

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

COLONIAL PIPELINE)	
COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action File No.: _____
)	
AIG SPECIALTY)	
INSURANCE COMPANY,)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Colonial Pipeline Company, by counsel, files this Complaint against Defendant AIG Specialty Insurance Company and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This action involves an insurance coverage dispute.
2. Colonial Pipeline Company (“Colonial”) is a corporation incorporated under the laws of Delaware and Virginia, with its principal place of business located at 1185 Sanctuary Parkway, Suite 100, Alpharetta, Georgia.
3. AIG Specialty Insurance Company (“AIG”) is a corporation incorporated under the laws of Illinois, with its principal place of business located at 175 Water Street, New York, New York. AIG is, among other things, in the

business of issuing environmental pollution legal liability insurance policies to companies such as Colonial.

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are citizens of different states.

5. AIG is subject to the personal jurisdiction of this Court.

6. Venue is proper in this Court.

FACTS

The Pipeline

7. At all times relevant to the Complaint, Colonial owned and operated a multi-state refined petroleum pipeline system (hereinafter “the Pipeline”).

8. The Pipeline includes more than five thousand miles of petroleum pipelines, and is the largest refined petroleum pipeline in the United States, delivering one hundred million gallons of petroleum products per day.

The Insurance Policy

9. Colonial and AIG entered into a contract for insurance under AIG policy number PLS 13047864 (the “Policy”). A copy of the Policy is attached as Exhibit A to this Complaint.

10. The Policy has effective dates of October 1, 2015, to October 1, 2016.

11. Under the terms of the Policy, AIG has agreed to submit to the jurisdiction of this court.

12. The Policy affords Colonial, among other things and under the Policy's terms and conditions, pollution liability insurance coverage. Specifically, among other coverages, the Policy insures Colonial for "Clean-Up Costs resulting from a Pollution Condition on or under the Insured Property," as certain of those terms are defined in the Policy.

13. The Policy obligates AIG, in pertinent part:

COVERAGE B - ON-SITE CLEAN-UP OF NEW CONDITIONS

1. To pay on behalf of the **Insured, Clean-Up Costs** resulting from a **Pollution Condition** on or under the Insured Property that first commenced on or after the **Continuity Date**, provided:

(a) A **Responsible Insured** first becomes aware of such **Pollution Condition** during the **Policy Period** and such **Pollution Condition** is reported to the Company in writing as soon as possible after such discovery and in any event during the **Policy Period** in accordance with Section III. of the Policy.

Policy, Form 104827 (05/14) at 1.

14. The Policy defines "Clean-Up Costs" as "reasonable and necessary expenses, including legal expenses incurred with the Company's written consent

which consent shall not be unreasonably withheld or delayed, for the investigation, removal, treatment including in-situ treatment, remediation including associated monitoring, or disposal of soil, surfacewater, groundwater, Microbial Matter, Legionella pneumophila, or other contamination.” Policy, Form 104827 (05/14) at 15.

15. The Policy defines “Pollution Condition” as “1. The discharge, dispersal, release or escape; or 2. The illicit abandonment on or after the Inception Date by a third party without the Insured’s consent, of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, low-level radioactive material, electromagnetic fields, medical waste including infectious and pathological waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered...”. Policy, Form 104827 (05/14) at 17.

16. The Policy defines “Insured Property” as “each of the locations identified in Item 5. of the Declarations.” Policy, Form 104827 (05/14) at 16.

17. The Policy provides coverage for Third-Party Claims for Off-Site Clean-Up Resulting from New Conditions. The Policy obligates AIG, in pertinent part:

COVERAGE D - THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the Insured becomes legally obligated to pay as a result of a **Claim** for **Clean-Up Costs** resulting from a **Pollution Condition**, beyond the boundaries of the **Insured Property**, that first commenced on or after the **Continuity Date**, and migrated from or through the **Insured Property**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

Policy, Form 104827 (05/14) at 2.

18. The Policy defines “Loss” as (1) Monetary awards or settlements of compensatory damages; where allowable by law, punitive, exemplary, or multiple damages; and civil fines, penalties, or assessments for Bodily Injury or Property Damage; (2) Costs, charges and expenses incurred in the defense, investigation or adjustment of Claims for such compensatory damages or punitive, exemplary or multiple damages, and civil fines, penalties or assessments, or for Clean-Up Costs; (3) Clean-Up Costs; (4) Interruption Expenses; or (5) Emergency Response Costs. Policy, Form 104827 (05/14) at 16.

19. The Policy provides coverage for Third-Party Claims For Bodily Injury and Property Damage. The Policy obligates AIG, in pertinent part:

COVERAGE E - THIRD-PARTY CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE

To pay on behalf of the **Insured**, Loss that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Bodily Injury** or **Property Damage** resulting from a **Pollution Condition** on, under or migrating from or through the **Insured Property**, provided such Claim is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

Policy, Form 104827 (05/14) at 2.

20. The Policy provides coverage for Emergency Response Costs. The Policy provides, in relevant part:

COVERAGE F - EMERGENCY RESPONSE COSTS

1. The Company will pay **Emergency Response Costs** resulting from a **Pollution Condition** on, under or migrating from the **Insured Property**. **Emergency Response Costs** must be first incurred by the **Insured** and reported to the Company during the **Policy Period**.

For this Coverage to apply, all of the following conditions must be satisfied:

- (a) The **Insured** must report the **Emergency Response Costs** to the Company in accordance with Section III. of the Policy.
- (b) **COVERAGE B - ON-SITE CLEAN UP OF NEW CONDITIONS** is purchased.

Policy, Form 104827 (05/14) at 2.

21. The Policy defines “Emergency Response Costs” as reasonable and necessary expenses, including legal expenses incurred with the Company’s written consent which consent shall not be unreasonably withheld or delayed, incurred in the remediation of soil, surfacewater, groundwater or other contamination that must be incurred:

1. In response to a **Pollution Condition** that necessitates immediate action; and
2. Within ninety-six (96) hours of the first commencement of such **Pollution Condition**; or as approved by the Company in writing.

Policy, Form 104827 (05/14) at 15.

22. The Policy contains a Self-Insured Retention Endorsement which provides, in pertinent part:

Subject to Paragraphs V.A. through V.E. above, this Policy is to pay covered **Loss**, in excess of the Self-Insured Retention amount stated in Item 3. of the Declarations for the applicable coverage, up to but not exceeding the applicable “Each Incident” limit of coverage. The Self-Insured Retention amount is to be borne by the **Insured** and is not to be insured. The insurance provided by this Policy shall be excess over the applicable Self-Insured Retention amount shown in Item 3. of the Declarations, whether such Self-Insured Retention is collectible or not collectible by reason of the refusal or inability of the **Insured** to pay the retention amount due to insolvency, bankruptcy or any other reason. In no event shall the Company be responsible to make any payment under this Policy before the **Insured** has paid the Self-Insured Retention, and the risk of uncollectibility (in whole or in part) of such Self-Insured Retention is expressly retained by the **Insured** and is not in any way or under any circumstances insured or assumed by the Company.

If **Each Incident** results in coverage under more than one coverage under Coverages A through I, only the highest applicable Self-Insured Retention amount stated in Item 3. of the Declarations among all the coverage sections applicable to the **Loss** shall apply.

Further, any **Claim** for **Loss** or **Clean-Up Costs** resulting from **Each Incident** covered in the underlying policies noted on this Endorsement, is not subject to a separate Self-Insured Retention on this Policy once the current Self-Insured Retention applicable to the underlying coverage has been satisfied.

Policy, Endorsement No. 6.

23. The Policy's Other Insurance provision provides, in pertinent part:

M. Other Insurance - Where other insurance may be available for **Loss** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. If other insurance is available to the **Insured** for **Loss** covered by this Policy, the Company's obligations are limited as follows:

1. Except as set forth in Paragraphs 3., 4. and 5. below, this insurance is primary and the Company's obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 2. below.
2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, [AIG] will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

3. This insurance shall apply as excess insurance over the Scheduled Underlying Insurance listed at the end of this Endorsement and any renewals or replacements thereof, provided, however that this insurance shall be primary as described in Paragraphs 1. and 2. above where any such policy in the Schedule of Underlying Insurance below and any replacements or renewals thereof do not provide primary coverage to the **Insured** for **Loss** covered under the terms and conditions of this Policy. This excess insurance shall in no way be increased or expanded or drop down as a result of the receivership, insolvency, or inability or refusal to pay of any insurer with respect to both the duty to indemnify and the duty to defend.

Policy, Form 104827 (05/14) at 11-12 (as modified by Endorsement 6).

The CR-91 Event

24. On or about September 9, 2016, a release of gasoline was discovered on Line No. 1 of the Pipeline in Shelby County, Alabama.

25. The release resulted in the release of 7,370 barrels of gasoline into the surrounding area.

26. The release occurred near County Road 91 (“CR-91”). As such, Colonial refers to this event as the CR-91 Event.

27. To remediate the release, Colonial excavated and accessed segments of the Pipeline and other equipment and materials that were not in the immediate vicinity of the release.

28. Part of the efforts to respond to the CR-91 Event included Colonial’s hiring L.E. Bell Construction, Inc. (“L.E. Bell”) to perform excavation and repairs

of the Pipeline. In September and October 2016, L.E. Bell stationed multiple crews in the Shelby County area to perform repair work.

The CR-251 Event

29. L.E. Bell's work on Line No. 1 was ongoing on October 31, 2016.

30. In conjunction with L.E. Bell's work to repair Line No. 1, Colonial engaged Superior Land Designs, LLC ("Superior") to serve as an additional, third-party inspector for the excavation and repair work performed by L.E. Bell.

31. Superior's work on Line No. 1 was ongoing on October 31, 2016.

32. On October 31, 2016, L.E. Bell workers were assigned to work on Line No. 1 in the vicinity of County Road 251 ("CR-251"). During the course of the excavation work, the L.E. Bell workers struck Line No. 1 of the Pipeline resulting in a rupture of the line and a release of gasoline.

33. The gasoline, which was released under pressure, ignited.

34. Lawsuits have been brought against Colonial seeking various categories of damages from Colonial as a consequence of the CR-251 event.

Colonial's Insurance Claim

35. On September 13, 2016, Colonial gave notice to AIG that Colonial was seeking coverage under the Policy for pollution related costs arising out of the CR-91 Event.

36. On September 13, 2016, AIG acknowledged receipt of Colonial's claim.

37. On September 20, 2016, Colonial informed AIG that it had already incurred at least \$23 million in Clean-Up Costs as a result of the CR-91 Event. Colonial provided multiple updates to AIG in the following two years concerning Clean-Up Costs and other covered Loss resulting from the CR-91 Event, including but not limited to, on Oct. 14, 2016, April 18, 2017, June 9, 2017, Sept. 12, 2017, Oct. 11, 2017, Oct. 29, 2017, Nov. 1, 2017, Nov. 3, 2017, Dec. 20, 2017, Jan. 19, 2018, Jan. 29, 2018, March 30, 2018, May 4, 2018, May 14, 2018, May 31, 2018, June 4, 2018, Aug. 16, 2018, Nov. 6, 2018, and Jan. 17, 2019.

38. On November 29, 2016, AIG issued a letter to Colonial in which AIG purported to reserve its right to deny or limit coverage under the Policy.

39. On June 9, 2017, Colonial provided a detailed cost schedule to AIG demonstrating over \$20 million in invoiced "Clean-Up Costs" and "Loss" resulting from CR-91.

40. On June 27, 2017, Colonial hosted a meeting with AIG and other insurers at which Colonial advised AIG again that it had incurred over \$20 million in "Clean-Up Costs" and "Loss" resulting from CR-91.

41. On October 3, 2017, AIG issued a letter to Colonial in which AIG asserted that the Policy does not afford primary coverage and does not afford coverage for losses sustained by Colonial until such time as Colonial has exhausted all available underlying insurance.

42. On October 11, 2017, Colonial wrote a letter to AIG disputing AIG's position that the Policy does not provide primary coverage for certain costs arising out of the CR-91 Event. Specifically, Colonial illustrated for AIG that the Policy's "Other Insurance" provision states that the Policy "shall be primary ... where any such policy in the Schedule of Underlying Insurance below and any replacements or renewals do not provide primary coverage to the Insured for Loss covered under the terms and conditions of this Policy."

43. AIG failed to change its position on coverage after receipt of Colonial's October 11, 2017 letter.

44. On November 1, 2017, Colonial provided an updated cost schedule to AIG that Colonial had incurred over \$25 million in covered "Loss" under the Policy to date.

45. Colonial again wrote a letter to AIG on March 30, 2018, stating that Colonial had exhausted the Policy's Self-Insured Retention (the "SIR") and again

requested that AIG immediately reimburse Colonial for covered Loss in excess of the SIR.

46. By letter dated June 27, 2018, AIG admitted that the Policy provided primary coverage for certain claims arising out of the CR-91 Event; however, AIG refused to make any payments, claiming that Colonial had not yet exhausted the Policy's \$10 million SIR, despite the fact that Colonial demonstrated to AIG by at least as early as June 9, 2017, that it had exhausted the applicable SIR through incurred covered Loss.

47. By letter from Colonial's counsel to AIG's counsel dated August 16, 2018, Colonial reiterated to AIG that Colonial had incurred \$26,270,879 in covered "Loss" as defined by the Policy. As Colonial further explained, the incurred loss amount includes, among other costs, Clean-Up Costs under Coverage B, Clean-Up Costs under Coverage D, and Emergency Responses Costs under Coverage F. Colonial explained that these amounts more than exhausted the Policy's SIR. In fact, the SIR had been exhausted in September 2016.

48. AIG continues to contend that the Policy SIR has not been exhausted, despite its knowledge since at least June 9, 2017, that Colonial had incurred covered "Loss" in excess of the SIR.

49. Colonial has incurred at least \$9,922,100 in invoiced “Loss” that is not also covered under Colonial’s excess liability policies and in excess of the SIR, which Colonial has exhausted. This amount continues to increase.

Colonial’s Insurance Claim for the ADEM Penalty

50. As noted above, on September 13, 2016, Colonial provided written notice to AIG that there had been a release from Line 1 of the Pipeline. That notice, in conjunction with updates throughout September 2016, notified AIG about the impending ADEM Claim, or at a minimum, provided notice of a possible claim to AIG under the Policy’s notice provision. Policy, Form 104827 (05/14) at 6-7.

51. On March 8, 2018, the Alabama Department of Environmental Management (“ADEM”) filed a civil complaint against Colonial seeking civil penalties for the discharge of petroleum product into the environment (the “ADEM Claim”).

52. On March 14, 2018, Colonial and the ADEM entered into a Consent Decree, whereby Colonial paid \$3.3 million to settle the ADEM claims against Colonial.

53. Colonial sought coverage under the Policy for costs arising from the ADEM Claim, including the amount of the ADEM settlement.

54. By March 14, 2018, AIG had already denied coverage under the Policy for the ADEM claim by means of its letter dated October 3, 2017. AIG had denied coverage for the costs incurred by Colonial in settling the ADEM Claim, asserting that Colonial had not provided timely notice of that “claim.”

COUNT I

(Breach of Contract)

55. Colonial incorporates by reference the allegations set forth in paragraphs 1 through 54 above as if fully set forth herein.

56. All applicable terms, conditions, and other requirements under the Policy have been satisfied and, alternatively, compliance with the applicable terms, conditions, and other requirements, in whole or in part, has been waived or compliance is unnecessary for other reasons, including AIG’s actions and inactions related to its handling of the claim.

57. Under the Policy, AIG was obligated to pay Colonial’s pollution coverage claim in excess of the SIR. AIG failed to make such payment.

58. Under the Policy, AIG was obligated to pay the costs arising out of Colonial’s ADEM Settlement that are in excess of the SIR. AIG has failed to make such payment.

59. Because of AIG's wrongful refusal to pay, Colonial has sustained damages in an amount exceeding \$9,922,100.

60. Colonial demands judgment against AIG in an amount to be determined at trial and, in addition, demands pre-judgment and post-judgment interest.

COUNT II

(Declaratory Judgment)

61. Colonial incorporates by reference the allegations set forth in paragraphs 1 through 60 above as if fully set forth herein.

62. Colonial has incurred and will incur in the future costs which Colonial contends are covered under the Policy.

63. Colonial seeks a declaration of the parties' respective rights and duties under the Policy, including, without limitation, that AIG is obligated to pay Colonial's pollution coverage claim, including but not limited to future Clean-Up Costs and liabilities to third parties arising out of Pollution Conditions at the CR-91 site.

64. A declaratory judgment is necessary and proper, will serve a useful purpose, and will clarify the legal rights of the parties. Additionally, a declaratory

judgment will afford relief from uncertainty, insecurity, and controversy regarding the parties' relationship and any outstanding obligations related to that relationship.

WHEREFORE, Colonial demands a jury trial on all issues so triable and respectfully prays for judgment in its favor and against AIG as follows:

- a. On all counts, for compensatory damages and prejudgment interest in an amount to be proved at trial;
- b. On Count II, for a declaration of Colonial's rights and AIG's obligations under the Policy;
- c. For court costs; and
- d. For such other relief as this court deems just and proper.

[Signature page follows]

Respectfully submitted, this 13th day of February, 2019.

s/ Lawrence J. Bracken II

Lawrence J. Bracken II
Georgia Bar No. 073750
lbracken@huntonAK.com
Laura Wagner
Georgia Bar No. 674911
lwagner@huntonAK.com
Alexander D. Russo
Georgia Bar No. 132078
arusso@huntonAK.com
HUNTON ANDREWS KURTH LLP
Bank of America Plaza
Suite 4100
600 Peachtree St., N.E.
Atlanta, GA 30308-2216
Telephone: (404) 888-4182
Facsimile: (404) 602-9074

Of Counsel

Michael S. Levine*
District of Columbia Bar No. 449272
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Ave NW,
Washington, DC 20037
Telephone: (202) 955-1500
mlevine@huntonAK.com

Andrea DeField*
Florida Bar No. 92344
HUNTON ANDREWS KURTH LLP
1111 Brickell Ave. 25th Floor
Miami, FL 33131
Telephone: (305) 810-2500
adefield@huntonAK.com

*Attorneys for Plaintiff,
Colonial Pipeline*

* *Pro hac vice* applications
to be filed.