

08 CV 3062

JUDGE GARDEPHE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

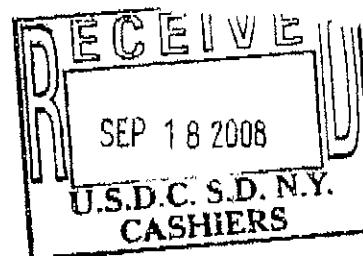
NATIONAL CASUALTY COMPANY,

Plaintiff,

-v-

08 CV _____

MUTUAL MARINE OFFICE, INC.,
PACIFIC MUTUAL MARINE OFFICE, INC.,
MUTUAL INLAND MARINE OFFICE, INC.,
MUTUAL MARINE OFFICE OF THE MIDWEST, INC.,
UTICA MUTUAL INSURANCE COMPANY,
EMPLOYERS MUTUAL CASUALTY COMPANY,
MERCHANTS MUTUAL INSURANCE COMPANY,
THE LUMBER MUTUAL FIRE INSURANCE
COMPANY OF BOSTON, MASSACHUSETTS,
THE MUTUAL FIRE, MARINE AND INLAND
INSURANCE COMPANY,
ARKWRIGHT BOSTON INSURANCE COMPANY
n/k/a COFACE NORTH AMERICA INSURANCE
COMPANY,
ARKWRIGHT BOSTON MANUFACTURERS
MUTUAL INSURANCE COMPANY n/k/a
COFACE NORTH AMERICA INSURANCE
COMPANY,
NEW YORK MARINE INSURANCE COMPANY
NEW YORK MARINE AND GENERAL
INSURANCE COMPANY,
THE PENNSYLVANIA NATIONAL MUTUAL
CASUALTY INSURANCE COMPANY,



Defendants.

COMPLAINT

National Casualty Company ("NCC"), through its undersigned counsel, as and for its Complaint against Defendants Mutual Marine Office, Inc. ("MMO"); Pacific Mutual Marine Office, Inc. ("PMMO"); Mutual Inland Marine Office, Inc. ("MIMO"); Mutual Marine Office of the Midwest, Inc. ("MMOM"); Utica Mutual Insurance Company

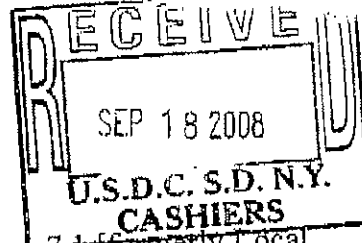
08 CV 8062

JUDGE GARDEPHE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	Plaintiff,
NATIONAL CASUALTY COMPANY	
-v-	
MUTUAL MARINE OFFICE, INC., ET AL	Defendant.

Case No. _____

Rule 7.1 Statement



Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for NATIONAL CASUALTY COMPANY (a private non-governmental party)

certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

NATIONAL CASUALTY COMPANY IS A WHOLLY-OWNED SUBSIDIARY OF NATIONWIDE MUTUAL INSURANCE COMPANY AND NATIONWIDE MUTUAL INSURANCE COMPANY IS NOT A PUBLICLY HELD CORPORATION.

Date: 9/17/08

[Signature]
Signature of Attorney

Attorney Bar Code: K18526

JUDGE GARDEPHE

08 CV 2008
CIVIL COVER SHEET

JS 44C/SDNY
REV. 1/2008

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 use of the Clerk of Court for the purpose of indexing the civil docket sheet.

PLAINTIFFS

NATIONAL CASUALTY COMPANY

DEFENDANTS

See Attached

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Office of Epstein, Harms & McDonald
One Whitehall Street, 13th Floor, New York, NY 10004-2109
(212) 248-9100

ATTORNEYS (IF KNOWN)

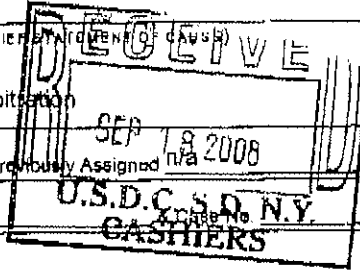
UNKNOWN

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 USC § 1332(a)(1) and 28 USC § 2201 - declaratory action regarding arbitration

Has this or a similar case been previously filed in SDNY at any time? No? Yes? Judge Previously Assigned

If yes, was this case Vol Invol. Dismissed. No Yes If yes, give date _____



(PLACE AN (x) IN ONE BOX ONLY)

NATURE OF SUIT

TORTS		ACTIONS UNDER STATUTES			
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY -	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT	<input type="checkbox"/> MED MALPRACTICE	<input type="checkbox"/> 620 OTHER FOOD &	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> REAPPORTIONMENT
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY	<input type="checkbox"/> DRUG	<input type="checkbox"/> 1423 WITHDRAWAL	<input type="checkbox"/> ANITRUST
<input type="checkbox"/> 140 NEGOTIABLE	<input type="checkbox"/> 320 ASSAULT, LIBEL &	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> 626 DRUG RELATED	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> INSTRUMENT	<input type="checkbox"/> 325 SLANDER	<input type="checkbox"/> 368 ASBESTOS PERSONAL	<input type="checkbox"/> SEIZURE OF		<input type="checkbox"/> 430 COMMERCE
<input type="checkbox"/> 160 RECOVERY OF	<input type="checkbox"/> 330 FEDERAL	<input type="checkbox"/> INJURY PRODUCT	<input type="checkbox"/> PROPERTY		<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> OVERPAYMENT &	<input type="checkbox"/> EMPLOYERS'	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 21 USC 881	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 470 RACKETEER INFLU-
<input type="checkbox"/> ENFORCEMENT	<input type="checkbox"/> LIABILITY		<input type="checkbox"/> LIQUOR LAWS		<input type="checkbox"/> ENCED & CORRUPT
<input type="checkbox"/> OF JUDGMENT	<input type="checkbox"/> 340 MARINE	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 640 RR & TRUCK	<input type="checkbox"/> 820 COPYRIGHTS	<input type="checkbox"/> ORGANIZATION ACT
<input type="checkbox"/> 161 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT		<input type="checkbox"/> 650 AIRLINE REGS	<input type="checkbox"/> 830 PATENT	<input type="checkbox"/> (RICO)
<input type="checkbox"/> 162 RECOVERY OF	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 660 OCCUPATIONAL	<input type="checkbox"/> 840 TRADEMARK	<input type="checkbox"/> 480 CONSUMER CREDIT
<input type="checkbox"/> DEFAULTED	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> SAFETY/HEALTH		<input type="checkbox"/> 490 CABLE/SATELLITE TV
<input type="checkbox"/> STUDENT LOANS	<input type="checkbox"/> 355 MOTOR VEHICLE	<input type="checkbox"/> 380 OTHER PERSONAL	<input type="checkbox"/> 680 OTHER	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 510 SELECTIVE SERVICE
<input type="checkbox"/> (EXCL. VETERANS)	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> PROPERTY DAMAGE			<input type="checkbox"/> 500 SECURITIES/
<input type="checkbox"/> 163 RECOVERY OF	<input type="checkbox"/> 360 OTHER PERSONAL	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> LABOR	<input type="checkbox"/> 861 HIA (1385F)	<input type="checkbox"/> COMMODITIES/
<input type="checkbox"/> OVERPAYMENT	<input type="checkbox"/> INJURY	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> 710 FAIR LABOR	<input type="checkbox"/> 862 BLACK LUNG (B22)	<input type="checkbox"/> EXCHANGE
<input type="checkbox"/> OF VETERANS'			<input type="checkbox"/> STANDARDS ACT	<input type="checkbox"/> 863 DRUG/DRUGW (405(j))	<input type="checkbox"/> 875 CUSTOMER
<input type="checkbox"/> BENEFITS			<input type="checkbox"/> LABOR/MGMT	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> CHALLENGE
<input type="checkbox"/> 180 STOCKHOLDERS			<input type="checkbox"/> RELATIONS	<input type="checkbox"/> 865 RBI (405(j))	<input type="checkbox"/> 12 USC 3410
<input type="checkbox"/> SUITS			<input type="checkbox"/> 730 LABOR/MGMT		<input type="checkbox"/> OTHER STATUTORY
<input checked="" type="checkbox"/> 180 OTHER			<input type="checkbox"/> REPORTING &	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> ACTIONS
<input type="checkbox"/> CONTRACT			<input type="checkbox"/> DISCLOSURE ACT	<input type="checkbox"/> 870 TAXES (U.S. Plaintiff or	<input type="checkbox"/> 881 AGRICULTURAL ACTS
<input type="checkbox"/> 185 CONTRACT	<input type="checkbox"/> ACTIONS UNDER STATUTES		<input type="checkbox"/> RAILWAY LABOR ACT	<input type="checkbox"/> Defendant)	<input type="checkbox"/> ECONOMIC
<input type="checkbox"/> PRODUCT	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> PRISONER PETITIONS	<input type="checkbox"/> 780 OTHER LABOR	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 883 ENVIRONMENTAL
<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 510 MOTIONS TO	<input type="checkbox"/> LITIGATION	<input type="checkbox"/> 28 USC 7608	<input type="checkbox"/> STABILIZATION ACT
<input type="checkbox"/> 190 FRANCHISE	<input type="checkbox"/> 442 EMPLOYMENT	<input type="checkbox"/> VACATE SENTENC	<input type="checkbox"/> 791 ENPL. RET INC		<input type="checkbox"/> MATTERS
	<input type="checkbox"/> 443 HOUSING/	<input type="checkbox"/> 28 USC 2255	<input type="checkbox"/> SECURITY ACT		<input type="checkbox"/> 884 ENVIRNY
	<input type="checkbox"/> ACCOMMODATIONS	<input type="checkbox"/> 530 HABEAS CORPUS	<input type="checkbox"/> IMMIGRATION		<input type="checkbox"/> ALLOCATION ACT
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> 444 WELFARE	<input type="checkbox"/> 535 DEATH PENALTY	<input type="checkbox"/> 402 NATURALIZATION	<input type="checkbox"/> 885 FREEDOM OF	<input type="checkbox"/> INFORMATION ACT
<input type="checkbox"/> 210 LAND	<input type="checkbox"/> 445 AMERICANS WITH	<input type="checkbox"/> 540 MANDAMUS & OTHER	<input type="checkbox"/> APPLICATION	<input type="checkbox"/> 890 APPEAL OF FEE	<input type="checkbox"/> DETERMINATION
<input type="checkbox"/> CONDEMNATION	<input type="checkbox"/> DISABILITIES -	<input type="checkbox"/> 550 CIVIL RIGHTS	<input type="checkbox"/> 483 HABEAS CORPUS-	<input type="checkbox"/> UNDER EQUAL	<input type="checkbox"/> ACCESS TO JUSTICE
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> EMPLOYMENT	<input type="checkbox"/> 655 PRISON CONDITION	<input type="checkbox"/> ALIEN DETAINEE	<input type="checkbox"/> 950 CONSTITUTIONALITY	<input type="checkbox"/> OF STATE STATUTES
<input type="checkbox"/> 230 RENT LEASE &	<input type="checkbox"/> 446 AMERICANS WITH		<input type="checkbox"/> 485 OTHER IMMIGRATION		
<input type="checkbox"/> EJECTMENT	<input type="checkbox"/> DISABILITIES -OTHER		<input type="checkbox"/> ACTIONS		
<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 440 OTHER CIVIL RIGHTS				
<input type="checkbox"/> 245 TORT PRODUCT					
<input type="checkbox"/> LIABILITY					
<input type="checkbox"/> 250 ALL OTHER					
<input type="checkbox"/> REAL PROPERTY					

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: YES NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

SDAO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

National Casualty Company,
Plaintiff,

SUMMONS IN A CIVIL ACTION

V.
MUTUAL MARINE OFFICE, INC., et al.
DEFENDANTS.

CASE NUMBER:

08 CV 8062

JUDGE GARDEPHE

TO: (Name and address of Defendant)

Mutual Marine Office, Inc. 919 Third Avenue, 10th Floor, New York, New York 10022 c/o Office of General Counsel in the New York City Office of the New York State Insurance Department, 25 Beaver Street, New York, NY 10004
REMAINING DEFENDANTS SEE ATTACHED RIDER

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

SEP 18 2008

CLERK

Catherine D'Assisi

DATE

(By) DEPUTY CLERK

("Utica"), Employers Mutual Casualty Company ("Employers Mutual"); Merchants Mutual Insurance Company ("Merchants Mutual"); The Lumber Mutual Fire Insurance Company of Boston, Massachusetts ("Lumber Mutual"); The Mutual Fire, Marine and Inland Insurance Company ("Mutual Fire"); Arkwright Boston Insurance Company ("ABIC"); Arkwright Boston Manufacturers Mutual Insurance Company ("ABMIC"); New York Marine Insurance Company ("NYM"); New York Marine and General Insurance Company ("NYMG"); and The Pennsylvania National Mutual Casualty Insurance Company ("Penn National") alleges and states as follows:

PARTIES

1. NCC is an insurance company duly organized and existing under the laws of the State of Wisconsin with its principal place of business at 400 Westwood Drive, Wausau, Wisconsin 54402.
2. MMO is a company duly organized and existing under the laws of the State of New York with its principal place of business at 919 Third Avenue, 10th Floor, New York, New York 10022.
3. PMMO is a company duly organized and existing under the laws of the State of New York with its principal place of business at 919 Third Avenue, 10th Floor, New York, New York 10022.
4. MIMO is a company duly organized and existing under the laws of the State of New York with its principal place of business at 919 Third Avenue, 10th Floor, New York, New York 10022.

5. MMOM is a company duly organized and existing under the laws of the State of New York with its principal place of business at 919 Third Avenue, 10th Floor, New York, New York 10022.
6. Utica is an insurance company duly organized and existing under the laws of the State of New York with its principal place of business at 180 Genesee Street, New Hartford, New York 13413.
7. Employers Mutual is an insurance company duly organized and existing under the laws of the State of Iowa with its principal place of business at 717 Mulberry Street, Des Moines, Iowa 50309.
8. Merchants Mutual is an insurance company duly organized and existing under the laws of the State of New York with its principal place of business at 250 Main Street, Buffalo, New York 14202-0903.
9. Lumber Mutual is an insurance company duly organized and existing under the laws of the State of Massachusetts with its principal place of business at 205 Newbury Street, Framingham, Massachusetts 01701.
10. On information and belief, Mutual Fire is an insurance company duly organized and existing under the laws of the State of Pennsylvania with its principal place of business at 120 E. Uwchlan Avenue, Suite 101, Exton, Pennsylvania 19341.
11. ABIC, now known as Coface North America Insurance Company, is an insurance company duly organized and existing under the laws of the State of Massachusetts with its principal place of business at Millstone Road, Bldg 100, Suite 360, East Windsor, New Jersey 08520.

12. ABMIC, now known as Coface North America Insurance Company, is an insurance company duly organized and existing under the laws of the State of Massachusetts with its principal place of business at 50 Millstone Road, Bldg 100, Suite 360, East Windsor, New Jersey 08520.
13. NYM, now know as New York Marine and General Insurance Company, is an insurance company duly organized and existing under the laws of the State of New York with its principal place of business at 919 Third Avenue, 10th Floor, New York, New York 10022.
14. NYMG is an insurance company duly organized and existing under the laws of the State of New York with its principal place of business at 919 Third Avenue, 10th Floor, New York, New York, 10022.
15. Penn National is an insurance company duly organized and existing under the laws of the State of Pennsylvania with its principal place of business at Two North Second Street, Harrisburg, Pennsylvania 17101.

JURISDICTION AND VENUE

16. The Court has jurisdiction over the subject matter of this litigation pursuant to 28 U.S.C. § 1332(a)(1) in that there is complete diversity between NCC and all the Defendants and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.
17. The Court has jurisdiction over the Defendants in that they have purposefully established significant contacts with New York and NCC's cause of action arises out of those contacts.
18. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a)(1), (2) and (c).

FACTUAL BACKGROUND

19. On or about December 8, 1977, NCC, as the reinsurer, entered into a reinsurance contract called the Marine Liability Excess of Loss Reinsurance Agreement, effective from January 1, 1977 through December 31, 1977 ("1977 Marine XOL"), which states that it is "for the account of and in favor of" MMO, PMMO and MIMO "to discharge [their] contractual and fiduciary obligations as Manager for" Utica, Employers Mutual, Merchants Mutual, Lumber Mutual, Mutual Fire, ABIC, ABMIC and NYM as the reinsureds.
20. A true and correct copy of the 1977 Marine XOL is attached hereto and incorporated by reference as Exhibit 1.
21. On or about February 14, 1980, NCC, as the reinsurer, entered into a reinsurance contract, called the Marine Liability Excess of Loss Reinsurance Agreement, effective from January 1, 1978 through December 31, 1978 ("1978 Marine XOL"), which states that it is "for the account of and in favor of" MMO, PMMO and MIMO "to discharge [their] contractual and fiduciary obligations as Manager for" Utica, Employers Mutual, Merchants Mutual, Lumber Mutual, Mutual Fire, ABIC, ABMIC and NYM as the reinsureds.
22. A true and correct copy of the 1978 Marine XOL is attached hereto and incorporated by reference as Exhibit 2.
23. On or about September 26, 1979, NCC, as the reinsurer, entered into a reinsurance contract, called the Marine Liability Excess of Loss Reinsurance Agreement, effective from January 1, 1979 through December 31, 1979 ("1979 Marine XOL"), which states that it is "for the account of and in favor of" MMO,

PMMO and MIMO “to discharge [their] contractual and fiduciary obligations as Manager for” Utica, Employers Mutual, Merchants Mutual, Lumber Mutual, Mutual Fire, ABIC, ABMIC and NYM as the reinsureds.

24. A true and correct copy of the 1979 Marine XOL is attached hereto and incorporated by reference as Exhibit 3.
25. On or about May 20, 1980, NCC, as the reinsurer, entered into a reinsurance contract, called the Marine Liability Excess of Loss Reinsurance Agreement, effective from January 1, 1980 through December 31, 1980 (“1980 Marine XOL”), which states that it is “for the account of and in favor of” MMO, PMMO and MIMO “to discharge [their] contractual and fiduciary obligations as Manager for” Utica, Employers Mutual, Merchants Mutual, Lumber Mutual, Mutual Fire, ABIC, ABMIC and NYM as the reinsureds.
26. A true and correct copy of the 1980 Marine XOL is attached hereto and incorporated by reference as Exhibit 4.
27. On or about August 26, 1981, NCC, as the reinsurer, entered into a reinsurance contract, called the Marine Liability Excess of Loss Reinsurance Agreement, effective from January 1, 1981 through December 31, 1981 (“1981 Marine XOL”), which states that it is “for the account of and in favor of” MMO, PMMO, MIMO and MMOM “to discharge [their] contractual and fiduciary obligations as Manager for” Utica, Employers Mutual, Merchants Mutual, Lumber Mutual, Mutual Fire, ABIC, ABMIC, NYMG and Penn National as the reinsureds.
28. A true and correct copy of the 1981 Marine XOL is attached hereto and incorporated by reference as Exhibit 5.

29. On or about August 31, 1977, NCC, as the reinsurer, entered into a reinsurance contract, called the First Marine Excess of Loss Reinsurance Agreement, effective from January 1, 1977 through December 31, 1977 ("1977 1st Marine XOL"), which states that it is "for the account of and in favor of" MMO, PMMO and MIMO "to discharge [their] contractual and fiduciary obligations as Manager for" Utica, Employers Mutual, Merchants Mutual, Lumber Mutual, Mutual Fire, ABIC, ABMIC and NYM as the reinsureds.
30. A true and correct copy of the 1977 1st Marine XOL is attached hereto and incorporated by reference as Exhibit 6.
31. The 1977, 1978, 1979, 1980 and 1981 Marine XOL and 1977 1st Marine XOL are collectively referred to herein as the "Treaties".
32. The Treaties each contain a clause, captioned "Arbitration," which are identical and read as follows:

If any dispute shall arise between the REASSURED and the REINSURERS with reference to the interpretation of this Agreement or their rights with respect to any transaction involved, the dispute shall be referred to three arbitrators, one to be chose by each party and the third by the two so chosen. If either party refuses or neglects to appoint an arbitrator within thirty days after the receipt of written notice from the other party requesting it to do so, the requesting party may nominate two arbitrators who shall choose the third. Each party shall submit its case to the arbitrators within thirty days of the appointment of the arbitrators. The arbitrators shall consider this Agreement an honourable engagement rather than merely a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law. The decision of a majority of the arbitrators shall be final and binding on both the REASSURED and the REINSURERS. The expense of the arbitrators and the arbitration shall be equally divided between the REASSURED and the REINSURERS. Any such arbitration shall take place in New York, unless some other location is mutually agreed upon by the REASSURED and the REINSURERS.

33. The Treaties also contain a clause, identical in each, which provides, in pertinent part:

Guy Carpenter & Company, Inc., are hereby recognised [sic] as the Intermediaries negotiating this Agreement for all business hereunder, except Canadian business, on which Guy Carpenter & Company (Canada) Limited are hereby recognised [sic] as the Intermediaries. All communications relating thereto shall be transmitted to the REASSURED and the REINSURERS through Guy Carpenter & Company, Inc., 110 Williams Street, New York, New York 10038, (acting on behalf of themselves and Guy Carpenter & Company (Canada) Limited).

34. On August 12, 2008, the law firm of Hargraves, McConnell & Costigan, purporting to represent MMO, et al. caused a letter to be sent to an attorney employed by Nationwide Indemnity Company, a wholly-owned subsidiary of Nationwide Mutual Insurance Company, with responsibilities for handling certain NCC run-off business.
35. A true and correct copy of the August 12, 2008 letter is attached hereto and incorporated by reference as Exhibit 7.
36. Enclosed with the August 12, 2008 letter was a document captioned and entitled "DEMAND FOR ARBITRATION".
37. A true and correct copy Demand for Arbitration is attached hereto and incorporated by reference as Exhibit 8.
38. The Demand for Arbitration asserts that disputes exist between MMO, et al. and NCC "that arise from interpretation of the reinsurance contracts and the parties' right with respect to transactions involved, including [NCC's] wrongful failure to pay balances due MMO pursuant to the Treaties".

39. The attorney employed by Nationwide Indemnity Company responded to the August 12, 2008 letter and demand by letter of August 22, 2008.
40. A true and correct copy of the August 22, 2008 letter is attached hereto and incorporated by reference as Exhibit 9.
41. The August 22, 2008 letter advised MMO's counsel, *inter alia*, that NCC had not been properly served in that the attorney employed by Nationwide Indemnity Company was not authorized to receive service of the demand and that Defendants had not complied with the notice provisions of the Treaties.
42. The August 22, 2008 letter also advised MMO's counsel that the arbitration demand was defective in that it failed to identify what was in dispute - information necessary to confirm the existence of a dispute and the arbitrability of that dispute.
43. The August 22, 2008 letter advised that the only outstanding and unpaid claims of which NCC was aware were being paid that day.
44. The August 22, 2008 letter requested that the demand be acknowledged as ineffectively served and defective or withdrawn.
45. National Casualty sent a follow-up letter on August 28, 2008 expressing disappointment at MMO's failure to respond and advising that if National Casualty's concerns were not addressed this lawsuit would be filed.
46. A true and correct copy of the August 28, 2008 letter is attached hereto and incorporated by reference as Exhibit 10.
47. MMO has not responded to the August 22 or 28, 2008 letters.

DECLARATORY RELIEF

48. NCC realleges and incorporates herein by reference paragraphs 1 through 46 of this Complaint as if fully set forth herein.
49. There is an actual and justiciable controversy between NCC and Defendants as to whether Defendants' transmission of the Demand for Arbitration to an attorney employed by Nationwide Indemnity Company is effective to accomplish service of the demand.
50. There is an actual and justiciable controversy between NCC and Defendants as to whether a dispute even exists and, if so, whether that dispute is arbitrable, i.e. comes within the terms of the parties' arbitration agreement.
51. Pursuant to 28 U.S.C. § 2201, the Court has the authority to declare the parties' rights and obligations under the Treaties relative to the actual and justiciable controversies.
52. Under the terms of the Treaties and pursuant to applicable law, it is appropriate for the Court, pursuant to 28 U.S.C. § 2201, to declare:
 - a. The Defendants' Demand for Arbitration was not properly served on NCC, and therefore, was ineffective to commence arbitration with NCC under the Treaties;
 - b. To properly commence arbitration under the Treaties the demand must be served through Guy Carpenter & Company, Inc.;
 - c. To properly commence arbitration under the Treaties the demand must identify the dispute with sufficient particularity such that the respondent

can determine whether a dispute exists and, if so, whether that the dispute is arbitrable; and

- d. Defendants' Demand for Arbitration did not identify any dispute with sufficient particularity such that NCC could determine if there actually was a dispute and whether it had agreed to arbitrate said dispute(s), and therefore, the demand was ineffective to commence arbitration under the Treaties.

PRAYER FOR RELIEF

WHEREFORE, NCC prays that the Court grant judgment in its favor and against the Defendants as follows:

1. The Defendants' Demand for Arbitration was not properly served on NCC, and therefore, was ineffective to commence arbitration under the Treaties with NCC;
2. To properly commence arbitration under the Treaties the demand must be served through Guy Carpenter & Company, Inc.;
3. To properly commence arbitration under the Treaties the demand must identify the dispute with sufficient particularity such that the respondent can determine whether a dispute actually exists and, if so, that the dispute is arbitrable.
4. Defendants' Demand for Arbitration did not identify any dispute with sufficient particularity such that NCC could determine if there was actually a dispute and whether it had agreed to arbitrate such disputes, and therefore, the demand was ineffective to commence arbitration under the Treaties.
5. Awarding NCC its costs and disbursements in this action and such other and further relief as the Court may deem just and proper.

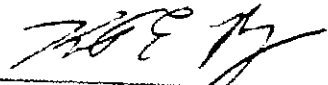
DEMAND FOR JURY TRIAL

NCC hereby demands that all issues be determined by a jury of twelve (12).

Dated: New York, New York
September 10, 2008

Yours, etc.

EPSTEIN, HARMS & McDONALD
Attorneys for Plaintiff
NATIONAL CASUALTY CO.
One Whitehall Street – 13th Floor
New York, New York 10004
(212) 248-9100

By: 
Kenneth Pinczower, Esq. (KP8526)