

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

AUTO-OWNERS INSURANCE COMPANY
6101 Anacapri Boulevard
Lansing, Michigan 48917,

Plaintiff,

-v-

Case No.:

COLORADO INTERSTATE GAS
2 North Nevada
Colorado Springs, CO 80903,

EL PASO CORPORATION
1001 Louisiana Street
Houston, TX 77252-2511,

and

ACE AMERICAN INSURANCE COMPANY
P.O. Box 1000
436 Walnut Street
Philadelphia, PA 19106,

Registered Agent
CT Corporation
8040 Excelsior Dr., Ste 200
Madison, WI 53717,

Defendants.

COMPLAINT

The plaintiff, Auto-Owners Insurance Company (hereinafter "Auto-Owners"), by its attorneys, Piper & Schmidt, alleges as follows:

INTRODUCTION

1. This is a civil action seeking monetary damages against the defendants for committing acts or omissions of negligence against the plaintiff.

JURISDICTION

2. The plaintiff, Auto-Owners Insurance Company (hereinafter Auto-Owners), is an insurance company that is headquartered in the State of Michigan. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.

3. The defendant, Colorado Interstate Gas, is, upon information and belief, a Colorado company headquartered in the State of Colorado.

4. The defendant, El Paso Corporation, is, upon information and belief, a Texas Corporation headquartered in the State of Texas.

5. ACE American Insurance Company, is, upon information and belief, a Philadelphia insurance company headquartered in the State of Pennsylvania.

6. The court has jurisdiction under 28 U.S.C. §1332.

PARTIES

7. The plaintiff, Auto-Owners, is a Michigan insurance company with its principal offices located at 6101 Anacapi Boulevard, Lansing, Michigan 48917.

8. Upon information and belief, Colorado Interstate Gas, is, a Colorado company with principal offices located at 2 North Nevada, Colorado Springs, CO 80903.

9. Upon information and belief, El Paso Corporation, is a Texas corporation with principal offices located at 1001 Louisiana Street, Houston, TX 77252-2511.

10. Ace American Insurance Company, is, upon information and belief, a

Philadelphia insurance company with a principal place of business located at P.O. Box 1000, 436 Walnut Street, Philadelphia, PA 19106, and whose registered agent is CT Corporation 8040 Excelsior Dr., Ste 200, Madison, WI 53717.

**COUNT ONE-NEGLIGENCE OF DARR HEALY AS AN AGENT
OF COLORADO INTERSTATE GAS AND EL PASO CORPORATION**

11. The plaintiff repeats and realleges and incorporates by reference the allegations contained in paragraphs 1 through 10 above with the same force and effect as if set forth herein.

12. On or about November 5, 2007, Riaan Roos was operating a freightliner truck that was pulling a forest harvester, in a southerly direction on State Highway 79 in Weld County in the State of Colorado.

13. Riaan Roos was legally operating the Freightliner truck on State Highway 79 in Weld County, Colorado through his employment with Al's Custom Cutting. The vehicle was equipped with an oversized load sign and orange flags.

14. At the same time and place, Darr Healy was the permissive driver of another motor vehicle, owned by Colorado Interstate Gas, and was acting through his employment as an agent of Colorado Interstate Gas, a company owned by El Paso Corporation, in a northerly direction on Highway 79 in Weld County, in the State of Colorado.

15. At the same time and place, it became and was the duty of Darr Healy, as an agent of Colorado Interstate Gas and El Paso Corporation, to exercise due care and caution in the operation of his motor vehicle having due regard for the traffic and use of the roadway.

16. At the same time and place, Riann Roos, was driving with due care and caution, along and upon the roadway, as previously stated.

17. At the same time and place, Darr Healy, as an agent of Colorado Interstate Gas and El Paso Corporation, negligently caused his vehicle to violently collide with the forest harvester that was being transported on the truck driven by Riaan Roos.

18. Darr Healy, as an agent of Colorado Interstate Gas and El Paso Corporation, at and immediately prior to the collision, negligently operated his vehicle, by, among other things, failing to yield the right-of-way, failing to maintain proper lookout and failing to have proper control of his vehicle. The negligence of Darr Healy, as an agent of Colorado Interstate Gas and El Paso Corporation, caused damages to the forest harvester owned by Al's Custom Cutting in the amount of \$237,663.00.

19. At all times material hereto, Al's Custom Cutting had a policy of insurance with Auto-Owners. By virtue of said policy of insurance, Auto-Owners was obligated to pay, and did pay, its insured, Al's Custom Cutting, for the property damage resulting from the above-referenced incident in the sum, to date, of \$237,663.00.

20. Pursuant to the terms of the policy and the payments made, Auto-Owners is subrogated to the rights of Al's Custom Cutting to the extent of its payment.

21. At all relevant times, Ace American Insurance Company issued a policy of liability insurance that insured the vehicle owned by Colorado Interstate Gas insuring it against claims for the damages as alleged herein.

WHEREFORE, the plaintiff, Auto-Owners Insurance Company prays for damages against the defendants, Colorado Interstate Gas, El Paso Corporation, and Ace American Insurance Company in an amount to be determined by the court, together with all allowable costs and disbursements, prejudgment interest and any other relief that may be appropriate.

COUNT II-RESPONDEAT SUPERIOR OF COLORADO INTERSTATE GAS

22. The plaintiff repeats and realleges and incorporates by reference the allegations contained in paragraphs 1 through 21 with the same force and effect as if set forth herein.

23. On or about November 5, 2007, at the time of collision with the plaintiff's insured as described in the preceding paragraphs, Darr Healy was acting within the scope of his employment, Colorado Interstate Gas.

24. On or about November 5, 2007, at the time of collision with the plaintiff's insured as described in the preceding paragraphs, Darr Healy's purpose of travel was for the benefit of Colorado Interstate Gas and related to his employment with the defendant, Colorado Interstate Gas.

25. At said time and place of the collision with the plaintiff as hereto for described, Darr Healy was the permissive driver for the defendant, Colorado Interstate Gas.

26. As a direct and proximate result of the negligent acts or omissions of Darr Healy, through his employment with Colorado Interstate Gas, the property of AI's Custom Cutting was damaged and Auto-Owners, through its policy with AI's Custom Cutting, was obligated to pay, and did pay, \$237,663.00 for the loss and is subrogated to the rights of AI's Custom Cutting to the extent of its payment.

27. At all relevant times, Ace American Insurance Company issued a policy of liability insurance that insured the vehicle owned by Colorado Interstate Gas insuring it against claims for the damages as alleged herein.

WHEREFORE, the plaintiff, Auto-Owners Insurance Company prays for damages against the defendants, Colorado Interstate Gas and Ace American Insurance Company in an

amount to be determined by the court, together with all allowable costs and disbursements, prejudgment interest and any other relief that may be appropriate.

COUNT III-RESPONDEAT SUPERIOR
OF EL PASO CORPORATION

28. The plaintiff repeats and realleges and incorporates by reference the allegations contained in paragraphs 1 through 27 with the same force and effect as if set forth herein.

29. Upon information and belief, Colorado Interstate Gas, is owned by El Paso Corporation and as such, at the time of the collision with the plaintiff, Darr Healy was acting within the scope of his employment with El Paso Corporation.

30. On or about November 5, 2007, at the time of the collision with the plaintiff as described in the preceding paragraphs, Darr Healy's purpose of travel was for the benefit of the defendant, El Paso Corporation and related to his employment with Colorado Interstate Gas, a company owned by El Paso Corporation.

31. At said time and place of the collision with the plaintiff as described in the preceding paragraphs, Darr Healy, was the permissive driver of a vehicle owned by Colorado Interstate Gas, a company owned by El Paso Corporation.

32. As a direct and proximate result of the negligent acts or omissions of Darr Healy, through his employment with Colorado Interstate Gas, the property of AI's Custom Cutting was damaged and Auto-Owners, through its policy of insurance with AI's Custom Cutting, was obligated to pay, and did pay, \$237,663.00 for the loss and is subrogated to the rights of AI's Custom Cutting to the extent of its payment.

33. At all relevant times, Ace American Insurance Company issued a policy of

liability insurance that insured the vehicle owned by Colorado Interstate Gas insuring it against claims for the damages as alleged herein.

WHEREFORE, the plaintiff, Auto-Owners Insurance Company, prays for damages against the defendant, El Paso Corporation and Ace American Insurance Company in an amount to be determined by the court, together with all allowable costs and disbursements, prejudgment interest and any other relief that may be appropriate.

PLAINTIFF DEMANDS A JURY OF TWELVE PERSONS

Respectfully submitted.

Dated this 6th day of October, 2010.

/s/ Thomas T. Calkins

RICHARD E. SCHMIDT

State Bar No.: 1016028

THOMAS T. CALKINS

State Bar No.: 1045717

Attorneys for Auto-Owners Insurance Company.

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AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JON W. SANFILIPPO
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JON W. SANFILIPPO
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JON W. SANFILIPPO
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

PIPER & SCHMIDT

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October 6, 2010

VIA HAND-DELIVERY

Jon W. Sanfilippo, Clerk of Court
Milwaukee Division, Room 362
362 United States Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202

Re: Auto-Owners Insurance Company v. Colorado Interstate Gas Co., et al.
Our File No.: 21061

Dear Clerk:

Enclosed for filing is an original and two copies of a Civil Summons for each defendant in the above-listed action, an original and six copies of the Complaint, the plaintiff's Disclosure Statement, Civil Cover Sheet and a check in the amount of \$350.00 representing the filing fee. Please file the originals and return the authenticated copies to the person hand-delivering these documents. Thank you for your consideration.

Very truly yours,

PIPER & SCHMIDT

THOMAS T. CALKINS

TTC/sco/ClerkofEasternDistrictltr
Enclosures