damages, including attorneys' fees, damages for net economic loss and damages for aggravation and inconvenience, in an amount to be determined at trial.

**Prayer for Relief**

92. Westlake prays for judgment in its favor and against Defendants as follows:

- a) Judgment declaring Defendants' duties and obligations under the Policies, including but not limited to coverage and payment of the amounts owed for the past and future losses, damages, and expenses incurred by Westlake as a result of the Incident;
- b) Judgment requiring Defendants to pay Westlake all losses, damages, and expenses owed under the Policies;
- c) Judgment requiring specific performance of the Policies (including payment to Westlake);
- d) Judgment against Defendants for an amount of damages representing the covered losses, damages, and expenses due and owed under the Policies and up to the applicable limits of liability, together with pre- and post-judgment interest thereon, expenses, and attorney's fees, as provided for under the Policies and/or by law;
- e) Judgment against Defendants for all costs of this action, and for all other general, special, punitive, statutory damages and attorneys' fees as allowed by law; and
- f) Such other relief, including any other appropriate equitable relief, as the Court may deem just and proper.

**Jury Trial Demanded**

Westlake demands a trial by jury on any and all issues so triable.

Respectfully submitted,



Dated: April 10, 2019

Thomas C. Ryan, Esq. (WVSB No. 9883)  
Travis L. Brannon, Esq. (WVSB No. 12504)  
K&L GATES LLP  
K&L Gates Center  
210 Sixth Avenue  
Pittsburgh, PA 15222  
(412) 355-6500

*Attorneys for Plaintiffs Axiall Corporation  
and Westlake Chemical Corporation*

*Of Counsel:*

John M. Sylvester, Esq.  
Paul C. Fuener, Esq.  
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K&L GATES LLP  
K&L Gates Center  
210 Sixth Avenue  
Pittsburgh, PA 15222  
(412) 355-6500

IN THE CIRCUIT COURT OF

MARSHALL

COUNTY, WEST VIRGINIA

2019 APR 19

CIVIL CASE INFORMATION STATEMENT  
(Civil Cases Other than Domestic Relations)

## I. CASE STYLE:

## Plaintiff(s)

Axial Corporation and

Westlake Chemical Corporation

Case No.

19-C-59

Judge:

Hummel

vs.

## Defendant(s)

Nat'l. Union Fire Ins. Co. of Pittsburgh, PA

Name

(c/o) New York Plaza, 44th Floor

Street Address

New York, NY 10004

City, State, Zip Code

Days to

Answer

Type of Service

Forthcoming

## II. TYPE OF CASE:

☒ General Civil☐ Mass Litigation [As defined in T.C.R. 26.04(a)]☐ Asbestos☐ FELA Asbestos☐ Other: \_\_\_\_\_☐ Habeas Corpus/Other Extraordinary Writ☐ Other: \_\_\_\_\_☐ Adoption☐ Administrative Agency Appeal☐ Civil Appeal from Magistrate Court☐ Miscellaneous Civil Petition☐ Mental Hygiene☐ Guardianship☐ Medical MalpracticeIII. JURY DEMAND: ☒ Yes ☐ No CASE WILL BE READY FOR TRIAL BY (Month/Year): 04 / 2021IV. DO YOU OR ANY  
OF YOUR CLIENTS  
OR WITNESSES  
IN THIS CASE  
REQUIRE SPECIAL  
ACCOMMODATIONS?☐ Yes ☒ No

## IF YES, PLEASE SPECIFY:

☐ Wheelchair accessible hearing room and other facilities☐ Reader or other auxiliary aid for the visually impaired☐ Interpreter or other auxiliary aid for the deaf and hard of hearing☐ Spokesperson or other auxiliary aid for the speech impaired☐ Foreign language interpreter-specify language: \_\_\_\_\_☐ Other: \_\_\_\_\_

Attorney Name: Travis L. Brannon

Firm: K&amp;L Gates LLP

Address: K&amp;L Gates Center, 210 Sixth Ave., Pittsburgh, PA 15222

Telephone: 412-355-7443

Representing:

☒ Plaintiff☐ Defendant☐ Cross-Defendant☐ Cross-Complainant☐ 3rd-Party Plaintiff☐ 3rd-Party Defendant☐ Proceeding Without an Attorney

Original and 20 copies of complaint enclosed/attached.

Dated: 04 / 10 / 2019

Signature: 

SCA-C-100: Civil Case Information Statement (Other than Domestic Relations)

Revision Date: 12/2015



Plaintiff: Axiall Corporation

, et al

Case Number: 19-C-59 (H)

vs.

Defendant: Nat'l. Union Fire Ins. Co. of Pittsburgh, PA

, et al

**CIVIL CASE INFORMATION STATEMENT  
DEFENDANT(S) CONTINUATION PAGE**

ACE American Insurance Company

Defendant's Name

(c/o) New York Plaza, 44th Floor

Days to Answer: \_\_\_\_\_

Street Address

New York, NY 10004

Type of Service: Forthcoming

City, State, Zip Code

Allianz Global Risks US Insurance Company

Defendant's Name

(c/o) New York Plaza, 44th Floor

Days to Answer: \_\_\_\_\_

Street Address

New York, NY 10004

Type of Service: Forthcoming

City, State, Zip Code

Zurich American Insurance Company

Defendant's Name

(c/o) New York Plaza, 44th Floor

Days to Answer: \_\_\_\_\_

Street Address

New York, NY 10004

Type of Service: Forthcoming

City, State, Zip Code

Great Lakes Insurance SE

Defendant's Name

(c/o) New York Plaza, 44th Floor

Days to Answer: \_\_\_\_\_

Street Address

New York, NY 10004

Type of Service: Forthcoming

City, State, Zip Code

XL Insurance America, Inc.

Defendant's Name

(c/o) New York Plaza, 44th Floor

Days to Answer: \_\_\_\_\_

Street Address

New York, NY 10004

Type of Service: Forthcoming

City, State, Zip Code

General Security Indemnity Company of Arizona

Defendant's Name

(c/o) New York Plaza, 44th Floor

Days to Answer: \_\_\_\_\_

Street Address

New York, NY 10004

Type of Service: Forthcoming

City, State, Zip Code

Aspen Insurance UK Limited

Defendant's Name

(c/o) New York Plaza, 44th Floor

Days to Answer: \_\_\_\_\_

Street Address

New York, NY 10004

Type of Service: Forthcoming

City, State, Zip Code

Plaintiff: Axiall Corporation

, et al

Case Number: 19-C-59(H)

vs.

Defendant: Nat'l. Union Fire Ins. Co. of Pittsburgh, PA

, et al

**CIVIL CASE INFORMATION STATEMENT  
DEFENDANT(S) CONTINUATION PAGE**

Navigators Management Company, Inc.

Defendant's Name

(c/o) New York Plaza, 44th Floor

Street Address

New York, NY 10004

City, State, Zip Code

Days to Answer: \_\_\_\_\_

Type of Service: Forthcoming

Ironshore Specialty Insurance Company

Defendant's Name

(c/o) New York Plaza, 44th Floor

Street Address

New York, NY 10004

City, State, Zip Code

Days to Answer: \_\_\_\_\_

Type of Service: Forthcoming

Validus Specialty Underwriting Services, Inc.

Defendant's Name

(c/o) New York Plaza, 44th Floor

Street Address

New York, NY 10004

City, State, Zip Code

Days to Answer: \_\_\_\_\_

Type of Service: Forthcoming

HDI-Gerling America Insurance Company

Defendant's Name

(c/o) New York Plaza, 44th Floor

Street Address

New York, NY 10004

City, State, Zip Code

Days to Answer: \_\_\_\_\_

Type of Service: Forthcoming

Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Type of Service: \_\_\_\_\_

City, State, Zip Code

Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Type of Service: \_\_\_\_\_

City, State, Zip Code

Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Type of Service: \_\_\_\_\_

City, State, Zip Code

K&L GATES

FILED  
2019 APR 10 PM 3:00

JOE RUCKI

April 10, 2019

**VIA COURIER**

Mr. Joe Rucki, Circuit Clerk  
Marshall County Courthouse  
600 Seventh Street  
Moundsville, WV 26041

Travis L. Brannon  
travis.brannon@klgates.com

T +1 412 355.7443  
F +1 412 355.6501

**Re: *Axiall Corporation, et al. v. National Union Fire Insurance Company of Pittsburgh, Pa, et al. (Circuit Court of Marshall County, West Virginia).***

Dear Mr. Rucki:

Enclosed please find the following:

- One (1) original Complaint for filing;
- Twenty (20) copies of the Complaint for date-stamping and return to me by return service with the courier;
- A civil case information statement; and
- A check for \$565.00 for payment of applicable filing fees.

I will contact you soon to request issuance of summonses for this matter so that we may complete service of process on Defendants.

If you have any questions or would like to discuss this further, please let me know.

Sincerely,



Travis L. Brannon

cc: Thomas C. Ryan, Esq.  
John M. Sylvester, Esq.  
Paul C. Fuener, Esq.  
David R. Osipovich, Esq.

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA**

AXIALL CORPORATION and  
WESTLAKE CHEMICAL CORPORATION,

Plaintiffs,

v.

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.; ALLIANZ  
GLOBAL RISKS US INSURANCE COMPANY;  
ACE AMERICAN INSURANCE COMPANY;  
ZURICH AMERICAN INSURANCE COMPANY;  
GREAT LAKES INSURANCE SE; XL  
INSURANCE AMERICA, INC.; GENERAL  
SECURITY INDEMNITY COMPANY OF  
ARIZONA; ASPEN INSURANCE UK LIMITED;  
NAVIGATORS MANAGEMENT  
COMPANY, INC.; IRONSHORE SPECIALTY  
INSURANCE COMPANY; VALIDUS  
SPECIALTY UNDERWRITING SERVICES,  
INC.; and HDI-GERLING AMERICA  
INSURANCE COMPANY,

Defendants.

**Civil Action No. 19-C-59**

**Judge Hummel**

FILED  
2019 MAY 23 PM 2:22  
MARSHALL COUNTY CLERK

**DEFENDANTS' ANSWER AND DEFENSES TO COMPLAINT**

Defendants National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"); Allianz Global Risks US Insurance Company ("Allianz"); ACE American Insurance Company ("ACE"); Zurich American Insurance Company ("Zurich"); Great Lakes Insurance SE ("Great Lakes"); XL Insurance America, Inc. ("XL"); General Security Indemnity Company of Arizona ("GSINDA"); Aspen Insurance UK Limited ("Aspen"); Navigators Management Company, Inc. ("Navigators"); Ironshore Specialty Insurance Company ("Ironshore"); Validus Specialty Underwriting Services, Inc. ("Validus"); and HDI-Gerling America Insurance Company ("HDI")

(collectively “Defendants”), by and through their counsel, file this Answer and Defenses to Complaint filed by Axiall Corporation (“Axiall”) and Westlake Chemical Corporation (“Westlake”) (collectively “Plaintiffs”), averring as follows:

### **PREFATORY STATEMENT**

Defendants assert that venue is not proper in this Court for the following reasons: (1) the proper venue for this action is in the Delaware Superior Court, where Defendants initiated their first-filed and pending action, *National Union Fire Ins. Co. of Pittsburgh, Pa., et al. v. Axiall Corp. and Westlake Chemical Corp.*, C.A. No. N19C-04-089 EMD CCLD (“Delaware Action”); (2) pursuant to W. VA. CODE § 56-1-1(c), Plaintiffs are not residents of West Virginia and the substantial part of the alleged acts or omissions giving rise to their claims did not occur in West Virginia; (3) the proper venue for this action is in the Delaware Action, and the Complaint should therefore be dismissed based on the doctrines of comity and/or forum non conveniens as codified at W. VA. CODE § 56-1-1a; and (4) alternatively, the proper venue for this action is in the Delaware Action, and therefore this action should be stayed pursuant to W. VA. CODE § 56-6-10.

Accordingly, Defendants move to dismiss this action pursuant to West Virginia Rule of Civil Procedure 12(b)(3), and will be submitting in the immediate future a memorandum in support of the same for the above-stated reasons. This Answer is subject to Defendants’ express preservation of the defense of improper venue under West Virginia Rule of Civil Procedure 12(b)(3).

### **FIRST DEFENSE**

The proper venue for this action is in the Delaware Action, and the Complaint should therefore be dismissed pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure.

### **SECOND DEFENSE**

The proper venue for this action is in the Delaware Action, and the Complaint should therefore be dismissed pursuant to Rule 12(b)(3) (or alternatively stayed) based on the doctrines of comity and/or forum non conveniens as codified at W. VA. CODE § 56-1-1a.

### **THIRD DEFENSE**

Venue for this action is not proper in West Virginia because Plaintiffs are not residents of West Virginia and the substantial part of the alleged acts or omissions giving rise to their claims did not occur in West Virginia. The Complaint should therefore be dismissed pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure and W. VA. CODE § 56-1-1(c).

### **FOURTH DEFENSE**

The proper venue for this action is in the Delaware Action, and this proceeding should therefore be stayed pending resolution of the Delaware Action pursuant to W. VA. CODE § 56-6-10.

### **FIFTH DEFENSE**

The Complaint fails to state a claim upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

### **SIXTH DEFENSE**

The Complaint fails to state a claim or cause of action for punitive or other extra-contractual damages upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

## **SEVENTH DEFENSE - ANSWER**

### **Introduction**

1. Admitted in part and denied in part. Defendants admit that a railroad tank car containing chlorine ruptured at Axiall's Natrium Plant in Marshall County, West Virginia ("Incident"). The remaining averments contained in Paragraph 1 are either denied or do not require a response as they refer to an insurance policy which is a writing that speaks for itself. Defendants deny any attempts by Plaintiffs to characterize or construe the writing except by the specific words used therein. Should a further response be necessary, the remaining averments contained in Paragraph 1 are denied. Plaintiffs are not entitled under the Policy<sup>1</sup> to recover any expenses for alleged damage in connection with the rupture of the railroad tank car.

### **Parties**

2. Defendants admit the averments contained in Paragraph 2.

3. Defendants admit the averments contained in Paragraph 3 concerning Westlake's principal place of business and state of incorporation, and further admit upon information and belief that Westlake acquired Axiall on or about August 31, 2016, but are without knowledge or information sufficient to admit or deny the nature of the subsidiary relationship between Axiall and Westlake following the acquisition.

4. Admitted in part and denied in part. Defendants admit that National Union is incorporated under the laws of Pennsylvania and that its principal place of business is in New York, New York. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy

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<sup>1</sup> "Policy" refers collectively to the following policies of insurance issued by Defendants on a quota share basis: National Union Nos. 020786808 and 27015349; Allianz No. CLP3016295; ACE No. PGL N09175325; Zurich No. OGR 8342756-19; Great Lakes No. B080110429J15; XL No. US00011825PR15A; GSINDA No. 10F149909-2015-1; Aspen No. OGADFE315; Navigators No. 15NMNY1422-01; Ironshore No. 1843502; Validus No. AJC096910G15; and HDI No. XPD12642-02.

except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision and that service of process may be made upon Counsel, Legal Department, Lexington Insurance Company, 100 Summer Street, Boston, Massachusetts, 02110 pursuant to Endorsement No. 22 to National Union Policy No. 020786808. The remaining averments contained in Paragraph 4 are denied.

5. Admitted in part and denied in part. Defendants admit that Allianz is incorporated under the laws of Illinois and that its principal place of business is in Chicago, Illinois. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 5 are denied.

6. Admitted in part and denied in part. Defendants admit that ACE is incorporated under the laws of Pennsylvania and that its principal place of business is in Philadelphia, Pennsylvania. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 6 are denied.

7. Admitted in part and denied in part. Defendants admit that Zurich is incorporated under the laws of New York and that its principal place of business is in Schaumburg, Illinois. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 7 are denied.

8. Admitted in part and denied in part. Defendants admit that Great Lakes is a foreign business entity organized and existing under the laws of Germany with its principal place of business in Munich, Germany. Defendants deny any attempts by Plaintiffs to characterize or



construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 8 are denied.

9. Admitted in part and denied in part. Defendants admit that XL is incorporated under the laws of Delaware and that its principal place of business is in Stamford, Connecticut. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 9 are denied.

10. Admitted in part and denied in part. Defendants admit that GSINDA is incorporated under the laws of Arizona and that its principal place of business is in New York, New York. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 10 are denied.

11. Admitted in part and denied in part. Defendants admit that Aspen is a foreign business entity organized and existing under the laws of England and Wales with its principal place of business in London, England. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 11 are denied.

12. Admitted in part and denied in part. Defendants admit that Navigators is an underwriting management company designated to underwrite policies on behalf of Certain Underwriters at Lloyd's, London, that Navigators is considered to be the service company coverholder under the Certificate of Insurance evidencing placement of insurance with Lloyd's

Syndicates 1221, 1897, and 4000 subscribing to Policy No. 15NMNY1422-01, and that Navigators is incorporated under the laws of New York and that its principal place of business is in Stamford, Connecticut. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 12 are denied.

13. Admitted in part and denied in part. Defendants admit that Ironshore is incorporated under the laws of Arizona and that its principal place of business is in Boston, Massachusetts. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 13 are denied.

14. Admitted in part and denied in part. Defendants admit that Validus is a Managing General Agent designated to underwrite policies on behalf of Certain Underwriters at Lloyd's, London, that Validus is considered to be the service company coverholder under the Certificate of Insurance evidencing placement of insurance with Lloyd's Syndicate 1183, subscribing to Policy No. AJC036910G15, and that Validus is incorporated under the laws of Delaware and that its principal place of business is in New York, New York. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 14 are denied.

15. Admitted in part and denied in part. Defendants admit that HDI is incorporated under the laws of Illinois and that its principal place of business is in Chicago, Illinois. Defendants deny any attempts by Plaintiffs to characterize or construe the Policy except by the specific words

used therein, which provide that Jeffrey Weinstein is the nominee for the Service of Suit provision. The remaining averments contained in Paragraph 15 are denied.

**Jurisdiction and Venue**

16. Based on information and belief, the averments contained in Paragraph 16 are admitted.

17. Admitted in part and denied in part. Defendants admit that this Court has personal jurisdiction over Defendants pursuant to W. VA. CODE § 56-3-33. The remaining averments contained in Paragraph 17 are denied.

18. Defendants admit the averments contained in Paragraph 18.

19. Defendants admit the averments contained in Paragraph 19.

20. Defendants deny the averments contained in Paragraph 20. Venue is not proper in the Circuit Court of Marshall County, West Virginia for, among others, the following reasons: (1) the proper venue for this action is in the Delaware Superior Court, where Defendants initiated their first-filed and pending Delaware Action; (2) pursuant to W. VA. CODE § 56-1-1(c), Plaintiffs are not residents of West Virginia and the substantial part of the alleged acts or omissions giving rise to their claims did not occur in West Virginia; (3) the proper venue for this action is in the Delaware Action, and therefore the Complaint should be dismissed based on the doctrines of comity and/or forum non conveniens as codified at W. VA. CODE § 56-1-1a; and (4) alternatively, the proper venue for this action is in the Delaware Action, and this action should therefore be stayed pursuant to W. VA. CODE § 56-6-10.

## **Background**

### **A. The Policies**

21. Admitted in part and denied in part. Defendants admit that they received premiums for and issued the Policy<sup>2</sup> to Axiall for the period from November 19, 2015 to November 19, 2016 as a subscribing quota share Market. The remaining averments contained in Paragraph 21 are denied.

22. Defendants admit the averments contained in Paragraph 22 with the exception that the correct policy number is 020786808.

23. Defendants admit the averments contained in Paragraph 23.

24. Defendants admit the averments contained in Paragraph 24.

25. Defendants admit the averments contained in Paragraph 25.

26. Defendants admit the averments contained in Paragraph 26.

27. Defendants admit the averments contained in Paragraph 27.

28. Defendants admit the averments contained in Paragraph 28.

29. Defendants admit the averments contained in Paragraph 29.

30. Defendants admit the averments contained in Paragraph 30.

31. Defendants admit the averments contained in Paragraph 31.

32. Defendants admit the averments contained in Paragraph 32.

33. Defendants admit the averments contained in Paragraph 33.

34. Defendants admit the averments contained in Paragraph 34.

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<sup>2</sup> The policies contain the same relevant terms, conditions, and exclusions, with one notable exception being that National Union Policy No. 020786808 contains an additional pollution and contamination endorsement (Endorsement No. 19).

35. The averments contained in Paragraph 35 do not require a response. To the extent a response is required, Defendants admit that the referenced policies were issued in the referenced quota shares, with the exception that the correct policy number for the National Union 14.5% quota share line is 020786808.

**B. Westlake's Claims Under the Policies**

36. Defendants admit that Axiall owns and operates the Natrium Plant located along the banks of the Ohio River in Marshall County, West Virginia, and that the plant manufactures various products, including chlorine, hydrogen, liquid caustic soda, PELS dry caustic soda, calcium hypochlorite, and muriatic acid. The remaining averments contained in Paragraph 36 are denied.

37. The averments contained in Paragraph 37 do not require a response as they refer to an insurance policy which is a writing that speaks for itself. Defendants deny any attempts by Plaintiffs to characterize or construe the writing except by the specific words used therein. Should a response be necessary, the remaining averments contained in Paragraph 37 are denied.

38. Defendants admit the averments contained in Paragraph 38.

39. Admitted in part and denied in part. Defendants admit that on August 27, 2016, a railroad tank car ruptured due to faulty workmanship, causing the release of liquefied chlorine and subsequent plant evacuation. Defendants are without sufficient knowledge or information to admit or deny the remaining averments contained in Paragraph 39.

40. Defendants deny the averments contained in Paragraph 40.

41. Defendants deny the averments contained in Paragraph 41.

42. Defendants admit that Axiall provided notice of the Incident to Defendants, and that Plaintiffs are seeking coverage under the Policy for losses allegedly attributable to the Incident. The remaining averments contained in Paragraph 42 are denied.

43. Admitted in part and denied in part. Defendants admit that Plaintiffs submitted documentation allegedly supporting their claims, oftentimes after repeated requests for the same, but Defendants deny that Plaintiffs submitted “detailed documentation and financial information supporting [their] claims of physical loss, damages, and expenses.” To the contrary, Plaintiffs have never submitted any detailed documentation demonstrating covered physical damage caused by the Incident, that such damage is not from excluded corrosion and/or contamination, or that such corrosion and/or contamination did not exist prior to the Incident. The remaining averments contained in Paragraph 43 are denied.

44. Admitted in part and denied in part. Defendants admit that the investigation of the Incident began following the Incident, but the investigation was slowed for many months while Defendants awaited information and test results from Plaintiffs. While Defendants did not issue any letters reserving rights under the Policy during their initial investigation of the Incident while they were awaiting this information, Defendants did issue a detailed and comprehensive reservation of rights letter on January 18, 2018 and properly advised Plaintiffs of the involved coverage issues in various subsequent correspondence. Further, the January 18, 2018 reservation of rights letter explaining the involved coverage issues was issued to Plaintiffs approximately four months prior to Plaintiffs’ submission of their first interim claim to Defendants and prior to any significant repair or replacement work being undertaken at the plant. The remaining averments contained in Paragraph 44 are denied.

45. Admitted in part and denied in part. Defendants admit that the adjuster and an appointed technical consultant visited the plant following the Incident and engaged in discussions with Plaintiffs concerning the alleged damage at the plant. Upon information and belief, Plaintiffs indicated to the adjuster and consultant that certain areas of the plant and items of equipment were corroded as a result of the Incident, but the referenced corrosion and contamination upon information and belief actually pre-dated the Incident (as shown in various pre-Incident photographs of the plant received by the adjuster late in the investigation). Further, it is Plaintiffs' responsibility and burden, not Defendants', to identify, evaluate, and quantify damage allegedly caused to their property, if any, and present that information (with appropriate support) to Defendants for consideration. Defendants' adjuster and technical consultant did not have authority to make coverage determinations on behalf of Defendants and were never authorized or instructed to make such determinations. The remaining averments contained in Paragraph 45 are denied.

46. Admitted in part and denied in part. Defendants admit that a meeting took place between Plaintiffs and Defendants' adjuster and technical consultant on or about December 13, 2017, and that Plaintiffs presented bids for the replacement of lagging and banding ranging from \$9 million to \$104 million. The remaining averments contained in Paragraph 46 are denied.

47. Admitted in part and denied in part. Defendants admit that they issued a detailed and comprehensive reservation of rights letter to Plaintiffs on January 18, 2018. The remaining averments contained in Paragraph 47 are denied.

48. Admitted in part and denied in part. Defendants admit that they issued a detailed and comprehensive reservation of rights letter to Plaintiffs on January 18, 2018. The remaining averments contained in Paragraph 48 are denied.

49. Defendants deny the averments contained in Paragraph 49.

50. Admitted in part and denied in part. Defendants admit that additional technical consultants were retained after the investigation progressed and it became obvious that Plaintiffs' experts' limited testing was insufficient and additional technical disciplines and analysis were necessary for the investigation. The lagging and banding bids presented to Defendants ranged from as low as \$9 million to \$104 million. The delta between these figures demonstrated that Plaintiffs' experts' work was insufficient. Defendants further admit that their technical consultants requested to test and examine the allegedly damaged equipment in accordance with the Policy's mandate that at Defendants' request "[Plaintiffs] shall exhibit the damaged property to [Defendants]."<sup>3</sup> The remaining averments contained in Paragraph 50 are denied.

51. Admitted in part and denied in part. Defendants admit that Plaintiffs provided some requested information and allowed Defendants' technical consultants to visit the plant – oftentimes after repeated requests by Defendants for the same. Defendants are entitled under the Policy to request information and examine and test the allegedly damaged property in connection with the adjustment of the claims. The remaining averments contained in Paragraph 51 are denied.

52. Defendants admit that Plaintiffs submitted a sworn proof of loss to Defendants on March 20, 2019 in the amount of \$278,505,078. This was the second sworn proof of loss submitted to Defendants. Plaintiffs submitted the first sworn proof of loss to Defendants on May 22, 2018. Defendants denied the first sworn proof of loss on January 28, 2019 because it claimed for corrosion and contamination damages, which are expressly excluded by the Policy. Plaintiffs then submitted their second sworn proof of loss on March 20, 2019 for the exact same type of excluded corrosion and contamination damages. The remaining averments contained in Paragraph 52 are denied.

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<sup>3</sup> Policy, at p. 28 of 65.



53. Admitted in part and denied in part. Defendants admit that they denied Plaintiffs' March 20, 2019 sworn proof of loss by letter dated April 9, 2019. However, Defendants' April 9, 2019 letter was in follow-up to Defendants' January 28, 2019 denial letter wherein Defendants denied Plaintiffs' first sworn proof of loss (dated May 22, 2018). Defendants' April 9, 2019 denial letter reiterated that the Policy does not cover the alleged contamination and/or corrosion damage claimed by Plaintiffs. Defendants had previously informed Plaintiffs of the involved coverage issues in prior letters dated January 18, May 24, June 20, August 3, September 7, and November 1, 2018, specifically noting on multiple occasions that the Policy does not cover among other things contamination or corrosion. Plaintiffs had actual notice of Defendants' coverage defenses for more than a year before Defendants filed their first-filed and pending Delaware Action on April 9, 2019. Further, the Policy does not require Defendants to give Plaintiffs notice prior to filing suit under the Policy, and specifically recognizes Defendants' right to commence their own action. The remaining averments contained in Paragraph 53 are denied.

54. Defendants deny the averments contained in Paragraph 54.

55. Defendants deny the averments contained in Paragraph 55.

**COUNT I**  
**DECLARATORY JUDGMENT**

56. Defendants incorporate by reference their responses and denials as set forth in the foregoing Paragraphs 1 through 55 as if fully set forth herein.

57. Defendants deny the averments contained in Paragraph 57.

58. Defendants admit the averments contained in Paragraph 58.

59. Defendants deny the averments contained in Paragraph 59.

**COUNT II**  
**BREACH OF CONTRACT**

60. Defendants incorporate by reference their responses and denials as set forth in the foregoing Paragraphs 1 through 59 as if fully set forth herein.

61. Admitted in part and denied in part. Defendants admit that they have not indemnified Plaintiffs with respect to the claims because the claims are not covered since they are for contamination and corrosion damage – both of which are expressly excluded from coverage under the Policy. The remaining averments contained in Paragraph 61 are denied.

62. Defendants deny the averments contained in Paragraph 62.

63. Defendants deny the averments contained in Paragraph 63, and further deny that they have caused Plaintiffs to suffer any loss, damage, or expense or that they have breached any contractual obligations.

64. Defendants deny the averments contained in Paragraph 64, and further deny that Plaintiffs are entitled to any of the relief requested.

**COUNT III**  
**BAD FAITH – VIOLATION OF GEORGIA CODE § 33-4-6**

65. Defendants incorporate by reference their responses and denials as set forth in the foregoing Paragraphs 1 through 64 as if fully set forth herein.

66. Admitted in part and denied in part. Defendants admit that Plaintiffs submitted two separate sworn proofs of loss (dated May 22, 2018 and March 20, 2019) and have demanded payment for the same. However, Defendants deny that Plaintiffs provided satisfactory sworn proofs of loss (or support) that the claims are for direct physical loss or damage covered by the Policy. The remaining averments contained in Paragraph 66 are denied.

67. Admitted in part and denied in part. Defendants admit that Plaintiffs submitted a second sworn proof of loss on March 20, 2019 and that Plaintiffs provided certain documentation in support of their claim, mostly consisting of projected estimates of costs in various Excel spreadsheets. However, Defendants deny that the documentation Plaintiffs submitted in support of either of their sworn proofs of loss was sufficient to demonstrate the items claimed suffered direct physical loss or damage covered by the Policy as a result of the Incident. The remaining averments contained in Paragraph 67 are denied.

68. Defendants admit that they issued a letter dated April 9, 2019 denying coverage for Plaintiffs' March 20, 2019 sworn proof of loss. However, Defendants' April 9, 2019 letter was in follow-up to their January 28, 2019 denial letter wherein Defendants explained that the Policy does not cover the alleged contamination and/or corrosion damage claimed by Plaintiffs in their first May 22, 2018 sworn proof of loss. Defendants also informed Plaintiffs of the involved coverage issues in prior letters dated January 18, May 24, June 20, August 3, September 7, and November 1, 2018, specifically noting on multiple occasions that the Policy does not cover contamination or corrosion. The remaining averments contained in Paragraph 68 are denied.

69. Admitted in part and denied in part. Defendants admit that they filed the Delaware Action on April 9, 2019, but deny that this was the same day that Defendants denied any obligations to pay any part of Plaintiffs' claims since a previous letter denying coverage for corrosion and contamination had been issued to Plaintiffs on January 28, 2019. The remaining averments contained in Paragraph 69 are denied.

70. Defendants deny the averments contained in Paragraph 70.

71. Defendants deny the averments contained in Paragraph 71.

72. Defendants deny the averments contained in Paragraph 72, and further deny that Plaintiffs are entitled to any of the relief requested.

**COUNT IV**  
**BAD FAITH – WEST VIRGINIA COMMON LAW**

73. Defendants incorporate by reference their responses and denials as set forth in the foregoing Paragraphs 1 through 72 as if fully set forth herein.

74. Defendants admit that Plaintiffs and Defendants owe each other corresponding duties of good faith and fair dealing under the Policy and under applicable Georgia law. Defendants have complied with this obligation. The remaining averments contained in Paragraph 74 are denied.

75. Admitted in part and denied in part. Defendants admit that they have not indemnified Plaintiffs with respect to the claims because the claims are not covered since they are for contamination and corrosion damage – both of which are expressly excluded from coverage under the Policy. The remaining averments contained in Paragraph 75 are denied.

76. Defendants deny the averments contained in Paragraph 76, and further deny that their denials to provide coverage were unreasonable, untimely, in bad faith, or without merit. On the contrary, Defendants denied coverage based on the clear and unambiguous Policy exclusions for contamination and corrosion. Plaintiffs' assertion that Defendants failed to "investigate fully" is in direct contrast to their repeated complaints regarding Defendants' attempt to investigate the claims by requesting information and examining and testing the allegedly damaged property. The remaining averments contained in Paragraph 76 are denied.

77. Defendants deny the averments contained in Paragraph 77.

78. Defendants deny the averments contained in Paragraph 78.

79. Defendants deny the averments contained in Paragraph 79.

80. Defendants deny the averments contained in Paragraph 80.

81. Defendants deny the averments contained in Paragraph 81, and further deny that Plaintiffs are entitled to any of the relief requested.

**COUNT V**  
**UNFAIR TRADE PRACTICES – VIOLATION OF W. VA. CODE § 33-11-4**

82. Defendants incorporate by reference their responses and denials as set forth in the foregoing Paragraphs 1 through 81 as if fully set forth herein.

83. Defendants deny the averments contained in Paragraph 83.

84. Defendants deny the averments contained in Paragraph 84, and further deny that West Virginia law applies to any substantive claims relative to this dispute and that they violated any statute or regulation in connection with the investigation and handling of the claims.

85. The averments contained in Paragraph 85 are either denied or do not require a response as they refer to a statute that speaks for itself. Defendants deny any attempts by Plaintiffs to characterize or construe the statute except by the specific words used therein. Defendants further deny that they violated any statutes or regulations in connection with the investigation and handling of the claims.

86. Defendants deny the averments contained in Paragraph 86.

87. Defendants deny the averments contained in Paragraph 87.

88. Defendants deny the averments contained in Paragraph 88.

89. Defendants deny the averments contained in Paragraph 89.

90. Defendants deny the averments contained in Paragraph 90.

91. Defendants deny the averments contained in Paragraph 91, and further deny that Plaintiffs are entitled to any of the relief requested.

### **Prayer for Relief**

92. Defendants deny the averments contained in Paragraph 92, including its subparagraphs a) through f) as follows:

- a) Defendants deny the averments contained in subparagraph a) of Paragraph 92;
- b) Defendants deny the averments contained in subparagraph b) of Paragraph 92;
- c) Defendants deny the averments contained in subparagraph c) of Paragraph 92;
- d) Defendants deny the averments contained in subparagraph d) of Paragraph 92;
- e) Defendants deny the averments contained in subparagraph e) of Paragraph 92; and
- f) Defendants deny the averments contained in subparagraph f) of Paragraph 92.

### **Jury Trial Demanded**

Defendants admit that Plaintiffs have made a demand for trial by jury, but deny that this matter should be tried in this Court before a jury or otherwise, and should instead be resolved in the first-filed Delaware Acton.

### **EIGHTH DEFENSE**

Plaintiffs' claims are barred and/or their recoveries are limited to the extent that Plaintiffs' alleged loss or damages at the plant were not proximately caused by a covered and non-excluded peril under the Policy.

### **NINTH DEFENSE**

Plaintiffs' claims are barred and/or their recoveries are limited to the extent that Plaintiffs' alleged loss or damages at the plant did not constitute a fortuitous event to which the Policy must provide coverage.

#### **TENTH DEFENSE**

Plaintiffs' claims are barred and/or their recoveries are limited to the extent that Plaintiffs seek damages in excess of any amounts recoverable under any applicable legal or equitable doctrines or to the extent that Plaintiffs would be unjustly enriched or secure a double recovery from Defendants, other defendants and others to whom Plaintiffs have made, or may in the future, make claim and/or with whom Plaintiffs have reached settlements.

#### **ELEVENTH DEFENSE**

Plaintiffs' recovery against Defendants, if any is allowed, is limited and subject to offset to the extent that Plaintiffs have recovered or are entitled to or do in fact secure a recovery for any of their claimed losses or damages from any other source, including, but not limited to, other entities which insured Plaintiffs.

#### **TWELFTH DEFENSE**

Any recovery under the Policy is subject to the exhaustion of the applicable deductible(s) for covered damage.

#### **THIRTEENTH DEFENSE**

The Policy does not cover the loss claimed, or the loss claimed is limited, to the extent other applicable insurance provides coverage.

#### **FOURTEENTH DEFENSE**

O.C.G.A. § 33-4-6 provides the exclusive remedy for claims of bad faith against an insurer, pursuant to the Policy's Georgia choice of law provision, and therefore, Plaintiffs' claim for attorneys' fees and bad faith under West Virginia law should be dismissed.

### **FIFTEENTH DEFENSE**

Defendants, at all times, acted in good faith in the investigation and handling of Plaintiffs' insurance claims.

### **SIXTEENTH DEFENSE**

Defendants plead and assert all of the terms, conditions, deductibles, limits, sublimits, provisions, exclusions, endorsements, and waiting periods of the Policy, all of which are incorporated herein by reference.

### **SEVENTEENTH DEFENSE**

Plaintiffs' claims are barred or limited by the terms, conditions, deductibles, limits, sublimits, provisions, exclusions, and/or endorsements of the Policy, including the following, all of which are incorporated herein by reference:

- a) Section A – Declarations, paragraph 5;
- b) Section B – Real and Personal Property and Time Element, paragraphs 1, 3(C), 3(D), 4(A)(1)-(5);
- c) Section C – General Conditions, paragraphs 7, 10, 11, 19;
- d) Endorsement No. 1;
- e) Endorsement No. 5;
- f) Endorsement No. 19 (National Union Policy No. 020786808);
- g) Any other Policy provision raised by Plaintiffs or that may become applicable as discovery in this action progresses.

### **EIGHTEENTH DEFENSE**

Defendants' liability, if any, are several and not joint, based on their respective quota share subscription of the Axiall insurance program.



### **NINETEENTH DEFENSE**

Plaintiffs' claims are barred because Defendants have complied with all of their duties and obligations under the Policy, and accordingly, have not breached the contract.

### **TWENTIETH DEFENSE**

Plaintiffs' claims are barred because Defendants' handling of Plaintiffs' claims was performed in good faith.

### **TWENTY-FIRST DEFENSE**

Plaintiffs' claims for bad faith are barred because Defendants' actions were based on reasonable foundation.

### **TWENTY-SECOND DEFENSE**

Plaintiffs are not entitled to prejudgment interest on their breach of contract claim because Plaintiffs' claims were never liquidated to any degree of reasonable certainty.

### **TWENTY-THIRD DEFENSE**

Plaintiffs' claims for punitive damages and attorneys' fees are barred because Defendants' actions were based on reasonable foundation.

### **TWENTY-FOURTH DEFENSE**

Plaintiffs' claims for punitive damages are barred or limited by the equal protection and due process clauses of the United States, West Virginia, and Georgia Constitutions.

### **TWENTY-FIFTH DEFENSE**

Plaintiffs cannot meet their burden of proving that Defendants acted in bad faith by clear and convincing evidence.

#### **TWENTY-SIXTH DEFENSE**

Defendants did not take any action in violation of any applicable statute, regulation, and/or other laws asserted in Plaintiffs' Complaint.

#### **TWENTY-SEVENTH DEFENSE**

Defendants did not engage in any frivolous, unfounded, arbitrary, capricious, or bad faith refusal to pay proceeds pursuant to the terms and conditions of the Policy.

#### **TWENTY-EIGHTH DEFENSE**

Defendants did not engage in any wrongdoing, nor any willful, wanton, malicious, reckless, or egregious conduct, nor did Defendants act with actual malice; consequently, a sufficient factual basis does not exist to support a claim for punitive damages against Defendants.

#### **TWENTY-NINTH DEFENSE**

Plaintiffs' claims are barred because there is no causal relationship between the conduct, acts, or omissions of Defendants, as alleged in the Complaint, and Plaintiffs' alleged damages, if any.

#### **THIRTIETH DEFENSE**

Plaintiffs failed to mitigate their damages, in whole or in part.

#### **THIRTY-FIRST DEFENSE**

Plaintiffs' claims are barred by the doctrines of estoppel, laches, and waiver.

#### **THIRTY-SECOND DEFENSE**

Should this action proceed and not be dismissed and/or stayed in favor of the first filed Delaware Action, Defendants assert and allege all claims and coverage defenses as set forth in the Complaint for Declaratory Judgment filed in the Delaware Action as if fully incorporated herein by reference.

### **THIRTY-THIRD DEFENSE**

Defendants assert all affirmative defenses available under Rules 8(c), 9(b), and 12(b) of the West Virginia Rules of Civil Procedure as the facts of this case may so develop.

### **THIRTY-FOURTH DEFENSE**

Defendants assert that issues of coverage under the Policy are questions of law for the Court.

### **THIRTY-FIFTH DEFENSE**

Defendants assert that all substantive issues in this dispute, including the rights and obligations of the Parties under the Policy and any remedies for alleged acts or omissions in violation of the same, are governed exclusively by Georgia law pursuant to the Policy's broad Georgia choice of law provision.

### **THIRTY-SIXTH DEFENSE**

Defendants assert that Axiall is the named insured in the Policy, Axiall owns and operates the Natrium Plant, and Westlake may therefore lack standing or an insurable interest in this matter.

### **THIRTY-SEVENTH DEFENSE**

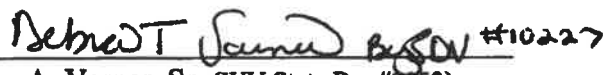
Defendants hereby give notice that they intend to rely upon such other affirmative defenses that may become available or apparent during the course of discovery in this matter, and reserve the right to amend their Answer to the Complaint and to assert such defenses.

**WHEREFORE, PREMISES CONSIDERED,** Defendants fully answered the Complaint, deny Plaintiffs are entitled to the relief sought or to any other relief against Defendants whatsoever, and request that judgment be awarded, dismissing Plaintiffs' Complaint with prejudice, and awarding Defendants their costs and expenses, including reasonable attorneys' fees

incurred in defending this action, together with such other relief as the Court may deem just and proper.

Respectfully submitted, this the 23rd day of May, 2019.

**DEFENDANT INSURERS, By Counsel:**

  
James A. Varner, Sr. (WV State Bar #3853)  
Debra Tedeschi Varner (WV State Bar #6501)

Varner & Van Volkenburg PLLC  
200 Peck Street, Suite 102 (26301)  
P. O. Box 2370  
Clarksburg, WV 26302-2370  
Telephone: (304) 918-2840  
Facsimile: (304) 566-1161

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA**

AXIALL CORPORATION and  
WESTLAKE CHEMICAL CORPORATION,

Plaintiffs,

vs.

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.; ALLIANZ  
GLOBAL RISKS US INSURANCE COMPANY;  
ACE AMERICAN INSURANCE COMPANY;  
ZURICH AMERICAN INSURANCE COMPANY;  
GREAT LAKES INSURANCE SE; XL  
INSURANCE AMERICA, INC.; GENERAL  
SECURITY INDEMNITY COMPANY OF  
ARIZONA; ASPEN INSURANCE UK LIMITED;  
NAVIGATORS MANAGEMENT  
COMPANY, INC.; IRONSHORE SPECIALTY  
INSURANCE COMPANY; VALIDUS  
SPECIALTY UNDERWRITING SERVICES,  
INC.; and HDI-GERLING AMERICA  
INSURANCE COMPANY

Defendants.

**Civil Action No. 19-C-59**

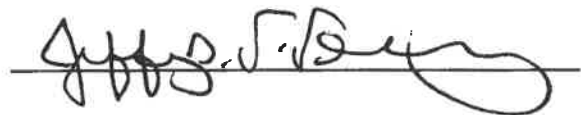
**Judge Hummel**

**CERTIFICATE OF SERVICE**

Service of the foregoing **Defendants' Answer and Defenses to Complaint** was had upon the parties, as set forth below, via facsimile and/or by mailing a true copy hereof, by United States Mail, postage prepaid, this 23rd day of May, 2019:

Jeffrey V. Kessler, Esquire  
Berry, Kessler, Crutchfield, Taylor & Gordon  
514 Seventh Street  
Moundsville, WV 26041  
**Fax (304) 845-9055**  
*Counsel for Plaintiffs*

Travis L. Brannon, Esquire  
Sarah M. Czypinski, Esquire  
Paul C. Fuener, Esquire  
David R. Osipovich, Esquire  
Thomas C. Ryan, Esquire  
John M. Sylvester, Esquire  
K&L Gates LLP  
210 Sixth Avenue  
Pittsburgh, PA 15222  
**Fax (412) 355-6501**  
*Counsel for Plaintiffs*



IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

**CIVIL CASE INFORMATION STATEMENT**  
(Civil Cases Other than Domestic Relations)

**I. CASE STYLE:**

Case No. 19-C-59

**Plaintiff(s)**

Judge: Hummel

Axiall Corporation and

Westlake Chemical Corporation

vs.

Days to

Type of Service

**Defendant(s)**

National Union Fire Insurance Co. of Pittsburgh, Pa  
Name

Street Address

New York, New York

City, State, Zip Code

**II. TYPE OF CASE:**

☒ General Civil

☐ Mass Litigation [As defined in T.C.R. 26.04(a)]

☐ Asbestos

☐ FELA Asbestos

☐ Other: \_\_\_\_\_

☐ Habeas Corpus/Other Extraordinary Writ

☐ Other: \_\_\_\_\_

☐ Adoption

☐ Administrative Agency Appeal

☐ Civil Appeal from Magistrate Court

☐ Miscellaneous Civil Petition

☐ Mental Hygiene

☐ Guardianship

☐ Medical Malpractice

**III. JURY DEMAND:** ☐ Yes ☒ No CASE WILL BE READY FOR TRIAL BY (Month/Year): \_\_\_\_\_ /

**IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS?**

☐ Yes ☒ No

**IF YES, PLEASE SPECIFY:**

☐ Wheelchair accessible hearing room and other facilities

☐ Reader or other auxiliary aid for the visually impaired

☐ Interpreter or other auxiliary aid for the deaf and hard of hearing

☐ Spokesperson or other auxiliary aid for the speech impaired

☐ Foreign language interpreter-specify language: \_\_\_\_\_

☐ Other: \_\_\_\_\_

Attorney Name: Debra T. Varner

Firm: Varner & Van Volkenburg, PLLC

Address: 200 Peck Street, Suite 102, Clarksburg, WV 26301

Telephone: (304) 918-2843

Representing:

☐ Plaintiff ☒ Defendant

☐ Cross-Defendant ☐ Cross-Complainant

☐ 3rd-Party Plaintiff ☐ 3rd-Party Defendant

☐ Proceeding Without an Attorney

Original and \_\_\_\_\_ copies of complaint enclosed/attached.

Dated: 05 / 23 / 2019

Signature: [Signature]

SCA-C-100: Civil Case Information Statement (Other than Domestic Relations)

Revision Date: 12/2015

Plaintiff: Axial Corporation and, et al Case Number: 19-C-59  
vs.  
Defendant: National Union Fire Insurance Co. of Pittsburgh, et al

**CIVIL CASE INFORMATION STATEMENT  
DEFENDANT(S) CONTINUATION PAGE**

Allianz Global Risks US Insurance Company  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Chicago, Illinois

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
ACE American Insurance Company  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Philadelphia, Pennsylvania

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
Zurich American Insurance Company  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Schaumburg, Illinois

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
Great Lakes Insurance SE  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Munich, Germany

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
XL Insurance America, Inc.  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Stamford, Connecticut

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
General Security Indemnity Co. of Arizona  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

New York, New York

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
Aspen Insurance UK Limited  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

London, England

Type of Service: \_\_\_\_\_

City, State, Zip Code

**Plaintiff:** Axial Corproation and

, et al

**Case Number:** 19-C-59

**vs.**

**Defendant:** National Union Fire Insurance Co. of Pittsburgh, et al

**CIVIL CASE INFORMATION STATEMENT  
DEFENDANT(S) CONTINUATION PAGE**

Navigators Management Company, Inc.

Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Stamford, Connecticut

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
Ironshore Specialty Insurance Company

Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Boston, Massachusetts

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
Validus Specialty Underwriting Services, Inc.

Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

New York, New York

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
HDI-Gerling America Insurance Company

Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Chicago, Illinois

Type of Service: \_\_\_\_\_

City, State, Zip Code

-----  
Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Type of Service: \_\_\_\_\_

City, State, Zip Code

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Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Type of Service: \_\_\_\_\_

City, State, Zip Code

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Defendant's Name

Days to Answer: \_\_\_\_\_

Street Address

Type of Service: \_\_\_\_\_

City, State, Zip Code