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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MONSANTO COMPANY, a corporation of the State of Delaware, Plaintiff, v. AETNA CASUALTY AND SURETY COMPANY; ALLSTATE INSURANCE COMPANY (as successor to NORTHBROOK EXCESS AND SURPLUS COMPANY, formerly NORTHBROOK INSURANCE COMPANY); AMERICAN CENTENNIAL INSURANCE COMPANY; AMERICAN HOME ASSURANCE COMPANY; ~~AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY~~; APPALACHIAN INSURANCE COMPANY; ASSOCIATED INTERNATIONAL INSURANCE COMPANY; BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA; CALIFORNIA UNION INSURANCE COMPANY; C.E. HEATH COMPENSATION AND LIABILITY INSURANCE COMPANY; CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, AND LONDON MARKET INSURANCE COMPANIES; COLUMBIA CASUALTY COMPANY; CONTINENTAL CASUALTY COMPANY; FIREMAN'S FUND INSURANCE COMPANY; FIRST STATE INSURANCE COMPANY; GRANITE STATE INSURANCE COMPANY; HARTFORD ACCIDENT AND INDEMNITY COMPANY; THE HOME INSURANCE COMPANY; HUDSON INSURANCE COMPANY; INSURANCE COMPANY OF NORTH AMERICA; INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; INTERNATIONAL INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; NATIONAL CASUALTY COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH; NEW ENGLAND INSURANCE COMPANY;	C.A. No. 88C-JA-118-1-CV NON ARBITRATION CASE FILED '88 JAN 20 P7:53 PROTHONOTARY ER 71

NORTH STAR REINSURANCE CORPORATION; NORTHWESTERN NATIONAL INSURANCE COMPANY; PACIFIC EMPLOYERS INSURANCE COMPANY; PROTECTIVE NATIONAL INSURANCE COMPANY OF OMAHA; ROYAL INDEMNITY COMPANY; ST. PAUL SURPLUS LINES INSURANCE COMPANY; TRAVELERS INDEMNITY COMPANY; UNIGARD SECURITY INSURANCE COMPANY; UNITED STATES FIRE INSURANCE COMPANY; and WAUSAU UNDERWRITERS INSURANCE COMPANY,)

Defendants.)

COMPLAINT

Plaintiff, Monsanto Company ("Monsanto"), by its attorneys, complaining of the defendants, alleges:

THE PARTIES

1. Plaintiff Monsanto is a corporation organized in 1933 under the laws of the State of Delaware, with an aggregate sales volume in Delaware of at least $50,000,000 annually. Monsanto has maintained an office in Delaware, and its registered agent in Delaware presently is located at 1209 Orange Street, Wilmington, Delaware 19801.

2. The full name, state of incorporation, principal place of business, and other jurisdictional information regarding each defendant is set forth in the Appendix of Jurisdictional Information, attached hereto as Appendix A, and is incorporated herein by reference.

3. The defendant insurance companies are, and at all relevant times mentioned herein were, engaged in the business of writing (a) primary or excess general liability insurance

policies, and/or (b) environmental impairment or pollution liability insurance policies.

4. In consideration of premiums paid by Monsanto, the defendants issued liability insurance policies covering Monsanto, the policy numbers and policy periods of which are listed in the attached appendices B (general liability policies) and C (environmental impairment and pollution liability policies) hereto, which hereby are incorporated by reference. The references to defendants' policies hereafter in this complaint are references, in part, to the specific policies listed in the exhibits attached hereto.

5. In addition to the insurance companies named as defendants, Excess Insurance Company ("Excess"), Integrity Insurance Company ("Integrity"), Midland Insurance Company ("Midland"), Mission Insurance Company ("Mission"), Mutual Fire, Marine and Inland Insurance Company ("Mutual Fire"), and Transit Casualty Company ("Transit") also sold excess liability insurance policies to Monsanto. Excess, Integrity, Midland, Mission, Mutual Fire, and Transit, however, currently are the subject of liquidation proceedings.

6. In each of the lead umbrella policies, covering the period from October 1, 1959, to April 1, 1986, (the "Lead Umbrella policies"), Lloyd's and the London Companies consented to submit, at the request of the insured, to the jurisdiction of any court of competent jurisdiction within the United States, to comply with all requirements necessary to give such court

jurisdiction, and to have all matters arising under their policies determined in accordance with the law and practice of such court.

7. Each of the excess general liability policies issued by ACIC adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

8. Each of the excess general liability policies issued by Aetna adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

9. Each of the excess general liability policies issued by American Home adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

10. Each of the excess general liability policies issued by American Manufacturers adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

11. Each of the excess general liability policies issued by Appalachian adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

12. Each of the excess general liability policies issued by Associated International adopts and follows the form of the Lead Umbrella policies, including those provisions

relating to jurisdiction and choice of law described in paragraph 6.

13. Each of the excess general liability policies issued by Birmingham adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

14. Each of the excess general liability policies issued by California Union adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

15. Each of the excess general liability policies issued by CNA adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

16. The excess general liability policy issued by Columbia adopts and follows the form of the underlying Lead Umbrella policy, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

17. Each of the excess general liability policies issued by Employers' Surplus adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

18. Each of the excess general liability policies issued by Fireman's Fund adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

19. Each of the excess general liability policies issued by First State adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

20. Each of the excess general liability policies issued by Granite State adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

21. Each of the excess general liability policies issued by Hartford adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

22. Each of the excess general liability policies issued by Home adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

23. Each of the excess general liability policies issued by Hudson adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

24. Each of the excess general liability policies issued by INA adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

25. Each of the excess general liability policies issued by International adopts and follows the form of the Lead

Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

26. Each of the excess general liability policies issued by ISOP adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

27. Each of the excess general liability policies issued by Lexington adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

28. Each of the excess general liability policies issued by Liberty Mutual adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

29. Each of the excess general liability policies issued by Lloyd's and the London Companies, that provides coverage in excess of a Lead Umbrella policy, adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

30. The excess general liability policy issued by National Casualty adopts and follows the form of the underlying Lead Umbrella policy, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

31. Each of the excess general liability policies issued by National Union adopts and follows the form of the Lead

Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

32. Each of the excess general liability policies issued by New England adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

33. Each of the excess general liability policies issued by North Star adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

34. Each of the excess general liability policies issued by Northbrook adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

35. Each of the excess general liability policies issued by Northwestern National adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

36. Each of the excess general liability policies issued by Pacific Employers adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

37. Each of the excess general liability policies issued by Protective National adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

38. Each of the excess general liability policies issued by Royal adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

39. Each of the excess general liability policies issued by St. Paul adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

40. Each of the excess general liability policies issued by Travelers adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

41. Each of the excess general liability policies issued by Unigard adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

42. Each of the excess general liability policies issued by U.S. Fire adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

43. The excess general liability policy issued by Wausau Underwriters adopts and follows the form of the underlying Lead Umbrella policy, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

44. Each of the excess general liability policies issued by Ambassador, Excess, Integrity, Midland, Mission, Mutual Fire, Northeastern, and Transit adopts and follows the form of the Lead Umbrella policies, including those provisions relating to jurisdiction and choice of law described in paragraph 6.

NATURE OF ACTION

45. This is an action for a declaratory judgment, brought pursuant to 10 Del. C. §6501 et seq., that defendants are obligated to pay in full the costs of defense of judicial and administrative actions brought against Monsanto seeking damages for personal or bodily injury and property damage allegedly caused by chemicals produced, generated, or disposed of by Monsanto (the "environmental actions"). Monsanto also seeks damages for breach of contract on the basis that defendants are obligated to pay in full the liability that has been, and may be, imposed on Monsanto in those actions by settlement or judgment, and defendants are obligated to pay in full the sums Monsanto expends to avoid liability to third parties.

BACKGROUND OF THE ENVIRONMENTAL ACTIONS

46. Since at least 1915, certain materials connected with Monsanto's business allegedly have contaminated the groundwater and/or caused air pollution at various locations

across the country, giving rise to actual and potential liability for alleged bodily or personal injury and property damage.

47. Monsanto has been, and is, a defendant in various judicial actions across the country alleging bodily injury or property damage caused by environmental contamination. Monsanto also has been designated as a responding party in various administrative actions across the country which allege that it is or may be responsible for damages resulting from environmental hazards allegedly existing at various sites throughout the United States. These alleged damages result from alleged personal or bodily injury and/or property damage which allegedly occurred as a result of exposure to chemicals at various locations or in the surrounding environment.

48. In cases where there have been accidents resulting in potential bodily injury, personal injury, or property damage to third parties, Monsanto has expended, and continues to expend, sums to investigate and remediate the actual or threatened migration of contaminants onto the properties of third parties. Hereinafter, references to environmental actions include Monsanto's remedial attempts to avoid liability to third parties at these locations.

49. The allegations asserted against Monsanto in the environmental actions, the damages that are sought therein, and the sums expended to avert liability, are within the coverages of the insurance policies that the defendants sold to

Monsanto and are not excepted or excluded therefrom. Thus, defendants are obligated to pay in full the costs and expenses of defense of those actions and to indemnify Monsanto in full for liability arising from those actions as a result of settlements or judgments. Defendants also are obligated to pay in full the sums Monsanto has expended, and continues to expend, in remedial actions to avoid liability arising from the migration of hazardous chemicals onto the properties of third parties.

50. Monsanto has incurred millions of dollars in costs and expenses of defense and liability as a result of the environmental actions.

JURISDICTION

51. Defendants threaten to breach, and have breached, insurance contracts with Monsanto and duties of good faith and fair dealing owed to Monsanto, causing great and incalculable damage to Monsanto's lawful interests. Defendants threaten to violate, and have violated, their fiduciary duties to Monsanto.

52. Monsanto brings this action to secure a declaratory judgment respecting rights of contract and legal relations between Monsanto and defendants, including the obligation to defend Monsanto in all further proceedings in the environmental actions and to indemnify Monsanto for all future liability and costs in the environmental actions. Monsanto also

seeks to obtain the fullest legal relief possible, including money damages, for defendants' breaches of contract and other wrongs.

ALLEGATIONS RELATING TO ALL DEFENDANTS

53. All of the defendant insurance companies named herein are, and at all times relevant to this action were, engaged in the business of writing liability insurance policies.

54. The defendant insurance companies sold Monsanto various primary, excess, and environmental impairment liability insurance policies which cover at least from the late 1930's, to and including April 1, 1986. A partial schedule of the primary and excess general liability policies currently at issue in this litigation is contained in Appendix B, attached hereto. schedule of the environmental impairment and pollution liability policies is attached hereto as Appendix C.

55. The general liability coverage in each policy period is organized into a primary policy and successive layers of excess coverage above that primary policy.

56. The primary and excess general liability coverage sold by defendant Liberty Mutual, covering at least the period from the late 1930's, to and including March 1, 1971, provides coverage for all sums which Monsanto becomes legally obligated to pay as damages because of bodily injury or property damage. Liberty claims that the applicable policy limits in its post-October 1, 1965 primary and excess liability policies are exhausted, and those policies are not included in this complaint.

57. Defendant Liberty Mutual sold Monsanto at least one insurance policy which provides coverage for pollution or contamination, covering periods prior to and including March 1, 1971 ("Liberty Pollution Policy"). A schedule of that policy is contained in Appendix C, attached hereto.

58. The policy sold by Liberty Mutual, described in the preceding paragraph, provides coverage for all sums that Monsanto becomes legally obligated to pay as a result of bodily injury or property damage caused by "exposure to pollution or contamination, resulting in injury or damage."

59. The primary general liability coverage sold by defendant Travelers, covering at least the period March 1, 1971, to and including April 1, 1978, provides coverage for all sums which Monsanto becomes legally obligated to pay as damages because of bodily injury or property damage.

60. The primary general liability coverage sold by defendant INA, covering at least the period April 1, 1978, to and including April 1, 1987, provides coverage for all sums which Monsanto becomes legally obligated to pay as damages because of bodily injury or property damage.

61. The Lead Umbrella general liability policies provide coverage for "ultimate net loss," which is defined broadly in most, if not all, of those policies to include payments both for indemnity and legal fees, charges and other costs and expenses of defense.

62. Each of the Lead Umbrella general liability policies contains the same or substantially similar language and provides coverage for:

> the total sum which the Assured, or his Underlying Insurers as scheduled, or both, become obligated to pay by reason of personal injuries, property damage or advertising liability claims, either through adjudication or compromise, and shall also include hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and law costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the Assured's or of any underlying insurer's permanent employees.

63. Most, if not all, of the excess liability policies that are excess of the Lead Umbrella policies, adopt and follow the form of the Lead Umbrella policies' provision relating to the scope of insurance coverage quoted in paragraph 62.

64. Defendant International sold Monsanto at least two environmental impairment liability ("EIL") policies, covering at least the period July 15, 1982 through July 15, 1985. A schedule of those policies is contained in Appendix C, attached hereto.

65. The EIL policies sold by defendant International provide coverage for sums which Monsanto becomes legally obligated to pay as a result of, _inter alia_,

> the emission, discharge, dispersal, disposal, seepage, release or escape of any liquid,

solid, gaseous or thermal irritant, contaminant or pollutant into or upon land, the atmosphere or any watercourse or body of water.

66. Monsanto currently is seeking coverage under the primary or excess general liability insurance policies and the Liberty pollution policy for environmental actions in connection with the following location and possibly others: (1) Martinez, CA; (2) Long Beach, CA; (3) Santa Clara, CA; (4) Sauget, Il; (5) Seymour, IN (6) Alvin, TX; (7) Bridgewater, MA; and satellite sites in Nashua, NH; Londonderry, NH; and Plymouth, MA; (8) Everett, MA; (9) Springfield, MA; (10) Woburn, MA; (11) St. Peters, MO; (12) Bridgeport, NJ; (13) Kearney, NJ; (14) Oswego, NY; and eight satellite sites; (15) Columbia, TN; (16) Friendswood, TX; (17) La Marque, TX; and (18) Texas City, TX; (19) Arlington, TN; (20) Bayou Sorrel, LA; (21) Swartz Creek, MI; (22) Hamilton, OH; (23) Livingston Parish, LA; (24) Kankakee, IL; (25) Oakland, CA; (26) Galloway, TN; (27) Slickerville, NJ; (28) Edison, NJ; (29) Pittstown, NJ; (30) Coventry, RI; (31) Rock Creek, OH; (32) Soda Springs, ID; (33) Times Beach, MO; (34) East St. Louis, IL; (35) Houston, TX; (36) Bear Creek, WI; (37) Columbia City, IN; (38) Burrillville, RI.

67. Monsanto also currently is seeking coverage under the EIL insurance policies sold by defendant International for environmental actions in connection with locations and possibly others at (1) Sauget, Illinois; (2) Bridgewater, Massachusetts; and sites in Nashua, New Hampshire; Londonderry, New Hampshire; and Plymouth, Massachusetts; (3) Everett, Massachusetts; (4)

Bridgeport, New Jersey; (5) Friendswood, Texas; (6) Texas City, Texas; and (7) eight satellite sites in connection with Oswego, New York.

68. Monsanto expended substantial premiums to purchase the liability insurance policies sold by the defendants and either has complied with all conditions precedent under those policies or those conditions are not applicable.

Allegations Relating to the Intent of the Insurance Industry Regarding Coverage for Pollution Liabilities

69. Documents written by representatives of the insurance industry at the time of the revision of the standard comprehensive general liability ("CGL") policy form in 1966 demonstrate that the insurance companies specifically intended to and did, cover pollution liabilities. The provisions of the insurance policies at issue in this action are virtually identical to the standard CGL policy as adopted.

70. In 1965, G.L. Bean, Assistant Secretary, Liberty Mutual Insurance Company, delivered a paper entitled "New Comprehensive General and Automobile Program, The Effect on Manufacturing Risks" at the Mutual Insurance Technical Conference. According to Mr. Bean, under the new policy, "it is in the waste disposal area that a manufacturer's basic premises-operations coverage is liberalized most substantially." (emphasis in original)

71. Also in 1965, Lyman J. Baldwin, Jr., Secretary-Underwriting of the Insurance Company of North America, addressed the American Society of Insurance Management. In his address, Mr. Baldwin cited "slow ingestion of foreign substances

or inhalation of noxious fumes" as examples of covered liabilities. He also stated that the new CGL policy would provide coverage for property damage resulting from the emission of "noxious fumes" from a chemical manufacturing plant.

72. In 1966, Mr. Bean prepared a "Summary of Broadened Coverage Under New CGL Policies With Necessary Limitations To Make This Broadening Possible." This document was circulated by cover memorandum dated July 18, 1966. In his summary, Mr. Bean stated that coverage was provided for "gradual BI or gradual PD resulting over a period of time from exposure to the insured's <u>waste disposal</u>. Examples would be gradual adverse effect of smoke, fumes, air or stream pollution, contamination of water supply or vegetation." (emphasis in original)

73. In 1966, Willard J. Obrist of the General Accident Group wrote a "New Comprehensive General Liability Insurance Policy-A Coverage Analysis." Mr. Obrist offered as an example of coverage, the "inhalation of noxious fumes."

74. Starting in 1970, some of the general liability policies sold by the defendant insurance companies exclude coverage for liability for bodily or personal injury or property damage arising out of

> the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden or accidental

or contain similar language.

75. When the insurance industry was seeking approval of the aforesaid pollution exclusion in 1970, it represented to various state insurance commissioners and departments that the exclusion was merely a clarification of the "neither expected nor intended" language in the definition of "occurrence."

76. For example, on July 30, 1970, the Mutual Insurance Rating Bureau, an insurance trade association which petitioned states to accept the pollution exclusion, told the West Virginia Commissioner of Insurance:

> This endorsement [pollution exclusion] is actually a clarification of the original intent, in that the definition of occurrence excludes damages that can be said to be expected or intended.

77. On August 3, 1970, Travelers wrote to the West Virginia Commissioner of Insurance:

> "The idea behind these endorsements is that the insurance industry does not consider intentional pollution to be insurable, and the industry wishes to make its position clear to the insured."

Travelers uses the term "if expected or intended" in its pollution exclusion instead of "sudden and accidental" but has stated that "the results of the two phrases are the same."

78. In view of these representations, the West Virginia Insurance Commissioner issued an order approving the pollution exclusion and stating in part:

> 1) The said companies [INA, Travelers, American Home, St. Paul and American States] and rating organizations have represented to the Insurance Commissioner, orally and in writing, that the proposed exclusions ... are

merely clarifications of existing coverage as defined and limited in the definitions of the term 'occurrence,' contained in the respective policies to which said exclusions would be attached;

2) To the extent that said exclusions are mere clarifications of existing coverage, the Insurance Commissioner finds that there is no objection to the approval of such exclusions.

79. Upon information and belief, similar representations were made by insurance industry trade groups to insurance commissioners in virtually every state, including Delaware.

80. The general liability policies sold by the defendant insurance companies provide coverage for an occurrence, defined as

> an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured

or contain similar language.

81. Statements by representatives of the insurance industry also demonstrate that their intent was to provide coverage to a policyholder who intended to emit pollutants if the policyholder did not expect or intend the resulting specific damage.

82. For example, Mr. Baldwin wrote in 1965 that there was coverage for a policyholder whose plant emitted noxious fumes that damaged the paint on neighboring buildings "until such time as the insured became aware that the damage was being done."

83. In 1966, Mr. Obrist noted that coverage would be denied only if the resulting injury was "clearly foreseeable or intended." Mr. Obrist also specifically wrote that there would be coverage for unintended damages caused by intentional acts.

> Further, instances arise when the injury is an unintended result of an intentional act. The two situations, an absence of intent or an unexpected result, would be covered under either the 'accident' or 'occurrence' definition.

FIRST CLAIM FOR RELIEF

84. Monsanto realleges paragraphs 1 through 83, as if fully set forth herein.

85. The primary and excess general liability insurance policies sold by all of the defendant insurance companies and the Liberty pollution policy provide Monsanto with insurance coverage for liability arising from personal or bodily injury and property damage, including damages arising out of the environmental actions described in paragraph 66 above.

86. The defendant insurance companies have refused, or threaten to refuse, to accept their legal obligations to pay in full the total sum that Monsanto legally is obligated to pay, including damages and costs and expenses of defense, as a result of some or all of the environmental actions described in paragraph 66 above.

87. All of the defendant insurance companies are obligated under their liability insurance policies to pay in full the total sum that Monsanto became or will become obligated

to pay, including damages and costs and expenses of defense of some or all of the environmental actions described in paragraph 66 above.

88. As a result of the foregoing, an actual and justiciable controversy presently exists between Monsanto and all of the defendant insurance companies regarding the defendants' obligation to pay in full the total sums that Monsanto became or will become legally obligated to pay as a result of some or all of the environmental actions described in paragraph 66 above.

SECOND CLAIM FOR RELIEF

89. Monsanto realleges paragraphs 1 through 88, as if fully set forth herein.

90. As a result of some or all of the environmental actions described in paragraph 66 above, Monsanto has incurred, and will continue to incur, substantial legal liability and costs and expenses of defense.

91. Each of the defendant insurance companies has breached, or will breach, its obligations set forth in its primary or, excess general liability policies or in the Liberty pollution policy, which it sold to Monsanto, by its failure and refusal to pay in full, within its policy limits, the total sum that Monsanto became obligated to pay by reason of legal liability and costs and expenses of defense of the environmental actions described in paragraph 66 above.

92. As a direct and proximate result of their breaches of contract, the defendant insurance companies have deprived Monsanto of the benefit of the insurance coverage from at least from the late 1930's, to April 1, 1986, for which Monsanto has paid substantial premiums.

THIRD CLAIM FOR RELIEF

93. Monsanto realleges paragraphs 1 through 92, as if fully set forth herein.

94. The EIL insurance policies sold by defendant International provide Monsanto with insurance coverage for liability arising from personal or bodily injury and property damage, including damages arising out of the environmental actions described in paragraph 67 above.

95. Defendant International has failed, or will fail, to accept its legal obligations to pay in full all sums that Monsanto legally is obligated to pay, including damages and costs and expenses of defense, as a result of the environmental actions described in paragraph 67 above.

96. Defendant International is obligated under its EIL insurance policies to pay all sums that Monsanto is, or will be, obligated to pay, including damages and costs and expenses of defense of the environmental actions described in paragraph 67 above.

97. As a result of the foregoing, an actual and justiciable controversy presently exists between Monsanto and defendant International regarding International's obligation to

pay in full all sums that Monsanto became, or will become, legally obligated to pay as a result of the environmental actions described in paragraph 67 above.

FOURTH CLAIM FOR RELIEF

98. Monsanto realleges paragraphs 1 through 97, as if fully set forth herein.

99. As a result of the environmental actions described in paragraph 67 above, Monsanto has incurred, and will continue to incur, substantial legal liability and costs and expenses of defense.

100. Defendant International has breached, or will breach, its obligations set forth in its EIL insurance policies, which it sold to Monsanto, by its failure and refusal to pay in full, within its policy limits, all sums that Monsanto became obligated to pay by reason of legal liability and costs and expenses of defense of the environmental actions described in paragraph 67 above.

101. As a direct and proximate result of its breaches of contract, defendant International has deprived Monsanto of the benefit of the insurance coverage from at least July 15, 1982 to July 15, 1985, for which Monsanto has paid substantial premiums.

WHEREFORE, plaintiff Monsanto requests judgment:

1. On the First Claim for Relief, that this Court declare that the defendant insurance companies, all of which sold primary or excess general liability insurance policies to

Monsanto, are obligated (i) to pay in full Monsanto's legal liability for damages arising out of the environmental actions described in paragraph 66 above, and (ii) to pay in full the fees, charges, law costs, and expenses for lawyers and for litigation for defense of the environmental actions described in paragraph 66 above, both incurred, and to be incurred, by Monsanto.

2. On the Second Claim for Relief, for Monsanto's damages.

3. On the Third Claim for Relief, that this Court declare that defendant International, which sold EIL insurance policies to Monsanto, is obligated (i) to pay in full Monsanto's legal liability for damages arising out of the environmental actions described in paragraph 67 above, and (ii) to pay in full the costs and expenses for defense of the environmental actions described in paragraph 67 above, both incurred, and to be incurred, by Monsanto.

4. On the Fourth Claim for Relief, for Monsanto's damages.

5. That this Court declare that defendants have violated their fiduciary duties to Monsanto.