

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

ROCK COUNTY

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STATE OF WISCONSIN  
17 West Main Street  
Madison, WI 53703

Plaintiff,

v.

Case No. 11-CV 1916  
Unclassified - Civil: 30703

AGRO DISTRIBUTION, LLC  
5500 Cenex Drive  
Inver Grove Heights, MN 55077

AGRILIANCE LLC  
5500 Cenex Drive  
Inver Grove Heights, MN 55077

WINFIELD SOLUTIONS, LLC  
1080 County Road F West  
Shoreview, MN 55126

CENEX/LAND O'LAKES AGRONOMY COMPANY  
5500 Cenex Drive  
Inver Grove Heights, MN 55077

LAND O'LAKES, INC.  
4001 Lexington Avenue North  
Arden Hills, MN 55126

AMERICAN INTERNATIONAL SPECIALTY LINES  
INSURANCE COMPANY  
c/o AIG Domestic Claims, Inc.  
101 Hudson St., 31<sup>st</sup> Fl  
Jersey City, NJ 07302

Defendants

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**AMENDED COMPLAINT**

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The plaintiff, the State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General F. Mark Bromley, alleges:

## **PARTIES**

1. Plaintiff State of Wisconsin (“the State”) is one of the fifty sovereign states of the United States of America, with its seat of government located in Madison, Dane County, Wisconsin. The State brings this action on behalf of its Department of Agriculture, Trade and Consumer Protection (“DATCP”).

2. Defendant Agro Distribution, LLC, (“Agro”) is a foreign corporation with its last known principal place of business at the captioned address. At all times relevant to this Amended Complaint, Agro has conducted business in Wisconsin and engaged in substantial and not isolated activities within this state. This Court has personal jurisdiction over Agro pursuant to Wis. Stat. §. 801.05(1), (3), (5) and (6).

3. Defendant Agriliance LLC, (“Agriliance”) is a foreign corporation with its last known principal place of business at the captioned address. At all times relevant to this Amended Complaint, Agriliance has conducted business in Wisconsin and engaged in substantial and not isolated activities within this state. This Court has personal jurisdiction over Agriliance pursuant to Wis. Stat. § 801.05(1), (3), (5) and (6).

4. Defendant Winfield Solutions, LLC, (“Winfield”) is a foreign corporation with its last known principal place of business at the captioned address. At all times relevant to this Amended Complaint, Winfield has conducted business in Wisconsin and engaged in substantial and not isolated activities within this state. This Court has personal jurisdiction over Winfield pursuant to Wis. Stat. § 801.05(1), (3), (5) and (6).

5. Defendant Cenex/Land O’Lakes Agronomy Company (“Cenex/LOL”) is a foreign corporation with its last known principal place of business at the captioned address. At all times relevant to this Amended Complaint, Cenex/LOL has conducted business in Wisconsin and

engaged in substantial and not isolated activities within this state. This Court has personal jurisdiction over Cenex/LOL pursuant to Wis. Stat. § 801.05(1), (3), (5) and (6).

6. Defendant Land O'Lakes, Inc., ("LOL") is a foreign corporation with its last known principal place of business at the captioned address. At all times relevant to this Amended Complaint, LOL has conducted business in Wisconsin and engaged in substantial and not isolated activities within this state. Agro, Agriliance, Cenex/LOL, Winfield, and LOL are collectively referred to as "LOL Defendants" in this Amended Complaint. This Court has personal jurisdiction over LOL pursuant to Wis. Stat. § 801.05(1), (3), (5) and (6).

7. Defendant American International Specialty Lines Insurance Company ("AISLIC") is a foreign insurance corporation with its principal place of business at the captioned address. At all times relevant to this Amended Complaint, AISLIC has conducted business in Wisconsin and engaged in substantial and not isolated activities within this state. At all times relevant to the allegations in this Amended Complaint, AIG Domestic Claims, Inc., ("AIG") has been an authorized representative of AISLIC. This Court has personal jurisdiction over AISLIC pursuant to Wis. Stat. § 801.05(1) and (5).

### **BACKGROUND FACTUAL ALLEGATIONS**

8. Cenex/LOL was formed in 1987 and was owned jointly by Cenex, Inc. ("Cenex") (a foreign corporation that is not a defendant in this Amended Complaint) and LOL, with each owning 50% of Cenex/LOL.

9. Agro was formed on September 5, 1999. Cenex and LOL each owned 50% of Agro.

10. Agriliance was formed on January 5, 2000. Agriliance purchased LOL's and Cenex's full interests in Agro in July 2000, and is a successor in interest to Agro.

11. Winfield was formed on September 7, 2007, as a wholly owned subsidiary of LOL and is the successor in interest to the business of Agriliance.

12. At all times relevant to this Amended Complaint, LOL owned and controlled Agro, Agriliance, Winfield and Cenex/LOL. LOL is a successor in interest to Agro, Agriliance, Winfield, and Cenex/LOL.

13. LOL is a “responsible person” pursuant to Wis. Stat. § 94.73(1) (b), relating to the Edgerton Site as described at paragraph 16, below.

#### **State’s Agricultural Chemical Cleanup Program**

14. DATCP administers the Agricultural Chemical Cleanup Program (“ACCP”) pursuant to Wis. Stat. § 94.73. Under the ACCP, DATCP may reimburse a “responsible person” for certain enumerated costs of restoring the environment at a discharge site contaminated by agricultural chemicals. A “responsible person” is defined in Wis. Stat. § 94.73(1)(h) as “a person who owns or controls an agricultural chemical that is discharged, a person who causes a discharge or a person on whose property an agricultural chemical is discharged or any of their successors in interest.”

15. Under the ACCP, and pursuant to Wis. Stat. § 94.73(6)(b) and (c), eligible corrective action costs of up to \$400,000 can be considered in determining the amount of reimbursement for each environmental discharge site, after subtraction of a deductible amount. Also, if deemed eligible, the applicant is responsible for either a 20% or 25% co-pay, depending on when eligible costs were paid by the responsible person. Interest is then paid based on the prime rate from the date a complete application is received.

#### **Agro’s First Application to ACCP for the Edgerton Site**

16. As of 1999, Agro operated a business located at 122 West Lawton Street, Edgerton, Wisconsin (the “Edgerton Site”) that stored agricultural chemicals, including fertilizer. On or about January 21, 2000, DATCP informed Agro that a release of nitrogen had occurred at the Edgerton Site, resulting in environmental contamination.

17. Prior to January 2004, a representative of Agro or a successor to Agro disclosed to DATCP that Agro was an insured under a pollution policy issued by Defendant AISLIC (policy number PLS/CCC 476 04 93) (the “Policy”), and that Agro expected the Policy would cover a portion of remediation costs at the Edgerton Site, but the issue of coverage and the amounts that might be paid by the insurer were unresolved.

18. By January 2004, Agro was approaching the end of the ACCP program’s three-year limitation for reimbursement of eligible costs at the Edgerton Site.

19. DATCP staff informed Agro at that time that Agro could submit an ACCP application for the costs it had incurred at the Edgerton Site, but further directed Agro in its letter dated June 30, 2004, to inform DATCP as soon as Agro was compensated for any portion of cleanup costs through insurance or other sources, before or after it had received reimbursement from the ACCP fund.

20. On January 15, 2004, Agro applied to ACCP for reimbursement for environmental cleanup costs incurred at the Edgerton Site. In that application, Agro submitted invoices to support its request for reimbursement of \$275,156.29 in remediation costs.

21. In a letter dated June 30, 2004, DATCP notified Agro that of the costs submitted, \$271,625.73 was eligible for ACCP reimbursement. After subtracting the ACCP’s \$7,500.00 deductible and the 20 percent copay, and adding interest of \$3,867.09, DATCP issued a reimbursed Agro in the amount of \$215,167.67.

**Insurer AISLIC Determined That Remediation Costs  
at the Edgerton Site Were Covered Under the Policy with  
Agro and Made Indemnification Payments to Agro**

22. AIG Domestic Claims, Inc. (“AIG”) is the authorized representative of AISLIC with respect to Agro’s AISLIC Policy. In a letter dated March 28, 2006, AIG informed Agro and its successor that AISLIC acknowledged coverage under the Policy for costs incurred by Agro at the

Edgerton Site, subject to exhaustion of the applicable deductible of \$100,000.00. That letter further stated that AISLIC would reimburse Agro (through LOL) for the sums incurred at the Edgerton Site in excess of the deductible.

23. AIG subsequently determined that of the \$510,916.25 Agro claimed for Edgerton Site costs, \$488,061.28 was reasonable and necessary, and reimbursable under the Policy. In a letter dated August 28, 2006, AIG advised Agro of that decision, and issued two checks to Agro (through LOL), totaling \$172,893.61, as insurance indemnification payments under the Policy for the Edgerton Site.

#### **Agro's Second Application to ACCP for the Edgerton Site**

24. On December 22, 2006, Agro applied for additional ACCP reimbursement (the "December 2006 Application"). That application included invoices for additional cleanup costs at the Edgerton Site totaling \$229,018.34. That amount included invoices that AISLIC included as insured costs in its August 28, 2006 determination of coverage.

25. In the December 2006 Application, Agro or its successor indicated that insurance policies issued by "American International Specialty Lines Insurance Co. /American International Group, Inc." were in effect. Agro's application represented that "[w]e expect that a settlement with AIG will be reached, but are still waiting for it to occur." That representation was false, deceptive and misleading.

26. All of the \$229,018.34 in costs submitted by Agro and its successor in the December 2006 Application were eligible for reimbursement, absent insurance coverage. However, when the eligible costs of that application were combined with the eligible costs of the first application, the costs surpassed the ACCP's statutory cap of \$400,000 in eligible costs for a single discharge site. As a result, ACCP issued a check to Agro for \$92,492.75 under the December 6 Application, which resulted in a total reimbursement from the ACCP fund for the Edgerton Site of \$307,660.42. That

sum was the maximum ACCP reimbursement allowed for a discharge site after the required deductions.

27. As of the December 22, 2006 ACCP application, neither Agro nor its successor had disclosed to DATCP that (a) AISLIC had accepted coverage on the Edgerton Site on or about March 8, 2006; (b) AISLIC had determined that of the \$510,916.25 of the costs Agro incurred at the Edgerton Site, \$488,061.28 were reasonable and necessary costs payable under the Policy; and (c) after subtracting the \$100,000.00 deductible and deducting the first ACCP payment of \$215,167.67, AISLIC paid Agro \$172,893.61.

28. As of December 22, 2006, DATCP was not aware that Agro or its successor had sought ACCP reimbursement for costs AISLIC deemed payable through its insurance policy.

29. After DATCP made the payment of \$92,492.75 on the December 2006 application, Agro's eligible costs exceeded the statutory cap and the Edgerton Site was not eligible for additional reimbursement from the ACCP.

**Almost Five Years Later, LOL Finally Disclosed to DATCP  
Information Demonstrating That the December 2006 Application  
Contained False, Deceptive, or Misleading Representations**

30. In a letter dated June 17, 2011, LOL disclosed to DATCP that it was a 50% owner of Agro Distribution, LLC and Agriliance, LLC, and was responsible for those entities' insurance and legal representation. The letter indicated that LOL believed its insurer at the Edgerton Site was required to reimburse the ACCP fund for the 2006 payment of \$215,167.67 by DATCP to Agro.

31. Upon receiving the June 17, 2011 letter and attachments, DATCP first learned that Agro had: a) received a determination of insurance coverage by AISLIC; b) received insurance indemnification payments for costs incurred at the Edgerton Site; c) received reimbursement payments from the ACCP Fund for remediation costs at the Edgerton Site that were included as insured costs in AISLIC's determination of coverage and included in the indemnification payments

received by Agro; and; d) made false, deceptive, and misleading representations in the December 2006 Application regarding insurance coverage at the Edgerton Site.

**ACCP Payments to LOL Defendants at Sites Other Than Edgerton**

32. The following payments, plus applicable interest and minus the deductible and 25% copay, were made by DATCP for eligible costs under the ACCP that were incurred by one or more of the LOL Defendants between December 22, 2006 and December 22, 2011:

	<u>Site</u>	<u>Date Application Rec'd</u>	<u>ACCP Payment</u>
a.	Clinton	5/15/2007	\$1,641.82
b.	Clinton	4/05/2010	\$87,594.63
c.	Columbus	4/03/2007	\$29,593.98
d.	Columbus	3/05/2010	\$13,750.71
e.	Fennimore (4 <sup>th</sup> St.)	3/10/2010	\$1,282.34
f.	Fennimore (Bronson Blvd.)	8/14/2009	\$117,712.22
g.	Fennimore (Bronson Blvd.)	7/29/2011	\$23,116.48
h.	Green Bay	11/23/2009	\$72,518.22
i.	Hazel Green	8/12/2009	\$20,068.85
j.	Little Chute	1/08/2009	\$4,651.51
k.	Monroe	7/21/2008	\$1,569.86
l.	Platteville	8/29/2008	\$57.91
m.	Platteville	12/20/2010	\$68,428.76
n.	Schofield	7/21/2008	\$17,331.49
o.	Schofield	3/30/2011	\$11,515.35
p.	Dane	8/12/2009	\$27,407.13
q.	Fall River	8/15/2008	\$97,478.98

r.	Reedsburg	12/23/2009	\$5,750.33
s.	Shiocton	6/11/2009	\$9,728.19
<b>TOTAL</b>			<b>\$611,198.78</b>

33. An additional ACCP application for reimbursement on the Shiocton site was submitted by Agriliance, or a successor in interest, on October 14, 2011, seeking reimbursement of \$12,862.46 in costs. DATCP has not yet processed and paid on this amount, pending resolution of this matter.

**FIRST CAUSE OF ACTION**

**FALSE, DECEPTIVE OR MISLEADING REPRESENTATIONS IN CONNECTION WITH A REIMBURSEMENT APPLICATION IN VIOLATION OF WIS. ADMIN. CODE § ATCP 35.06(3)(a)**

34. The State realleges and incorporates by reference paragraphs 1 to 33 of this Amended Complaint.

35. Wis. Admin. Code § ATCP 35.06(3)(a) provides that “[n]o person may make, or conspire with another person to make, any false, deceptive or misleading representation in connection with any reimbursement application under this [ACCP] section.”

36. The December 2006 Application submitted by Agro and its successor contained false, deceptive or misleading representations, including:

- a. The statement that “[w]e expect that a settlement [with our insurer AISLIC] will be reached, but are still waiting for it to occur” which is false, deceptive or misleading because Agro (through LOL) had previously received a determination in March 2006 that the insurer AISLIC had acknowledged coverage for response costs at the Edgerton Site.
- b. The December 2006 Application omitted required insurance information, including the fact that 4 months before the application, AISLIC had determined that of \$510,916.25 in costs incurred by Agro, \$488,061.28 was payable under the AISLIC Policy.

- c. The December 2006 Application omitted required insurance information, including the fact that Agro/ LOL had already received insurance indemnification payments totaling \$172,893.61. The ACCP application form requires the applicant to “provide detailed documentation which indicates the specific invoices or costs that were covered and not covered by insurance.”
- d. By submitting invoices for reimbursement under ACCP that had previously been accepted by AISLIC as costs payable under the Policy, AGRO made a false, misleading, or deceptive statement because costs payable under an insurance or other contract are not eligible for reimbursement under the ACC, pursuant to Wis. Stat. § 94.73(3m)(p).

37. Relying on the false, deceptive and misleading representations in the December 2006 Application, DATCP reimbursed Agro for certain costs that had already been reimbursed under the Policy and were therefore ineligible for ACCP reimbursement.

38. Pursuant to Wis. Admin. Code § ATCP 35.06(3)(b), violations of Wis. Admin. Code § ATCP 35.06(3)(a) make Agro and all its successors in interest, including LOL, ineligible for any reimbursement for any corrective action at the Edgerton Site.

## **SECOND CAUSE OF ACTION**

### **FALSE, DECEPTIVE OR MISLEADING REPRESENTATIONS IN CONNECTION WITH A REIMBURSEMENT APPLICATION, IN VIOLATION OF WIS. ADMIN. CODE § ATCP 35.06(3) (a)**

39. The State realleges and incorporates by reference the allegations in paragraphs 1 to 38 of this Amended Complaint.

40. Pursuant to Wis. Admin. Code § ATCP 35.06(3) (b), any violation of Wis. Admin. Code § ATCP 35.06(3)(a) by Agro with respect to the Edgerton Site makes Agro and the affiliated LOL Defendants ineligible for any ACCP reimbursement for any other corrective action taken or ordered at any other discharge site within 5 years after the date of the improper December 2006 ACCP application.

41. During the applicable 5-year period, the LOL Defendants received a total of \$611,198.78 in reimbursements under the ACCP.

42. The LOL Defendants are required to return \$611,198.78 to the ACCP fund pursuant to Wis. Admin. Code § ATCP 35.06(3)(b).

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO IMMEDIATELY NOTIFY DATCP AND REFUND THE FULL AMOUNT OF INELIGIBLE REIMBURSEMENT, IN VIOLATION OF WIS. ADMIN. CODE § ATCP 35.06(3)(c).**

43. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 to 42 of this Amended Complaint.

44. Wis. Admin. Code § ATCP 35.06(3)(c) required Agro and its successors to immediately notify DATCP of reimbursements for which it was ineligible, and to refund the full amount of the reimbursements for which they were ineligible.

45. Following receipt of the AISLIC coverage letter Agro and LOL were on notice that the \$215,167.67 ACCP payment received from DATCP was no longer eligible for reimbursement from the ACCP fund.

46. To date, neither Agro nor LOL have refunded any of the ineligible ACCP reimbursement to DATCP.

47. Agro and its successor in interest LOL failed to notify DATCP that AISLIC had made a determination of the amount of insurance coverage available for the Edgerton Site, and failed to reimburse DATCP for the covered amount, which violates Wis. Admin. Code § ATCP 35.06(3)(c).

48. Agro and LOL are required pay DATCP \$215,167.67 for the violation of Wis. Admin. Code § 35.06(3)(c).

#### **FOURTH CAUSE OF ACTION**

##### **AGRO'S FAILURE TO PROMPTLY NOTIFY AND REIMBURSE DATCP WHEN AGRO WAS REIMBURSED FOR THE SAME COST FROM ANOTHER SOURCE, IN VIOLATION OF WIS. ADMIN. CODE § ATCP 35.14(11).**

49. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 to 48 of this Amended Complaint.

50. Under Wis. Admin. Code § ATCP 35.14(11), “[i]f, after being reimbursed by the department for any cost, a responsible person is reimbursed for the same cost from another source, the responsible person shall promptly notify the department and repay any duplicate reimbursement.”

51. Pursuant to the ACCP, DATCP reimbursed Agro \$215,167.67 on June 30, 2004, based on costs totaling \$275,156.29 that Agro submitted in its first ACCP application.

52. On or about August 28, 2006, AISLIC reimbursed Agro on costs submitted of \$510,916.28, of which \$275,156.29 were the same costs submitted to DATCP.

53. Agro was reimbursed for the same costs by AISLIC in 2006 that were paid by ACCP in 2004 but failed to promptly notify DATCP that insurer AISLIC paid on the same costs, in violation of Wis. Admin. Code § ATCP 35.14(11). Agro further violated Wis. Admin. Code § ATCP 35.14(11) by not returning the ACCP reimbursement funds to DATCP.

#### **FIFTH CAUSE OF ACTION**

54. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 to 53 of this Amended Complaint.

55. Wisconsin Stat. § 94.73(13) provides that “[a]ny person who violates this section or an order issued or rule promulgated under this section shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.”

56. Agro and its successor LOL violated Wis. Stat. § 94.73(5)(e), which provides that [n]o person may make a false statement or misrepresentation on an application submitted under this section. . . . [i]f the responsible person has received any reimbursement for which the responsible person is ineligible under this paragraph, the responsible person shall refund the full amount of that reimbursement to the department.”

57. Agro and its successor LOL violated Wis. Admin. Code §§ ATCP 35.06(3)(a) and (c), and 35.14(11).

58. Pursuant to Wis. Stat. § 94.73(14), the State is entitled to recover the forfeitures specified in Wis. Stat. § 94.73(13).

59. Agro and LOL are liable for forfeitures in the amount of \$10.00 to \$5,000.00 per day for each violation alleged in this cause of action.

## **SIXTH CAUSE OF ACTION**

### **SUBROGATION**

60. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 to 59 of this Amended Complaint.

61. When DATCP makes ACCP payments, it is subrogated to the claimant’s reimbursement rights, pursuant to Wis. Stat. § 94.73(8).

62. DATCP is subrogated to Agro and LOL’s rights under its AISLIC policy, and is entitled to payment from AISLIC of all sums AISLIC owes Agro/LOL under the described policy.

WHEREFORE, Plaintiff demands judgment as follows:

- a. For Plaintiff’s First Cause of Action, a judgment against Agro and all its successors in interest, including LOL, a responsible person for the Edgerton Site, in the amount of \$307,660.42, plus pre-judgment interest from the date of the December 2006 Application, December 22, 2006;

- b. For Plaintiff's Second Cause of Action, a judgment against the LOL Defendants in the amount of \$611,198.78, plus pre-judgment interest calculated from the dates upon which each unauthorized ACCP reimbursement payment was received by one of the LOL Defendants within the five-year period specified in Wis. Stat. § 94.73(5)(e) and Wis. Admin. Code § ATCP 35.06(3)(b), and an order declaring that the October 14, 2011 ACCP application for the Shiocton site seeking \$12,770.14 is not allowable;
- c. For Plaintiff's Third Cause of Action, a judgment against Agro and LOL in the amount of \$215,167.67, plus interest from the date AISLIC notified Agro and LOL that certain costs at the Edgerton Site were insured under the Policy;
- d. For Plaintiff's Fourth Cause of Action, a judgment against Agro and LOL in an amount or \$215,167.67, or a greater amount to be determined at trial, plus interest from the date Agro and LOL received reimbursement from AISLIC for the same amount or amounts paid by DATCP from the ACCP fund;
- e. For Plaintiff's Fifth Cause of Action, a judgment for civil forfeitures, pursuant to Wis. Stat. § 94.73 (13), of between \$10 and \$5,000 per day for each day from December 22, 2006, to the date of judgment herein, during which any of the LOL Defendants were in violation of any provision of Wis. Stat. § 94.73, Wis. Admin. Code §§ ATCP 35.06 and 35.14, as appropriately determined at trial and by the court;

- f. For Plaintiff's Sixth Cause of Action, a judgment against AISLIC in the amount of \$215,167.67, plus pre-judgment interest from the date AISLIC determined that such amount was an insured cost under the Policy;
- g. An award of the attorney fees, costs and disbursements incurred by Plaintiff in prosecuting this action; and,
- h. All other relief as the court deems just, equitable or appropriate.

Dated this \_\_\_\_\_ day of August, 2012.

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