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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE EASTERN DISTRICT OF WASHINGTON**

12 MISSION SUPPORT ALLIANCE,  
13 LLC, a foreign limited liability  
company,

14 Plaintiff,

15 v.

16 WESTCHESTER FIRE  
17 INSURANCE COMPANY, a foreign  
18 insurance company,

19 Defendant.

No. CV-12-5079-TOR

COMPLAINT FOR  
DECLARATORY RELIEF AND  
DAMAGES

**JURY TRIAL DEMANDED**

20 Plaintiff Mission Support Alliance, LLC (“MSA”) alleges as follows:  
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23

**PARTIES**

1  
2 1. MSA is a foreign Limited Liability Company transacting business  
3 in Washington.

4 2. Defendant Westchester Fire Insurance Company (“Westchester”)  
5 is a foreign insurance company transacting business in Washington.  
6

7 3. Westchester issued one or more liability insurance policies to  
8 MSA to insure against certain losses.

9 **JURISDICTION & VENUE**

10 4. MSA is incorporated in Delaware and has its principal place of  
11 business in Washington.

12 5. Westchester is incorporated in New York and has its principal  
13 place of business in Philadelphia, Pennsylvania.

14 6. Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1)  
15 because MSA and Westchester are citizens of different states and the amount in  
16 controversy exceeds \$75,000, exclusive of interests and costs.  
17

18 7. Personal jurisdiction over Westchester is proper under  
19 Washington’s Long Arm Statute, RCW 4.28.185, because Westchester  
20 transacts business within Washington by selling policies of insurance in this  
21 state, including one or more of the policies at issue in this action.  
22

1 8. Venue is proper in this Judicial District under 28 U.S.C. §§  
2 1391(a) and (d) because Washington has more than one Judicial District, and  
3 Westchester's contacts with this Judicial District are sufficient to subject it to  
4 personal jurisdiction.

5  
6 **FACTUAL BACKGROUND**

7 9. Westchester sold MSA an "ACE Express Private Company  
8 Management Indemnity Package" with a Policy Period from November 9, 2011  
9 to November 9, 2012 and a Policy Number of G25028867 002 ("the Policy").  
10 The Policy includes "Directors & Officers and Company" coverage.

11 10. The Policy states, among other things, that Westchester "shall pay  
12 the Loss of the Company which the Company becomes legally obligated to pay  
13 by reason of a Claim first made against the Company during the Policy period.  
14 . . . for any Wrongful Act taking place prior to the end of the Policy Period."

15  
16 11. On January 27, 2012, MSA sent Westchester written notice of a  
17 possible Claim under the Policy related to a possible error or omission  
18 committed by MSA in its dealings with the Department of Energy.

19  
20 12. On March 9, 2012, consistent with its legal obligations, MSA sent  
21 a letter to the Department of Energy informing it of an error or omission.

1 13. On March 21, 2012, the Department of Energy sent a demand  
2 letter to MSA requesting reimbursement of \$2,755,031 within 60 days relating  
3 to this error or omission.

4 14. By letter dates April 25, 2012, Westchester denied coverage to  
5 MSA for the Department of Energy's claim.  
6

7 **CAUSES OF ACTION**

8 **COUNT I**  
9 **Declaratory Relief**

10 15. The allegations of paragraphs 1 through 14 are incorporated herein  
11 by reference.

12 16. An actual controversy exists between MSA and Westchester  
13 concerning the rights and obligations of the parties under the Policy.

14 17. MSA is entitled to a declaration of the rights and obligations of the  
15 parties under the Policy pursuant to 28 U.S.C. § 2201.

16 18. The declaratory relief sought includes, but is not limited to,  
17 declarations that: (a) coverage exists under the Policy for the Department of  
18 Energy's claim; (b) by virtue of Westchester's denial of any obligation to MSA  
19 under the Policy, MSA is excused from complying with any of the conditions  
20 allegedly imposed by the Westchester Policy, including but not limited to the  
21 Alternative Dispute Resolution clause in the Policy; (c) notwithstanding, MSA  
22  
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1 complied with all its obligations under the terms of the Policy and may  
2 properly bring this action consistent with the “Action Against Insurer” clause  
3 contained in the Policy; and (d) to the extent the Alternative Dispute Resolution  
4 clause in the Policy is deemed to apply, the Court should stay MSA’s contract  
5 claim (Count II) pending mediation and arbitration and allow the extra-  
6 contractual claims (Count III) to proceed in this action.  
7

8 **COUNT II**  
9 **Breach of Contract**

10 19. The allegations of paragraphs 1 through 18 are incorporated herein  
11 by reference.

12 20. A contractual relationship exists between MSA and Westchester.

13 21. Westchester owed a duty under the Policy to investigate and pay  
14 for losses covered under the Policy.

15 22. Westchester breached that duty, proximately causing harm to  
16 MSA in an amount to be proven at trial.  
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18 **COUNT III**  
19 **Extra-Contractual Claims**

20 23. The allegations of paragraphs 1 through 22 are incorporated herein  
21 by reference.  
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24. Westchester owed MSA a duty in tort and under applicable statutes, regulations, and common law to conduct a thorough investigation before denying its claim and to otherwise act reasonably and in good faith in investigating and analyzing coverage for MSA's claim.

25. Westchester breached that duty by, among other things, unreasonably denying MSA's claim for insurance benefits; proximately causing damage to MSA in an amount to be proven at trial.

26. Moreover, as a result of its conduct, Westchester is estopped from denying coverage for any liability MSA may have to the Department of Energy.

**PRAYER FOR RELIEF**

WHEREFORE, MSA requests the following relief:

1. A declaration as to the rights and obligations of the parties under the Policies consistent with 28 U.S.C. § 2201;
2. An award of all money damages legally available;
3. An award of prejudgment and postjudgment interest as allowed by law;

1 4. An award of attorney's fees and other costs and expenses pursuant  
2 to Olympic Steamship Co., Inc. v. Centennial Ins. Co., 117 Wn.2d 37, 811 P.2d  
3 673 (1991), or as otherwise allowed by law; and

4 5. Such other and further relief as this Court deems just and proper.

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6 **JURY DEMAND**

7 MSA demands a trial by jury pursuant to FRCP 38.

8 DATED this 15<sup>th</sup> day of June, 2012.

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10  
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