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WESTPORT INSURANCE CORPORATION

8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
11

12 WESTPORT INSURANCE  
CORPORATION, A MISSOURI  
13 CORPORATION,

14 Plaintiff,

15 vs.

16 VASQUEZ, ESTRADA & CONWAY  
LLP AND DOES 1 THROUGH 10,

17 Defendants.  
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No.

**COMPLAINT OF WESTPORT  
INSURANCE CORPORATION  
AGAINST VASQUEZ, ESTRADA &  
CONWAY LLP FOR: (1) BREACH  
OF CONTRACT; (2) BREACH OF  
THE COVENANT OF GOOD  
FAITH & FAIR DEALING; (3)  
DECLARATORY RELIEF; AND  
(4) AN ACCOUNTING**

1 Plaintiff Westport Insurance Corporation, a Missouri corporation  
2 (“Westport”), for its Complaint against Vasquez, Estrada & Conway LLP (“VEC”)  
3 and DOES 1 through 10, inclusive (collectively, “Defendants”), alleges as follows:

4 **I. INTRODUCTION**

5 1. Westport is one of several insurers of Hill Brothers Chemical  
6 Company (“Hill Brothers”), which is, and for nearly two decades has been, a  
7 defendant in numerous asbestos-related cases (the “Hill Brothers Cases”). Hill  
8 Brothers has an extensive group of insurance policies (including a Westport policy)  
9 which have paid defense fees and indemnity settlements in connection with the Hill  
10 Brothers Cases. VEC has defended Hill Brothers in the Hill Brothers Cases. Prior  
11 to about July 2013, except for a short time period in 2002, Westport was not  
12 actively involved in the Hill Brothers Cases and did not pay defense fees or  
13 indemnity settlements, as it had no policy that was triggered. In or about July 2013,  
14 Westport agreed to pay a share of the defense fees and indemnity settlements, as a  
15 number of other policies had reached their policy limits, potentially triggering the  
16 Westport policy. Several other insurance companies were involved in the defense  
17 group at that time and acted as lead up until about November 1, 2014, when  
18 Westport became the sole responding insurance company. Between May 2013 and  
19 April 2015, VEC invoiced the insurers more than \$9 million for the attorneys’ fees  
20 and costs it purportedly incurred in defending Hill Brothers. Westport’s share of  
21 these invoices was \$6,022,744.11, of which Westport has already paid  
22 \$5,028,234.04.

23 2. In late 2014, VEC presented Westport with a \$5 million budget for  
24 defending the Hill Brothers Cases in 2015. Westport considered this budget to be  
25 excessive and advised VEC of this fact and requested a revised budget. Rather than  
26 presenting an updated budget based on actual work to be performed and realistic  
27 assumptions, VEC instead responded that it would simply reduce its 2015 budget to  
28 whatever the remaining policy limits of Westport’s policy were. VEC’s response

1 triggered alarms to Westport. Westport became concerned that its insured's policy  
 2 limits were being (and had been) improperly eroded by exorbitant defense costs.  
 3 Rather than simply exhausting the policy and moving on, Westport decided, at its  
 4 own expense, to investigate VEC's case management procedures, staffing  
 5 protocols, defense spend, and settlement strategy. This investigation revealed  
 6 VEC's apparent mismanagement of the Hill Brothers Cases and excessive billing.  
 7 Based on the investigation, it was determined that reasonable charges to Westport  
 8 should not have exceeded \$2,942,260.00. Westport apprised Hill Brothers of the  
 9 findings of its investigation, and in April 2015, Hill Brothers replaced VEC with  
 10 the law firm of Morgan, Lewis & Bockius LLP.

11 3. VEC has breached its contract with Westport, as well as the covenant  
 12 of good faith and fair dealing implied therein, by failing to provide competent  
 13 services and by excessive billing. As discussed in more detail below, Westport is  
 14 entitled to recover at least \$2,028,234.04 in overpayments it has already made to  
 15 VEC. In addition, a declaratory judgment that Westport has no further payment  
 16 obligation to VEC is plainly warranted. Finally, an accounting is required so that  
 17 Westport is fully aware of VEC's liability with respect to amounts Westport is  
 18 seeking as a refund from VEC.

## 19 **II. THE PARTIES**

20 4. Plaintiff Westport is a Missouri Corporation and is a wholly owned  
 21 subsidiary of SR Corporate Solutions America Holding Corporation, a Delaware  
 22 Corporation. Westport's principal place of business is located in Overland Park,  
 23 Kansas.

24 5. Defendant VEC is a law firm and limited liability partnership located  
 25 in Glendale and San Rafael, California. On information and belief, each of its  
 26 members resides in California.

27 6. Westport does not know the true names of Defendants designated as  
 28 Does 1 through 10, inclusive, and therefore sues them by said fictitious names.

Westport is informed and believes, and on this basis alleges, that each fictitiously named Defendant, including Does 1 through 10, inclusive, is in some manner of law or fact responsible for the wrongs, damages and causes of action alleged herein, and that at all times referenced herein each was the successor, assign, joint venturer, co-venturer, co-conspirator, partner, agent, or alter ego of the others, or was otherwise involved with the other Defendants in the wrongdoing averred herein, and by virtue of such capacity is liable and responsible on the facts alleged for some or all of the damages sought herein.

### **III. JURISDICTION AND VENUE**

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 as the parties are citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because (a) a substantial part of the events or omissions giving rise to Westport's claims occurred in this District, and (b) Defendants transact business on a systematic and continuous basis within this District and may be found here.

### **IV. FACTUAL BACKGROUND**

#### **A. The Westport Policy**

9. Hill Brothers supplies industrial chemicals and construction products throughout the West Coast and Rocky Mountains. For nearly two decades, Hill Brothers has been a defendant in the Hill Brothers Cases. As mentioned above, VEC has defended Hill Brothers in the Hill Brothers Cases.

10. Hill Brothers has an insurance policy with Westport for the year April 30, 1980 through April 30, 1981 (the "Westport Policy"). The Westport Policy has a limit of \$9.5 million and is a "burning limits" policy in that both defense costs and indemnity payments reduce and eventually will exhaust the policy limits. The Westport Policy is an excess policy of insurance above five other policies issued to Hill Brothers for the specified period by other carriers.

11. Westport became involved in the defense of Hill Brothers as the policies below the Westport Policy exhausted. Between about May 1, 2013 and April 21, 2015, Westport's share of the defense spending gradually increased from 40.93% to 100%. Westport became the sole responding insurance company on or about November 1, 2014. Prior to that time, other insurance companies, namely Fireman's Fund, CNU and Brandywine, were paying a share of the defense costs and indemnity settlements and were taking the lead in the Hill Brothers Cases.

**B. The Engagement Agreement and Guidelines**

12. On September 19, 2013, Westport sent a letter to Michael Vasquez, a partner at VEC, setting forth the basis upon which Westport instructed VEC to act in relation to Hill Brothers (the "Engagement Agreement"). On that same day, Mr. Vasquez counter-signed the Engagement Agreement.

13. Westport provided VEC with its Outside Counsel Claims Litigation Guidelines (the "Guidelines") setting forth in detail Westport's requirements with respect to various matters, including the development and management of assigned claim files, budgeting and case management, expense guidelines, and billing time and format requirements. Together, the Engagement Agreement and the Guidelines set forth the terms and conditions of the contract between Westport and VEC.

**C. VEC's Attorneys' Fees and Costs**

14. For the period between May 1, 2013 and April 21, 2015, VEC billed \$9,776,549.95 of costs and attorneys' fees on the Hill Brothers Cases, of which, based on agreements between the other insurance companies, Westport's share is \$6,022,744.11. The following table shows how that share is calculated.

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Dates of Time Entries	VEC Fees and Costs	Westport's Percentage Allocation of VEC's Fees and Costs	Amount VEC Seeks From Westport
May 1, 2013 to March 31, 2014	\$4,174,363.09	40.93%	\$1,708,556.81
April 1, 2014 to August 12, 2014	\$2,082,354.62	55.2%	\$1,149,459.75
August 13 to October 31, 2014	\$1,149,238.49	69.1%	\$794,123.80
November 1, 2014 to April 21, 2015	\$2,370,593.75	100%	\$2,370,593.75
<b>Totals</b>	<b>\$9,776,549.95</b>		<b>\$6,022,744.11</b>

15. To date, Westport has paid \$5,028,234.04 under a reservation of rights to VEC for its work on the Hill Brothers Cases.

**D. Westport's Investigation of VEC's Litigation Management**

16. On or about December 1, 2014, VEC sent a proposed litigation budget of \$5 million for 2015 to Westport. Westport became alarmed that this proposed budget was significantly higher than what Westport had anticipated.

17. On or about December 3, 2014, Westport advised Mr. Vasquez of Westport's objection to the budget. In response, Mr. Vasquez revised the budget to an amount equal to the remaining policy limits. Mr. Vasquez's revised budget was cause for concern to Westport because it suggested that the budget was not the product of careful thought and planning or based on the actual work to be performed and realistic assumptions about the cases.

18. As a result, in February 2015, Westport initiated an investigation of VEC's case management procedures, staffing protocols, defense spend, and settlement strategy. Based on the investigation, Westport had questions about the extent of VEC's expertise in the technical aspects of certain product-specific defenses. Westport further concluded that proper oversight in the management of the Hill Brothers Cases was lacking and that VEC had engaged in widespread

1 overbilling. Westport uncovered numerous examples of VEC's deficiencies,  
2 including, by way of example, all of the following:

3 a. In violation of the Guidelines' requirement that each case be  
4 staffed with no more than three persons, VEC billed more than a dozen timekeepers  
5 on each of several cases.

6 b. In the Spring of 2014, VEC prepared 29 motions *in limine* for  
7 two cases that were virtually identical to motions *in limine* filed in previous cases.  
8 Nevertheless, VEC billed 174.3 hours for the preparation of these motions.

9 c. VEC billed 22.1 hours of time for a routine status report and  
10 then billed an additional 5.9 hours for a virtually identical report that it later  
11 provided to Westport.

12 19. Hill Brothers agreed to replace VEC as defense counsel. Accordingly,  
13 effective as of April 17, 2015, Hill Brothers retained Morgan, Lewis & Bockius  
14 LLP to defend the Hill Brothers Cases.

15 20. Westport has attempted to informally resolve the matter with VEC, to  
16 no avail. Among other things, Westport filed a petition for nonbinding voluntary  
17 fee arbitration with the Attorney-Client Mediation and Arbitration Services of the  
18 Los Angeles County Bar Association, but has now determined that litigation in this  
19 Court is necessary to obtain a fair and binding outcome. VEC has represented that  
20 it will file litigation for fees it claims it is owed and for other damages it has  
21 allegedly suffered, regardless of the outcome of any nonbinding dispute resolution  
22 procedure. Accordingly, Westport dismissed the arbitration without prejudice and  
23 has now filed this complaint.

24 **FIRST CAUSE OF ACTION**

25 **(BREACH OF CONTRACT)**

26 21. Westport refers to and incorporates herein by this reference each and  
27 every allegation contained in Paragraphs 1 through 20, inclusive, hereinabove set  
28 forth.



3           23.    VEC failed to perform its obligation under the contract by providing  
4 incompetent legal services and by excessive billing.

8           25. As a direct and proximate result of VEC's breaches, Westport has  
9 sustained monetary and other damages in an amount in excess of \$2 million and  
10 that is subject to proof at the time of trial.

12 (BREACH OF THE COVENANT OF GOOD FAITH & FAIR DEALING)

16            27.    Implied in every contract is a covenant of good faith and fair dealing  
17    whereby each party covenants that it shall not do anything which will have the  
18    effect of destroying or injuring the right of the other party to receive the fruits of the  
19    agreement.

24           29.    The implied covenant of good faith and fair dealing imposed upon  
25    VEC the duty to refrain from acting, or failing to act, in a manner that would,  
26    among other things, prevent Westport from obtaining the benefits of the contract.  
27    As set forth in detail above, the acts and/or omissions of VEC breached the implied  
28    covenant to deal fairly and in good faith. Specifically, but without limitation, VEC



1 breached the covenant of good faith and fair dealing by engaging in widespread  
2 overbilling and submitting unreasonable bills to Westport.

3 30. As a direct and proximate result of VEC's breaches of the implied  
4 covenant of good faith and fair dealing, Westport has sustained monetary and other  
5 damages in an amount in excess of \$2 million and that is subject to proof at the  
6 time of trial. Moreover, VEC has been unjustly enriched by its retention of the  
7 benefit/monies paid to it at the expense of Westport.

8 **THIRD CAUSE OF ACTION**

9 **(DECLARATORY RELIEF)**

10 31. Westport refers to and incorporates herein by this reference each and  
11 every allegation contained in Paragraphs 1 through 30, inclusive, hereinabove set  
12 forth.

13 32. An actual controversy has arisen and now exists between Westport and  
14 VEC concerning their respective rights and duties in that Westport alleges that VEC  
15 breached its contractual obligations to Westport by providing incompetent legal  
16 services and by overbilling, and VEC denies those allegations.

17 33. Westport desires a judicial determination of its rights and duties and a  
18 declaration that it does not owe VEC any amount of money in further payment for  
19 VEC's purported attorneys' fees and costs in connection with the Hill Brothers  
20 Cases.

21 34. A judicial declaration is necessary and appropriate at this time under  
22 the circumstances in order that Westport may ascertain its rights and duties.

23 **FOURTH CAUSE OF ACTION**

24 **(ACCOUNTING)**

25 35. Westport refers to and incorporates herein by this reference each and  
26 every allegation contained in Paragraphs 1 through 34, inclusive, hereinabove set  
27 forth.

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