

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

HAZELWOOD LOGISTICS CENTER, LLC,
HAZELWOOD COMMERCE REDEVELOPMENT
CORPORATION, PAUL J. MCKEE, JR., individually,
and as Trustee of the PAUL J. MCKEE, JR. REVOCABLE)
TRUST,)

Plaintiffs,)

v.)

NP HAZELWOOD 140. LLC, A Missouri Limited
Liability Company,)

Cause No.:

Division No.:

Serve: Its Registered Agent
Missouri Corporation #2, Inc.
1010 Walnut Street, Suite 500
Kansas City, Missouri 64106)

And)

AIG ASSURANCE COMPANY, a Foreign Insurance
Company d/b/a AMERICAN INTERNATIONAL
SPECIALTY LINES,)

Serve: John M. Huff
Director Missouri Division of Insurance
301 West High Street, Room 530
Jefferson City, Missouri 65102)

And)

CONTINENTAL CASUALTY COMPANY,)

Serve: John M. Huff
Director Missouri Division of Insurance
301 West High Street, Room 530
Jefferson City, Missouri 65102)

Defendants.)

PETITION

COME NOW Plaintiffs, Hazelwood Logistics Center, LLC, formerly known as Hazelwood Commerce Center, LLC, Hazelwood Commerce Redevelopment Corporation, Paul J. McKee, Jr., individually and as Trustee of the Paul J. McKee, Jr. Revocable Trust, by and through their undersigned counsel of record and as their Petition and causes of action against Defendants NP Hazelwood 140, LLC, AIG Assurance Company, and Continental Casualty Company, state as follows:

The Parties

1. Hazelwood Logistics Center, LLC, f/k/a Hazelwood Commerce Center, LLC (“HLC”), is a Missouri limited liability company formed to acquire, own, environmentally remediate, redevelop, lease and convey real property located in Hazelwood, Missouri.
2. Hazelwood Commerce Redevelopment Corporation (“HCRC”) is a Missouri corporation formed to acquire, construct, remediate, maintain and operate a redevelopment project or projects in accordance with the provisions of the Urban Redevelopment Corporation law, section 353.00 et. seq. of the Missouri Revised Statutes.
3. Paul J. McKee, Jr. (“McKee”) guaranteed loan obligations of HLC and HCRC in connection with the acquisition, environmental remediation and redevelopment of certain real property located in Hazelwood, Missouri.
4. McKee is also the Trustee of the Paul J. McKee, Jr. Revocable Trust (the “McKee Trust”), which also guaranteed loan obligations of HLC and HCRC in connection with the acquisition, environmental remediation and redevelopment of certain real property located in Hazelwood, Missouri.

5. NP Hazelwood 140, LLC (“NP”), is a Missouri limited liability company that claims to be the assignee of all BancorpSouth Bank’s rights, title and interest under a loan that BancorpSouth Bank’s predecessor in interest made to HLC and HCRC, which loan was guaranteed by McKee and the McKee Trust.

6. AIG Assurance Company (“AIG”) is a foreign insurance company who, while doing business as American International Specialty Lines, issued a commercial general liability policy of insurance to Environmental Operations, Inc. (“EOI”) in connection with work that EOI did pursuant to a contract with HLC and HCRC.

7. Continental Casualty Company (“Continental”) is a foreign insurance company that issued a commercial general liability policy of insurance to Geotechnology, Inc. (“Geotech”) in connection with work that Geotech performed pursuant to a contract with HLC and HCRC.

Non-Parties Mentioned in Petition

8. EOI is a Missouri corporation that provides environmental engineering, consulting and remediation services, including but not limited to the assumption of environmental liabilities for contaminated sites.

9. Geotech is a Missouri corporation that provides environmental engineering and consulting services, including but not limited to Phase I and II environmental site assessments, Brownfield and state voluntary clean-up assistance.

10. The Clayton Engineering Company, Inc. (“CEC”) is a Missouri corporation that provides professional engineering services, including but not limited to the design of engineered cells to hold and contain landfill trash.

Facts Applicable To All Counts

11. HLC is the legal and/or equitable owner and developer of approximately 150 acres of real property located in the City of Hazelwood, Missouri (the "Property"), northwest of Lambert International Airport.

12. The Property formerly contained, among other things, the Edwards Avenue Landfill (the "Landfill").

13. The Landfill was a 30 acre, non-permitted, illegal landfill, which operated for over 50 years. It consisted of large ravines filled with trash.

14. HCRC retained Geotech to provide various engineering and consulting services, including but not limited to environmental site assessments, Brownfield and state voluntary clean-up assistance for the Property.

The Remedial Action Plan (RAP)

15. On or about April 29, 2005, EOI and Geotech submitted to the Missouri Department of Natural Resources ("MoDNR") a Remedial Action Plan ("RAP") to remediate the Landfill and the Property.

16. Pursuant to the RAP, Geotech and EOI proposed, among other things, to excavate, screen, and place organic and other materials retrieved from the Landfill in an onsite engineered cell.

17. The RAP acknowledged that HLC intended to develop the Property for industrial and warehousing facilities and that Geotech was acting as the oversight consultant while EOI was to perform the environmental remediation activities.

18. The RAP called for the construction of an engineered cell on the Property. The

cell was to consist of a 24 inch thick clay liner, and be capped by a 60 inch clay cap, all of which was to be situated below a water detention basin and above the below-ground water table.

19. EOI amended the RAP on February 1, 2006, to include a proposal for pumping and discharging trapped water from within the engineered cell area.

Environmental Services Agreement

20. On June 8, 2006, HLC and EOI entered into an Environmental Services Agreement with regard to the Property (“Environmental Agreement”).

21. Pursuant to the Environmental Agreement, HLC and EOI agreed that EOI would perform the remediation services in the RAP and that EOI would provide the services necessary to remediate the Property to receive a “No Further Action Letter” (“NFA Letter”) from the MoDNR.

22. EOI was to achieve substantial completion of the Landfill remediation work, other than capping the engineered cell, within seven (7) months, and substantial completion to cap the cell within twelve (12) months. All other remediation work was to be completed within fourteen (14) months, and EOI’s work would be deemed complete when MoDNR issued a No Further Action Letter.

EOI’s Breach of Environmental Services Agreement

23. EOI failed to substantially complete the remediation work within the fourteen months. In addition, the engineered cell, as designed by CEC and constructed by EOI and GeoTech, was insufficiently designed and constructed to contain methane gas, and methane gas now migrates from the cell and affects large portions of the Property.

24. The methane detected outside the engineered cell exceeds levels established by

the MoDNR, making substantial portions of the Property unsuitable for commercial buildings. As a result, HLC was and is unable to develop portions of the Property for industrial or warehouse use.

25. The inability to develop the Property caused HLC and HCRC to default on a loan with BancorpSouth Bank.

26. BancorpSouth Bank brought suit (“Case No. 4:10-cv-590”) against HLC and HCRC under its note and against McKee and the McKee Trust under their guaranties, ultimately obtaining a judgment in excess of \$31 Million (the “BancorpSouth Bank Judgment”).

Lawsuit Against EOI

27. In January 2011, BancorpSouth Bank filed suit against EOI, Geotech and CEC (hereinafter collectively referred to as the “Environmental Contractors”) alleging that the Environmental Contractors caused environmental damage to the Property and caused HLC/HCRC’s default on the loan (the “EOI Lawsuit”).

28. In February 2012, HLC and HCRC intervened in the EOI Lawsuit, asserting claims for breach of contract, negligence and related causes of action against the Environmental Contractors, all arising out of the improper design and construction of the engineered cell. HLC and HCRC engaged counsel pursuant to a contingency fee contract and provided notice of the contingent fee arrangement to Defendants.

Scheme To Force HLC and HCRC to Settle Its Claims

29. Beginning at a point in time known better to the Defendants, but believed to be in late 2014, BancorpSouth Bank, NP, AIG, and Continental developed a scheme to force HLC and HCRC to settle its claims against the Environmental Contractors on terms (i) contrary to the best

interests of HLC and HCRC and their owners, and unacceptable to both, (ii) that would unnecessarily and arbitrarily deprive HLC and HCRC of all their rights and interest in the Property, (iii) that would unnecessarily and arbitrarily prevent HLC and HCRC from resolving the BancorpSouth Bank Judgment, (iv) that would unnecessarily and arbitrarily prevent HLC/HCRC from negotiating a meaningful settlement with the Environmental Contractors and their insurers, (v) that would convert the insurance proceeds referable to HLC and HCRC's claims to the benefit of either or all of NP or other third parties and some or all of the Environmental Contractors, and (vi) that would unnecessarily, arbitrarily and illegally avoid the attorneys' fee lien of HLC and HCRC's counsel.

30. On or about January 22, 2015, BancorpSouth informed HLC and HCRC that it, the Defendants, and the Environmental Contractors had agreed to a \$7.25 Million settlement of the EOI Lawsuit, to be comprised of payments from an unnamed third party (now known to be NP) and a combination of the Environmental Contractors, AIG and Continental. The proposed "settlement" required that HLC and HCRC consent to the dismissal of their claims in the EOI Lawsuit with prejudice *and* transfer of all their rights in the Property to NP.

31. The proposal was expressly contingent upon BancorpSouth's agreement that it "not enter into any negotiations or agreement with any other prospective purchasers of the land at issue, unless and until it is mutually agreed not to pursue this settlement." As a result of this condition, BancorpSouth refused to respond to numerous settlement offers made by HLC, HCRC, McKee and the McKee Trust.

32. The proposal was also expressly contingent upon the participants' agreement that they would not disclose to HLC and HCRC the amount of money that the Environmental

Contractors' insurers, including the Defendants, would pay toward the settlement, even though that payment was referable and due to HLC and HCRC's claims against the Environmental Contractors. Despite this benefit conferred by HLC and HCRC and its counsel, the proposal did not contemplate or provide for any payment toward the satisfaction of HLC and HCRC's contingent fee agreement.

33. Upon information and belief, the proposal also contemplated that one or more of the Environmental Contractors would remain involved with the Property following the "settlement" and earn substantial sums to fix the environmental problem they created in the first place.

HLC and HCRC Settlement Offer

34. Without the critical financial information (that was being withheld by the participants), HLC and HCRC could not evaluate whether the proposal presented an acceptable or meaningful contribution by the various wrongdoers and their insurers and HLC and HCRC therefore rejected the "settlement" proposal. Thereafter, HLC and HCRC developed, as best they could, a framework for their own settlement proposal based upon what HLC and HCRC believed were the anticipated contributions from the Environmental Contractors and their insurers, and providing for financing to pay millions of dollars to cover the difference between that assumed number and \$7,250,000.

35. Without disclosing whether HLC and HCRC's proposal accurately assumed the unknown contributions—and therefore provided identical financial terms—BancorpSouth and the other participants simply refused to respond to HLC and HCRC's offer to settle HLC and HCRC's claims against the Environmental Contractors.

New Scheme To Force HLC and HCRC to Settle its Claims

36. Instead of negotiating, in good faith, with HLC and HCRC, the Defendants devised a second, no less improper approach which likewise contemplated the use of insurance proceeds referable to HLC and HCRC's claims. This new scheme contemplated taking control of HLC and HCRC and dismissing their claims against the Environmental Contractors without paying *anything* in return and without satisfying or paying HLC and HCRC's counsel their contingent fee.

37. The alternative strategy involves NP, AIG, Continental and the Environmental Contractors payment of \$7.25 Million to BancorpSouth in exchange for the bank's assignment of its HLC and HCRC Note and collateral (including the bank's judgment) to NP. NP would then, at least as claimed by Defendants, be in a position to foreclose on and control the voting interests in HLC. Once having done that, NP would vote those interests to dismiss HLC and HCRC's claims without paying HLC and HCRC's counsel—all despite the use of millions of insurance and other dollars referable to HLC and HCRC's claims.

Count I

(Against NP)

38. Plaintiffs had the following contractual and business expectancies arising out of the Property, BancorpSouth's loans to HLC and HCRC, the Environmental Agreement and the EOI Lawsuit:

- A. That HLC and HCRC would be able to pursue all remedies against the Environmental Contractors (and their insurers) in the event that the Environmental Contractors breached their contractual promises to HLC

- and HCRC so that HLC and HCRC might obtain the benefit of its bargain with the Environmental Contractors;
- B. That HLC and HCRC would be able to prosecute and/or negotiate the settlement of its claims against the Environmental Contractors without arbitrary and improper interference from those not in privity with the Environmental Contractors;
 - C. That HLC and HCRC, being the parties damaged by the Environmental Contractors' negligence and faulty workmanship, would stand on at least equal footing with third parties as far as negotiating and agreeing to a global resolution of all parties' claims arising out of the remediation and development of the Property;
 - D. That HLC and HCRC, not unrelated persons not in privity with the Environmental Contractors, would be able to avail themselves of settlement payments from the Environmental Contractors and their insurers referable to the claims brought by HLC and HCRC;
 - E. That HLC and HCRC would be able to satisfy its contractual contingent fee obligation to its counsel from the proceeds referable and recovered as a result of HLC and HCRC's claims.
 - F. That HLC, HCRC, McKee and the McKee Trust would be able to negotiate in good faith with BancorpSouth regarding the resolution of case No.4:10-CV-390 and their obligations under the loan documents.
39. NP knew of Plaintiffs' relationship and expectations.

40. NP intentionally interfered in Plaintiffs relationship with BancorpSouth Bank and their expectation to fully participate in all settlement discussions, by preventing BancorpSouth, EOI, Geotech, AIG and Continental from discussing settlement with Plaintiffs and partaking in a scheme to settle HLC and HCRC's claims without their consent.

41. NP had no justification for its conduct and, upon information and belief, NP's conduct was for the purpose of pressuring HLC and HCRC to accept a settlement with the Environmental Contractors, which they would not have otherwise accepted, and to avoid paying HLC and HCRC's attorneys a fee, and to prevent the Plaintiffs from satisfying all their obligations for the BancorpSouth Judgment for less than twenty percent of the total amount claimed.

42. As a direct and proximate result of NP's conduct, HLC, HCRC, McKee and the McKee Trust were prevented from negotiating a settlement with BancorpSouth Bank and the Environmental Contractors, which would have resulted in the complete satisfaction of the BancorpSouth Bank Judgment, the global settlement of the EOI Lawsuit, the payment of their attorneys, and the retention of some or all their rights and interests in the Property.

43. NP's conduct was willful, wanton and in conscious disregard of the rights of the Plaintiffs, entitling the Plaintiffs to punitive damages.

WHEREFORE, Plaintiffs pray for judgment in its favor and against Defendant NP in an amount that is fair and reasonable and in excess of \$31,000,000, plus punitive damages in an amount sufficient to deter similar conduct in the future, together with attorneys' fees, prejudgment interest, lost profits, and such other relief as this Court deems just and proper.

Count II

(Against NP, AIG and Continental)

44. Plaintiffs restates all allegations in the preceding paragraphs as if fully stated herein.

45. Defendants conspired, after a meeting of the minds, to undertake a series of transactions, the sole purpose of which were to force HLC and HCRC to settle its claims against the Environmental Contractors, to deprive HLC and HCRC of all their rights and interest in the Property, to prevent Plaintiffs from being able to negotiate a settlement with BancorpSouth Bank, which would have resulted in the complete satisfaction of the BancorpSouth Bank Judgment, to avoid the attorneys' fee lien of HLC and HCRC's counsel, and to prevent HLC and HCRC from receiving any benefit from the settlement of their claims in the EOI lawsuit.

46. As a direct and proximate result of NP, AIG and Continental's conduct, HLC, HCRC, McKee and the McKee Trust were prevented from negotiating a settlement with BancorpSouth Bank and the Environmental Contractors, which would have resulted in the complete satisfaction of the BancorpSouth Bank Judgment, and the retention of all their rights and interests in the Property.

47. Similarly, NP, AIG and Continental's conduct prevented HLC and HCRC from receiving any benefit from the settlement of their claims in the EOI Lawsuit.

48. Defendants' conduct was willful, wanton and in conscious disregard of the rights of the Plaintiffs, entitling the Plaintiffs to punitive damages.

WHEREFORE, Plaintiffs pray for judgment in their favor on Count II of their Petition and against Defendants NP, AIG and Continental, in an amount that is fair and reasonable and in

excess of \$31,000,000.00, plus punitive damages in an amount sufficient to deter similar conduct in the future, together with punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court deems just and proper.

Respectfully Submitted,

STONE, LEYTON & GERSHMAN,
A PROFESSIONAL CORPORATION

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