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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
PEORIA DIVISION**

**INDEMNITY INSURANCE COMPANY )  
OF NORTH AMERICA and ACE )  
AMERICAN INSURANCE COMPANY, )**

**Plaintiffs, )**

**v. )**

**SILVER CREEK PIG, INC., a Missouri )  
corporation, JOE CLARK, MEGAN )  
CLARK, BOB NORRIS and TOM GALL, )**

**Defendants. )**

**COMPLAINT FOR DECLARATORY JUDGMENT**

Now come the Plaintiffs, Indemnity Insurance Company of North America and Ace American Insurance Company, by their attorney, Robert Marc Chemers of Pretzel & Stouffer, Chartered, and for their Complaint for Declaratory Judgment against the Defendants, Silver Creek Pig, Inc., a Missouri corporation, Joe Clark, Megan Clark, Bob Norris and Tom Gall, allege the following:

**JURISDICTION**

1. The jurisdiction of this Court is premised upon 28 U.S.C. §1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, in this action seeking a declaration of no insurance coverage.

**VENUE**

2. Venue is premised upon 28 U.S.C. §1391(b) as the Defendant insured is a resident of this District, and a substantial part of the events giving rise to the claim occurred in this District.

**THE PARTIES**

3. Indemnity Insurance Company of North America (hereinafter "IINA") is an insurance corporation organized under the laws of the State of New York, which maintains its principal place of business in Philadelphia, Pennsylvania, and which at all times herein relevant was licensed to and which did transact insurance business in the State of Illinois and elsewhere.

4. Ace American Insurance Company (hereinafter "Ace") is an insurance corporation organized under the laws of the State of Pennsylvania, which maintains its principal place of business in Philadelphia, Pennsylvania, and which at all times herein relevant was licensed to and which did transact insurance business in the State of Illinois and elsewhere.

5. Silver Creek Pig, Inc. (hereinafter "Silver Creek") is a corporation organized under the laws of the State of Missouri, which maintains its principal place of business and registered agent in Carthage, Illinois, and which at times herein relevant was the named insured on certain policies of insurance issued by IINA and by Ace.

6. Joe Clark and Megan Clark, his wife, are citizens of the State of Illinois, who reside in or near Greenfield, Macoupin County, Illinois.

7. Bob Norris and Tom Gall are citizens of the State of Illinois, who reside in or near Greenfield, Macoupin County, Illinois.

8. Joe Clark, Megan Clark, Bob Norris and Tom Gall (hereinafter “the underlying plaintiffs”) are the plaintiffs in a certain action brought against Silver Creek (and others) in another Court, which action will be more fully described later herein, and who are nominal but interested parties to this declaratory judgment action. IINA and Ace seek no relief from the underlying plaintiffs, who have been joined herein as nominal party defendants solely in order to be bound by the judgment rendered in this cause.

#### **THE INSURANCE POLICIES**

9. IINA issued its policy of insurance numbered FO-174944 to Silver Creek as named insured. The policy provided for Farmowners Liability Insurance, on a primary basis, for the effective period of September 29, 2009 to September 29, 2010. A certified true and correct copy of the IINA policy is attached hereto, made a part hereof and is marked as Pleading Exhibit A.

10. Ace issued its policy of insurance numbered FO-176296 to Silver Creek as named insured. The policy provided for Excess Liability Insurance for the effective period of September 29, 2009 to September 29, 2010. A certified true and correct copy of the Ace policy is attached hereto, made a part hereof and is marked as Pleading Exhibit B.

### THE UNDERLYING LITIGATION

11. The underlying plaintiffs have filed an action for damages against Silver Creek in the Circuit Court of the 20<sup>th</sup> Judicial Circuit, St. Clair County, Illinois, under Cause No. 12 L 111. A true and correct copy of the Second Amended Complaint is attached hereto, made a part hereof and is marked as Pleading Exhibit C.

12. The underlying plaintiffs seek damages from Silver Creek, compensatory and punitive, for bodily injury, property damage and other claims in connection with their operation of "swine factories" or confined animal feeding operations, involving approximately 4,500 hogs, on property adjacent to or in proximity with property owned by the underlying plaintiffs, who allege, among other things, that Silver Creek, which leased the property from the owner, Fragrant 40, LLC, disregarded its duties in connection with the proper handling and storage of animal waste and the maintenance of lagoons for hog urine, feces, and carcasses, as well as other hazardous substances and materials, as well as the disposal of millions of gallons of hog waste generated each year, as well as the leakage, spillage, discharge and release of swine waste, the spreading of hog waste, the disposal of dead hogs and the accumulation of dead animal carcasses without proper and timely disposal, all of which more fully appears in Pleading Exhibit C attached hereto.

**TENDER OF DEFENSE**

13. Silver Creek has made a demand on IINA (and Ace) to provide it with a defense for the action filed by the underlying plaintiffs. IINA (and Ace) has accepted that tender subject to reservation for the reasons herein stated.

**COUNT I**

**(DECLARATORY JUDGMENT RE: NO DUTY DEFEND IINA POLICY)**

14. IINA adopts and repeats the allegations of ¶¶ 1 through 13 as and for ¶ 14 hereof as though the same were fully set forth herein.

15. While the IINA policy, Pleading Exhibit A, extends coverage for “bodily injury” or “property damage” as defined therein, the claims in the underlying action by the underlying plaintiffs do not involve “bodily injury” or “property damage” as those terms are defined.

16. While the IINA policy, Pleading Exhibit A, extends coverage for “personal injury” and “advertising injury” as defined therein, the claims in the underlying action by the underlying plaintiffs do not involve “personal injury” and “advertising injury” as those terms are defined.

17. IINA contends that Silver Creek is not entitled to any coverage under the policy because of one or more or all of the following reasons:

- (a) The Second Amended Complaint does not seek damages because of covered “bodily injury” as defined;
- (b) The Second Amended Complaint does not seek damages because of covered “property damage” as defined;

- (c) The Second Amended Complaint does not seek damages because of covered “personal injury” and “advertising injury” to which the policy applies;
- (d) The Second Amended Complaint does not involve an “occurrence,” that is, accidental conduct but only intentional and non-accidental conduct operating a Confined Animal Feeding Operation causing alleged damages and losses;
- (e) That if the Second Amended Complaint alleges “bodily injury,” “property damage,” “personal injury” or “advertising injury,” then each and all of such claims are excluded by the pollution exclusion in the policy;
- (f) That if the Second Amended Complaint alleged “bodily injury” or “property damage,” then such claims are excluded from coverage as they arose from an act or omission in connection with a location, which is not an “insured location,” that is rented to Silver Creek.

18. The above contentions of IINA are, on information and belief, denied by Silver Creek which, in turn, contends that it is entitled to coverage under the IINA policy of insurance. IINA, in turn, denies the contrary contentions of Silver Creek and each of them.

19. By reason of the foregoing, an actual and justiciable controversy exists between the parties and each of them, which may be determined by a judgment or order of this Court. Pursuant to the terms and provisions of 28 U.S.C. §§ 2201 and 2202, this Court has the power to declare and adjudicate the rights and liabilities of the parties hereto under the terms and provisions of the policy of insurance referred to herein, and to adjudicate the final rights of all parties and to give such other and further relief as may be necessary to enforce the same.

**COUNT II**  
**(DECLARATORY JUDGMENT RE: NO DUTY DEFEND ACE POLICY)**

20. Ace adopts and repeats the allegations of ¶¶ 1 through 13 as and for ¶ 20 hereof as though the same were fully set forth herein.

21. While the Ace policy, Pleading Exhibit B, extends coverage for “bodily injury” or “property damage” as defined therein, the claims in the underlying action by the underlying plaintiffs do not involve “bodily injury” or “property damage” as those terms are defined.

22. While the Ace policy, Pleading Exhibit B, extends coverage for “personal injury” and “advertising injury” as defined therein, the claims in the underlying action by the underlying plaintiffs do not involve “personal injury” and “advertising injury” as those terms are defined.

23. Ace contends that Silver Creek is not entitled to any coverage under the policy because of one or more or all of the reasons stated in ¶ 17 hereof which are incorporated by reference as if fully set forth herein.

24. The above contentions of Ace are, on information and belief, denied by Silver Creek which, in turn, contends that it is entitled to coverage under the Ace policy of insurance in the event that there is no coverage under the IINA policy. Ace, in turn, denies the contrary contentions of Silver Creek and each of them.

25. By reason of the foregoing, an actual and justiciable controversy exists between the parties and each of them, which may be determined by a judgment or order of this Court.

Pursuant to the terms and provisions of 28 U.S.C. §§ 2201 and 2202, this Court has the power to declare and adjudicate the rights and liabilities of the parties hereto under the terms and provisions of the policy of insurance referred to herein, and to adjudicate the final rights of all parties and to give such other and further relief as may be necessary to enforce the same.

**PRAYERS FOR RELIEF**

**WHEREFORE**, the Plaintiffs, Indemnity Insurance Company of North America and Ace American Insurance Company, pray that this Court enters judgment finding and declaring the rights of the parties as follows:

**AS TO COUNT I:**

- A. That Indemnity Insurance Company of North America has no duty or obligation to provide a defense to Silver Creek Pig, Inc. for the action filed in the Circuit Court of the 20<sup>th</sup> Judicial Circuit, St. Clair County, Illinois, under Cause No. 12 L 111, under its policy of insurance numbered FO-174944.
- B. That the Court grant Indemnity Insurance Company of North America such other and further relief as the Court deems fit and just under the circumstances.

- C. That Indemnity Insurance Company of North America be awarded and have and recover its just and reasonable costs incurred herein and have execution issue therefor.

**AS TO COUNT II:**

- A. That Ace American Insurance Company has no duty or obligation to provide a defense to Silver Creek Pig, Inc. for the action filed in the Circuit Court of the 20<sup>th</sup> Judicial Circuit, St. Clair County, Illinois, under Cause No. 12 L 111, under its policy of insurance numbered FX-176296.
- B. That the Court grant Ace American Insurance Company such other and further relief as the Court deems fit and just under the circumstances.
- C. That Ace American Insurance Company be awarded and have and recover its just and reasonable costs incurred herein and have execution issue therefor.

Respectfully submitted:

**/s/ Robert Marc Chemers**

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