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7
8 Attorneys for Plaintiffs
9 BECK ROOFING CO., INC., CHARLES
10 BECK, and MARY BECK

**ORIGINAL
FILED**

rtB 11 1993

**RICHARD W. WIEKING
CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 **C 93 0532** **RHS**

14 BECK ROOFING CO., INC., CHARLES)
15 BECK, and MARY BECK,)

16 Plaintiffs,)

17 vs.)

18 UNITED STATES FIDELITY &)
19 GUARANTY; INDUSTRIAL INDEMNITY;)
20 CONSOLIDATED AMERICAN INSURANCE)
21 COMPANY; and CONTINENTAL)
22 INSURANCE,)

23 Defendants.)

24 COMPLAINT FOR DECLARATORY
RELIEF

25 Plaintiffs BECK ROOFING CO., INC., CHARLES BECK, and MARY
26 BECK (collectively "Plaintiffs") allege as follows:

NATURE OF ACTION

1. Plaintiffs bring this action for declaratory relief to
determine Defendants' respective obligations to indemnify
Plaintiffs for governmental ordered investigation and remediation
of hazardous waste as to Plaintiffs' property and the groundwater

1 thereunder pursuant to a policy of insurance respectively issued
2 by Defendants.

3
4 JURISDICTION AND VENUE

5 2. The court has jurisdiction of this action under 28
6 U.S.C. Section 1332.

7 3. The claims asserted in this Complaint arose in this
8 district and venue is proper in this district and court under 28
9 U.S.C. Section 1391(c) and Rule 105 of the United States District
10 Court, Northern District of California.

11
12 PARTIES

13 4. Plaintiff BECK ROOFING CO., INC., is a corporation duly
14 organized and existing under the laws of the State of California
15 and doing business in the State of California at all relevant
16 times mentioned herein, and is an insured under the insurance
17 policies referenced herein. Plaintiffs CHARLES BECK and MARY
18 BECK are officers, directors, and shareholders of Plaintiff BECK
19 ROOFING CO., INC., and are insureds under the insurance policies
20 referenced herein.

21 5. Plaintiffs are informed and believe and thereon allege
22 that Defendant UNITED STATES FIDELITY & GUARANTY ("USF&G") issued
23 respectively a comprehensive general liability insurance policy
24 and an umbrella insurance policy for each year commencing in 1976
25 and terminating in 1982. Plaintiffs do not possess the USF&G
26 insurance policies and declarations thereto and have made a

1 diligent search of those items. Based upon Plaintiffs' former
2 insurance broker's records, the policy numbers are MP55200,
3 MP51371, and MP65204.

4 6. Plaintiffs are informed and believe and thereon allege
5 that Defendant INDUSTRIAL INDEMNITY ("Industrial") issued
6 respectively a comprehensive general liability insurance policy
7 and an umbrella insurance policy for each year commencing
8 November 1, 1977, and terminating on November 1, 1981.
9 Plaintiffs do not possess the Industrial insurance policies and
10 declarations thereto and have made a diligent search for those
11 items. Based upon Plaintiffs' former insurance broker's records,
12 the policy numbers are LC783-7061 and LC8159202.

13 7. Plaintiffs are informed and believe and thereon allege
14 that Defendant CONSOLIDATED AMERICAN INSURANCE COMPANY
15 ("Consolidated") issued a comprehensive general liability
16 insurance policy for the period July 1, 1982, and terminating on
17 July 1, 1983. Plaintiffs do not possess the Consolidated policy
18 and declarations thereto and have made a diligent search for
19 those items. Based upon Plaintiffs' former insurance broker's
20 records, the policy number is CAP177263.

21 8. Plaintiffs are informed and believe and thereon allege
22 that Defendant CONTINENTAL INSURANCE COMPANY ("Continental")
23 issued a comprehensive general liability insurance policy for the
24 period July 1, 1986, and terminating on July 1, 1987. Plaintiffs
25 do not possess the Continental insurance policy and declarations
26 thereto and have made a diligent search for those items. Based

1 upon Plaintiffs' former insurance broker's records, the policy
2 number is CBP00903674.

3
4 PRELIMINARY FACTS

5 9. In January 1976, Plaintiffs had installed an
6 underground storage tank ("UST") which Plaintiffs operated until
7 1991. During the period of operation, Plaintiffs had no
8 knowledge of petroleum leakage from the UST.

9 10. On May 20, 1991, Plaintiffs had the UST removed at
10 which time petroleum contamination was first discovered. At no
11 time prior to that date did Plaintiffs discover or have reason to
12 discover the existence of any contamination caused by leakage
13 from the UST.

14 11. On August 5, 1991, the Alameda County Health Care
15 Services Agency ("Agency") ordered Plaintiffs to investigate and
16 to remediate the contamination. As a result, Plaintiffs engaged
17 an environmental consultant who conducted an investigation and
18 installed three monitoring wells.

19 12. On February 3, 1992, the Agency notified Plaintiffs of
20 their obligation to reimburse the county for its costs relating
21 to investigation and remediation of the contaminated soil and
22 groundwater.

23 13. As a result of the contamination and the governmental
24 order, Plaintiffs have incurred and will continue to incur costs
25 in excess of \$50,000 relating to investigation and groundwater
26 monitoring and clean up of the contaminated soil and groundwater.

1 19. Plaintiffs desire a judicial determination of the
2 rights and obligations of the parties herein and a declaration
3 that the costs relating to investigation and remediation of the
4 contamination caused by the UST leakage are covered under the
5 respective policies of insurance and that Defendants are
6 obligated to indemnify Plaintiffs for such costs associated with
7 the investigation and clean up of the contamination as ordered by
8 the Agency.

9 20. A judicial determination is necessary and appropriate
10 at this time under the circumstances in order that the parties
11 may ascertain their respective rights and obligations under each
12 policy of insurance.

13
14 WHEREFORE, Plaintiffs pray for judgment as follows:

15 1. For a declaration that the costs relating to the
16 investigation and remediation of the soil and groundwater ordered
17 by the Agency are covered under the respective policies of
18 insurance and that Defendants are obligated to indemnify
19 Plaintiffs for such costs;

20 2. For costs of suit incurred herein; and

21 3. For such other and further relief as the court deems
22 just and proper.

23
24 Dated: February 10, 1993

MENDELSON & BROWN

25 By Michael S. Brown
MICHAEL S. BROWN
26 Attorneys for Plaintiffs

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