

A-16-739570-C

DISTRICT COURT CIVIL COVER SHEET

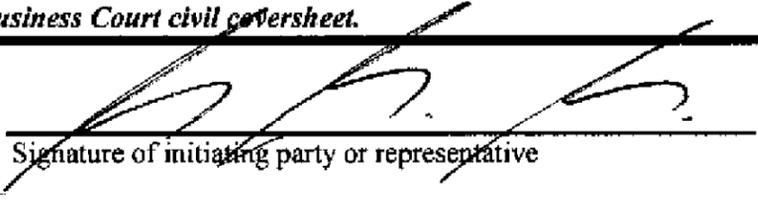
County, Nevada
 Case No. _____ XXI
(Assigned by Clerk's Office)

I. Party Information <i>(provide both home and mailing addresses if different)</i>	
Plaintiff(s) (name/address/phone): STATE OF NEVADA	Defendant(s) (name/address/phone): THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; DOE PERSONS 1 THROUGH 10; DOES ENTITIES 1 THROUGH 10; DOE CORPORATIONS 1 THROUGH 10
Attorney (name/address/phone): ADAM PAUL LAXALT, Attorney General STEVE SHEVORSKI, Head of Complex Litigation DONALD J. BORDELOVE, Deputy Attorney General 555 East Washington Avenue, #3900, Las Vegas, NV 89101	Attorney (name/address/phone):

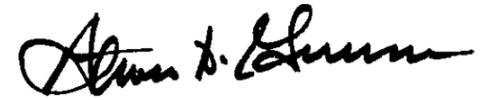
II. Nature of Controversy <i>(please select the one most applicable filing type below)</i>		
Civil Case Filing Types		
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input checked="" type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

7/6/2016
Date


Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

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9 *Attorneys for the Plaintiff*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 STATE OF NEVADA,)

13 Plaintiff,)

14 vs.)

15 THE INSURANCE COMPANY OF THE)
16 STATE OF PENNSYLVANIA; DOE)
PERSONS 1 THROUGH 10; DOE)
17 ENTITIES 1 THROUGH 10; DOE)
CORPORATIONS 1 THROUGH 10,)

18 Defendant.)

Case No. A-16-739570-C

Dept. No. XXI

COMPLAINT

(Jury Trial Demanded)

**AUTOMATIC EXEMPTION FROM
ARBITRATION:**

Declaratory Relief Sought

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20 Plaintiff, State of Nevada (**Nevada**), by and through its counsel, Adam Paul Laxalt,
21 Attorney General of the State of Nevada, and Donald J. Bordelove, Deputy Attorney General, for
22 its Complaint against The Insurance Company of the State of Pennsylvania (**ICSOP**), alleges:

23 **INTRODUCTION**

24 1. Nevada brings this suit in the public interest. ICSOP contracted with Nevada for
25 insurance, but failed to defend and indemnify Nevada from suit. Nevada pleads causes of action
26 for breach of contract, breach of the covenant of good faith and fair dealing, declaratory relief, and
27 violation of NRS 686A.310(1)(c) and (f) against ICSOP.
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1 respectively, and five successive annual policies numbered 37723008, with effective dates from
2 September 1, 2010 to September 1, 2015 (**Policies**).

3 8. Nevada complied with the Policies' provisions by timely paying premiums.

4 9. ICSOP's Policies provided coverage to Nevada for loss in excess of the retained
5 limit of \$2 million.

6 10. ICSOP's Policies covered losses arising out of Nevada's alleged wrongful acts
7 during Policies' respective periods.

8 11. ICSOP defined wrongful acts to include any actual or alleged error or
9 misstatement, omission, negligent act, or breach of duty including misfeasance, malfeasance, and
10 nonfeasance by Nevada.

11 12. ICSOP promised in the Policies it would "defend any claim or suit against
12 [insured] seeking damages under this Policy even if such claim or suit is groundless, false, or
13 fraudulent"

14 13. In September 2013, the City and County of San Francisco (**SF**) initiated a class
15 action in California state court, CGC-13-534108 (**Lawsuit**). SF sought damages against Nevada,
16 agencies of Nevada, and individual Nevada employees in their official capacities. SF alleged
17 Nevada provided discharged patients a transportation subsidy to enable them to travel to cities in
18 California, including to San Francisco.

19 14. Nevada tendered the defense of the Lawsuit to ICSOP.

20 15. In a May, 1, 2015 letter, ICSOP, through its claims administrator, AIG Claims, Inc.
21 (**AIG**), refused to defend and indemnify Nevada against SF's Lawsuit.

22 16. ICSOP admitted in its denial letter that SF's Lawsuit potentially fell within the
23 Policies' definition of wrongful acts. ICSOP then wrongfully refused to defend Nevada based on
24 inapplicable insurance coverage exclusions.

25 17. Upon information and belief, ICSOP also failed to implement reasonable policies
26 and procedures to investigate Nevada's insurance claim.

27 18. Nevada thereafter entered into settlement negotiations with SF and a settlement
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1 was reached. Nevada again demanded that ICSOP fulfill its contractual obligations. ICSOP
2 refused and then offered a paltry sum to resolve Nevada's claim.

3 19. On information and belief, defendants and each of them were agents and
4 representatives of each other and were acting within the course and scope of said agency and
5 representation at all times mentioned herein, and the conduct of each and every defendant was
6 ratified and adopted by each and every other defendant in this action.

7 **FIRST CAUSE OF ACTION**

8 **(Breach of Contract Against ICSOP and Does 1 through 10)**

9 20. Nevada incorporates by reference each and every allegation contained in
10 paragraphs 1 through 19 above as though fully set forth herein.

11 21. Based on the Policies, Nevada and ICSOP had a contractual relationship.

12 22. In the Policies, ICSOP promised Nevada it would defend and indemnify it for
13 wrongful acts and all other damages that took place during the Policies' respective periods.

14 23. Nevada complied with the Policies by notifying ICSOP of SF's Lawsuit and by
15 timely paying insurance premiums.

16 24. ICSOP breached the Policies by:

- 17 a. Failing to properly investigate SF's Lawsuit's claims against Nevada;
18 b. Failing and unreasonably refusing to pay the indemnity benefits;
19 c. Failing to conduct a reasonable coverage investigation before denying and
20 refusing to provide either a defense or indemnification of Nevada and/or failing
21 to consider extrinsic facts known or should have been known to ICSOP; and
22 d. Invoking inapplicable coverage exclusions to escape ICSOP's duty to defend
23 and indemnify Nevada from SF's Lawsuit.

24 25. As a direct and proximate result of ICSOP's breach of the Policies, Nevada
25 suffered, and will continue to suffer, damages in excess of \$10,000.

26 26. Nevada is also entitled to attorney's fees as special damages it has incurred as a
27 result of having to bring this lawsuit to vindicate its rights as an insured under the Policies and/or
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1 as foreseeable damages arising from the breach.

2 **SECOND CAUSE OF ACTION**

3 **(Breach of Implied Covenant of Good Faith and Fair Dealing Against ICSOP and**
4 **Does 1 through 10)**

5 27. Nevada incorporates by reference each and every allegation contained in
6 paragraphs 1 through 26 above as though fully set forth herein.

7 28. Based on the Policies, Nevada and ICSOP had a contractual relationship.

8 29. As a matter of law, implied in the Policies is a covenant of good faith and fair
9 dealing. This implied covenant obligates ICSOP to give Nevada's interest equal consideration
10 with ICSOP's interests, and to deal fairly and in good faith, and openly, with Nevada.

11 30. Nevada complied with the Policies by notifying ICSOP of SF's Lawsuit and by
12 timely paying insurance premiums.

13 31. ICSOP breached the implied covenant of good faith and fair dealing by:

- 14 a. Failing and unreasonably refusing to pay contractual benefits due to Nevada
- 15 under the provisions of the Policies;
- 16 b. Failing to conduct a reasonable and objective coverage investigation prior to
- 17 denying coverage for the claims of SF and refusing to provide Nevada with a
- 18 defense to SF's claims;
- 19 c. Failing and unreasonably refusing to provide indemnity benefits under the
- 20 liability insurance coverage portion of the Policies;
- 21 d. Placing ICSOP's economic interests over and above those of Nevada;
- 22 e. By referencing select provisions of the exclusions in the Policies to disclaim
- 23 coverage while disregarding applicable exceptions to said exclusions including,
- 24 but not limited to, in its May 1, 2015 denial letter;

25 32. ICSOP's breach of the duty of good faith and fair dealing proximately caused
26 Nevada to have to bear the burden of its own defense and bear the expense of the best settlement
27 possible. Nevada's damages are equal to the settlement therein, amounts incurred to defend itself
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1 above the retained limit in the Policies, plus accrued interest.

2 33. ICSOP's failure to defend and indemnify Nevada constitutes despicable conduct,
3 including, but not limited to, its refusal to reasonably and objectively investigate and evaluate the
4 claims and coverage issues, and failing to properly pay the benefits due to Nevada under the
5 Policies. Upon information and belief, this conduct was deliberate, calculated and intentional, and
6 the defendants have a pattern and practice of such conduct, and such conduct was done in the
7 conscious disregard of the rights and safety of Nevada, with an aim of protecting only ICSOP's
8 economic interests at the expense of the interests of Nevada.

9 34. ICSOP breached the implied covenant of good faith and fair dealing arising from
10 the above-referenced policies. ICSOP is liable to Nevada for all damages proximately caused by
11 such breach in excess of \$10,000.

12 35. ICSOP's breaches of the implied covenant of good faith and fair dealing were
13 intentional, done with callous and conscious disregard for Nevada's rights, and were willful,
14 malicious and oppressive, and designed to injure Nevada as evidenced by: ICSOP's failure to
15 investigate and consider information known or that should have been known to it that would have
16 provided coverage (such as the role of employed nurses or psychologists in making decisions
17 related to the claims in SF's Lawsuit which said role was provided to ICSOP) and referencing
18 select provisions of the exclusions in the Policies to disclaim coverage while disregarding
19 exceptions to the exclusions. ICSOP's conduct was done with the prior knowledge, consent
20 and/or subsequent ratification by an officer, director and/or managing agent of the defendants.
21 Therefore, Nevada is entitled to punitive damages in excess of \$10,000.

22 36. Nevada is also entitled to attorney's fees as special damages it has incurred as a
23 result of having to bring this lawsuit to vindicate its rights as an insured under the Policies and/or
24 as foreseeable damages arising from the tortious conduct.

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1 **THIRD CAUSE OF ACTION**

2 **(Declaratory Relief Against ICSOP and Does 1 through 10)**

3 37. Nevada incorporates by reference each and every allegation contained in
4 paragraphs 1 through 36 above as though fully set forth herein.

5 38. An actual controversy has arisen and now exists regarding the contractual duties of
6 ICSOP to defend and to pay for the damages sustained against Nevada under the terms, conditions
7 and covenants of the above-referenced insurance policies.

8 39. ICSOP had a duty to defend and indemnify Nevada in SF's Lawsuit. Nevada
9 contends that ICSOP had a contractual obligation to pay for the settlement as a result of its
10 wrongful refusal to defend and indemnify. ICSOP disagrees.

11 40. Nevada seeks a judicial determination of the rights and obligations under ICSOP's
12 Policies, and requests that this court declare:

- 13 a. That ICSOP had an obligation to defend Nevada under the Policies;
14 b. That ICSOP had a duty to indemnify Nevada under the terms and conditions of
15 the Policies;
16 c. That SF's causes of action in the Lawsuit met the Policies' definition of
17 wrongful acts; and
18 d. ICSOP wrongfully refused to defend and/or indemnify Nevada against SF's
19 Lawsuit.

20 **FOURTH CAUSE OF ACTION**

21 **(Violation of the Nevada Unfair Claims Settlement Practices Act Against ICSOP and**
22 **Does 1 through 10)**

23 41. Nevada incorporates by reference each and every allegation contained in
24 paragraphs 1 through 40 above as though fully set forth herein.

25 42. ICSOP violated NRS 686A.310 and committed unfair practices by, among other
26 things, the following actions:

- 27 a. Failing to adopt and implement reasonable standards for the prompt
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1 investigation and processing of claims arising under insurance policies;

2 b. Compelling insureds to institute litigation to recover amounts due under an
3 insurance policy by offering substantially less than the amounts ultimately
4 recovered in actions brought by such insureds, when the insureds have made
5 claims for amounts reasonably similar to the amounts ultimately recovered.

6 43. ICSOP's conduct caused Nevada to bear the financial burden of defending itself
7 from SF's Lawsuit, to negotiate the best possible settlement with SF to resolve SF's Lawsuit, and
8 to institute this action after ICSOP offered substantially less than Nevada is entitled.

9 44. ICSOP is liable to Nevada for damages sustained by ICSOP's statutory violations.

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PRAYER FOR RELIEF

WHEREFORE, Nevada prays for judgment against defendant ICSOP and DOES 1 through 10, as follows:

1. For damages in excess of \$10,000 and in such amounts as may be proven at trial;
2. For punitive damages according to proof;
3. For costs of suit incurred herein;
4. For attorney's fees in connection with this action;
5. For special and consequential damages in an amount to be proven at trial; and
6. For such other and further damages and/or relief as the court may deem just and

proper.

Respectfully submitted this 6th day of July, 2016.

ADAM PAUL LAXALT
Attorney General

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