

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

| | | |
|---------------------------|---|----------------------|
| RACETRAC PETROLEUM, INC., |) | |
| A Georgia Corporation, |) | |
| |) | CIVIL ACTION FILE |
| Plaintiff, |) | NO. 1:10-cv-2162-WSD |
| |) | |
| vs. |) | |
| |) | |
| ACE AMERICAN INSURANCE |) | |
| COMPANY, a Pennsylvania |) | |
| corporation, |) | |
| |) | |
| Defendant. |) | |

DEFENDANT ACE AMERICAN INSURANCE COMPANY'S
MOTION TO DISMISS COMPLAINT

Defendant ACE American Insurance Company (hereinafter “ACE”), pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully moves this Court to dismiss the complaint for declaratory relief filed by plaintiff RaceTrac Petroleum, Inc. (hereinafter “RaceTrac”), because it fails to state a claim upon which relief can be granted. Plaintiff’s complaint against ACE does not set forth facts stating a claim for relief that is plausible on its face because the absolute pollution exclusions in the ACE excess liability insurance policies preclude coverage for the claims asserted against RaceTrac in the cases styled as *Jacqueline Sheree Bunns, et al. v. Detsco, Inc., et al.*, Cause No. CV09-0057PT, and *Lisa R. Williams v. Detsco, Inc., et al.*, Cause No. 09-0059PT, both pending in the Circuit

Court of Tishomingo County, Mississippi. The absolute pollution exclusions contained in the ACE excess liability insurance policies are valid and enforceable, and they do not violate the public policy of the state of Georgia.

In support of this Motion, ACE is concurrently filing its brief in support of the motion to dismiss and attached exhibits.

WHEREFORE, ACE American Insurance Company respectfully requests that this Court (1) grant this motion to dismiss; (2) dismiss plaintiff's complaint; and (3) grant such other and further relief as is just and appropriate.

Respectfully submitted this 1st day of November, 2010.

/s/ Wayne D. Taylor

WAYNE D. TAYLOR

Georgia State Bar No. 701275

RUTH M. PAWLAK

Georgia Bar No. 045810

MOZLEY, FINLAYSON & LOGGINS LLP

One Premier Plaza, Suite 900

5605 Glenridge Drive

Atlanta, Georgia 30342

Tel: (404) 256-0700

Fax: (404) 250-9355

*Attorneys for Defendant ACE American
Insurance Company*

CERTIFICATION PURSUANT TO RULE 7.1

Counsel for defendant ACE American Insurance Company hereby certifies that this pleading has been prepared using Times New Roman 14 point, one of the font and point selections approved by the Court in L.R. 5.1C.

Respectfully submitted this 1st day of November, 2010.

/s/ Ruth M. Pawlak

WAYNE D. TAYLOR

Georgia Bar No. 701275

RUTH M. PAWLAK

Georgia Bar No. 045810

MOZLEY, FINLAYSON & LOGGINS, LLP

One Premier Plaza, Suite 900

5605 Glenridge Drive

Atlanta, Georgia 30342

Tel: (404) 256-0700

Fax: (404) 250-9355

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

| | | |
|----------------------------|---|----------------------|
| RACETRAC PRETROLEUM, INC., |) | |
| A Georgia Corporation, |) | |
| |) | CIVIL ACTION FILE |
| Plaintiff, |) | NO. 1:10-cv-2162-WSD |
| |) | |
| vs. |) | |
| |) | |
| ACE AMERICAN INSURANCE |) | |
| COMPANY, a Pennsylvania |) | |
| corporation, |) | |
| |) | |
| Defendant. |) | |

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the forgoing **DEFENDANT ACE AMERICAN INSURANCE COMPANY'S MOTION TO DISMISS COMPLAINT** using the Court's CM/ECF System, which will automatically send a copy of same to the following counsel of record:

Michael S. French, Esq.
Ryan D. Watstein, Esq.
WARGO & FRENCH LLP
1170 Peachtree Street N.E., Suite 2020
Atlanta, Georgia 30309
mfrench@wargofrench.com

This 1st day of November, 2010.

/s/ Ruth M. Pawlak

RUTH M. PAWLAK
Georgia Bar No. 045810
rpawlak@mflaw.com