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June 23, 2009

**VIA MESSENGER**

Stephen R. Miller, Esq.  
MYERS MILLER & KRAUSKOPF LLC  
30 N. LaSalle Street  
Suite 2200  
Chicago, IL 60602

Re: Clean Harbors Environmental Services, Inc. v. ESIS, Inc., et al.  
Court No.: 1:09-cv-3789, U.S. District Court, Northern District of IL

Dear Mr. Miller:

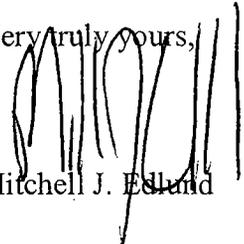
Enclosed please find copies of the following documents which were filed on today's date in the captioned matter:

- (1) Complaint;
- (2) Civil Cover Sheet;
- (3) Appearance of Steven D. Pearson;
- (4) Appearance of Mitchell J. Edlund;
- (5) Appearance of Dawn J. Blume;
- (6) Clean Harbors Environmental Services, Inc.'s Disclosure Statement.

I have also enclosed a Waiver of Service of Summons on behalf of Myers Miller & Krauskopf.

Please do not hesitate to contact me with any questions.

Very truly yours,

  
Mitchell J. Edlund

MJE:ab  
Enclosures  
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NOTE: When the print dialogue box appears, be sure to uncheck the Annotations option.

AO 399 (Rev. 05/00)

# UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

## Waiver of Service of Summons

TO: Steven D. Pearson  
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Myers Miller & Krauskopf, LLC, acknowledge receipt of your request  
(DEFENDANT NAME)

that I waive service of summons in the action of Clean Harbors v. ESIS, Inc., et al,  
(CAPTION OF ACTION)

which is case number 09 cv 3789 in the United States District Court  
(DOCKET NUMBER)

for the Northern District of Illinois.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after 06/23/09,  
(DATE REQUEST WAS SENT)  
or within 90 days after that date if the request was sent outside the United States.

\_\_\_\_\_  
(DATE) (SIGNATURE)

Printed/Typed Name: \_\_\_\_\_

As \_\_\_\_\_ of Myers Miller & Krauskopf, LLC  
(TITLE) (CORPORATE DEFENDANT)

### Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CLEAN HARBORS ENVIRONMENTAL	)	
SERVICES, INC., a Massachusetts corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ESIS, INC., a Pennsylvania corporation;	)	
MYERS MILLER & KRAUSKOPF, LLC, an	)	
Illinois limited liability company; HOWARD	)	
KRAUSKOPF, individually; and JASON M.	)	
SAX, individually,	)	
	)	
Defendants.	)	

Case No.

**COMPLAINT**

Plaintiff, Clean Harbors Environmental Services, Inc. (“Clean Harbors”), by its undersigned attorneys, and for its Complaint against ESIS, Inc. (“ESIS”), Myers Miller & Krauskopf, LLC (“Myers Miller”), Howard Krauskopf (“Krauskopf”), and Jason M. Sax (“Sax”) (Myers Miller, Krauskopf, and Sax are collectively hereinafter referred to as “MMK”), states as follows:

**NATURE OF THE ACTION**

1. This action arises out of ESIS’ negligent claims handling services and breach of its contractual and fiduciary duties to Clean Harbors under a claims handling services agreement ESIS entered into with Clean Harbors, including ESIS’ negligent selection and supervision of MMK to represent Clean Harbors in an underlying bodily injury action, styled *Eddie Lopez and Sandy Lopez v. Clean Harbors Environmental Services, Inc. a/k/a Clean Harbors, Inc.*, and MMK’s own negligence in connection with that representation (the “Lopez Action”).

THE PARTIES

2. Plaintiff Clean Harbors is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business located in Norwell, Massachusetts. Clean Harbors, among other things, provides environmental and hazardous waste management services throughout the United States.

3. Defendant ESIS is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Philadelphia, Pennsylvania. ESIS is ACE USA's third-party claims administrator, licensed under the laws of Pennsylvania to provide claims adjusting services and risk management services to businesses located throughout North America. ESIS' ultimate parent is ACE Limited.

4. Defendant Howard Krauskopf is a citizen of the State of Illinois and licensed to practice law in the State of Illinois. Upon information and belief, Krauskopf is one of the Managing Members of Defendant Myers Miller. Prior to joining Myers Miller, Krauskopf served as Assistant General Counsel for ACE USA Insurance Company (formerly Cigna Property and Casualty Company), whose ultimate parent company is also ACE Limited.

5. Defendant Jason Sax is a citizen of the State of Illinois and licensed to practice law in the State of Illinois. Upon information and belief, Sax is a member of Defendant MMK.

6. Defendant Myers Miller is an Illinois limited liability company engaged in the practice of law, with its principal place of business in Chicago, Illinois. Upon information and belief, Myers Miller's membership is comprised entirely of individuals who are citizens of the State of Illinois. Myers Miller is a citizen of the State of Illinois by virtue of the Illinois citizenship of Defendants Jason Sax, and Howard Krauskopf, and the other members of Myers Miller.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over this matter jurisdiction 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 interests and costs.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) in that some Defendants reside in this judicial district, a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and it is the judicial district in which all Defendants are subject to personal jurisdiction.

**ALLEGATIONS COMMON TO ALL CLAIMS**

**A. Clean Harbors Purchases Insurance from the ACE Group of Companies**

9. Clean Harbors provides, among other things, environmental and hazardous waste management services throughout the United States. As part of its business operations, Clean Harbors operates waste transfer, storage, and disposal facilities. At all times material to the allegations in this Complaint, a related, but legally distinct company, Clean Harbors Services, Inc., leased and operated a waste disposal facility located at 11800 Stony Island, Avenue, Chicago Illinois (the "Chicago Facility").

10. In 1997, Clean Harbors began purchasing insurance products from insurance companies under the umbrella of ACE USA, Inc., which is the U.S. based retail operating division of ACE Limited. ACE USA, Inc. operates through several insurance companies using a network of offices throughout the United States, including Pacific Employers Insurance Co. ("PEIC") (collectively, the "ACE Group of Companies"). ACE USA, Inc.'s ultimate parent is ACE Limited.

11. In November, 2000, Clean Harbors purchased a Comprehensive General Liability insurance policy from PEIC, Policy No. HDOG20577010, for the period from November 1, 2000 to November 1, 2001 (the "PEIC Policy"). The PEIC Policy provided defense and indemnity coverage to Clean Harbors for occurrences during the policy period for claims resulting from, among other things, bodily injury to a person, such as was alleged in the Lopez Action. PEIC, like ESIS, is a subsidiary of ACE USA, Inc. Also like ESIS, PEIC's ultimate parent is ACE Limited.

12. Pursuant to Endorsement No. 2 of the PEIC Policy, PEIC delegated the duty to defend to ESIS in part, retained the duty to indemnify and maintained the right to assume control of the defense of claims falling within the PEIC Policy under certain delineated circumstances, all as set forth in Endorsement No. 2 to the PEIC Policy.

**B. Clean Harbors Enters into a Claims Services Agreement with ESIS**

13. As a condition of purchasing the PEIC Policy, and as it was required to do with previous insurance policies it purchased from the ACE Group of Companies, Clean Harbors was required, as a condition to PEIC issuing the PEIC Policy, to enter into a claims servicing agreement with ESIS, whereby ESIS would manage and adjust claims asserted against Clean Harbors under the PEIC Policy in exchange for the payment of certain fees by Clean Harbors.

14. In November, 2000, Clean Harbors entered into a claims servicing agreement with ESIS, entitled the "ESIS Services Agreement" (the "ESIS Agreement"). (A true and accurate copy of the ESIS Agreement is attached as Exhibit A.) The ESIS Agreement imposed various obligations on ESIS with respect to claims asserted against Clean Harbors under the PEIC Policy, including without limitation, investigating and administering claims, arranging the

defense of the claims, and retaining experts, all in the "best professional judgment" of ESIS.

(See Exhibit A, at Section II, Part A, Paragraph 3.)

15. Section II, Part A, Paragraph 3 of the ESIS Agreement provides, in relevant part:

**3. CLAIMS ADJUSTING SERVICES - OBLIGATIONS OF ESIS - ESIS' obligations under this PART are to:**

- a. Investigate, adjust, and otherwise administer Claims, including the arrangement of a defense for litigated Claims, as ESIS deems necessary in accordance with ESIS' best professional judgment as a claims adjuster and state laws and regulations permit for monopolistic states. [Clean Harbors] agrees that ESIS may meet its obligations by engaging, at its reasonable discretion and on [Clean Harbors'] behalf, the services of persons or firms outside of ESIS' organizations.
- b. Review the facts of each Claim and the law applicable thereto to determine what compensation, if any, should be paid on [Clean Harbors'] behalf for each Claim. ESIS shall obtain [Clean Harbors'] prior approval before offering to settle any Claim for an amount, which exceeds the amount of ESIS' Discretionary Settlement Authority Limit, and ESIS shall incur no liability in excess of the Discretionary Settlement authority Limit as a result of its failure to settle any Claim for an amount within the Discretionary Settlement Authority Limit.
- c. Determine what Allocated Loss Expenses shall be incurred in the investigation, adjustment, administration, and defense of each Claim.  

\* \* \*
- g. Provide statistical or loss experience reports to [Clean Harbors] concerning the status of (a) Claims, (b) Claim reserves, and (c) Claim payment as agreed upon by ESIS and [Clean Harbors] in writing from time to time.  

\* \* \*
- i. Administer all Claims reported to their conclusion and further investigate, adjust, and otherwise administer any late Reported Claims according to the terms and conditions of this PART.

(See Exhibit A, at Section II, Part A, Paragraph 3(a)-(i).)

16. The ESIS Agreement also gave ESIS broad authority and control relating to the management of claims brought against Clean Harbors which were covered by the PEIC Policy:

**5. CLAIMS ADJUSTING SERVICES – GENERAL PROVISIONS:**

- a. *ESIS shall have full authority and control in all matters pertaining to the investigation, adjustment, and administration of Claims* covered by this PART, subject to any limitations which ESIS and [Clean Harbors] may have agreed upon as set forth in this agreement or in any Addendum to this PART agreed to and duly executed by both parties hereto.

(See Exhibit A, at Section II, Part A, Paragraph 5.) (Emphasis added.)

**C. The Underlying Lopez Action**

17. In 2001, Eddie Lopez was employed as a semi roll-off driver by Waste Management, Inc. The semi roll-off trucks that Mr. Lopez drove picked up dumpsters of various sizes.

18. One of Mr. Lopez's assigned stops was Clean Harbors' Chicago Facility. One of Mr. Lopez's tasks at the Chicago Facility was to pick up dumpsters containing crushed 55-gallon drums that had been processed through a fuels blending operation in Building 43 of the facility. In the fuels blending operation, drums of chemicals that ranged from 95% liquid to almost 100% solid were tilted, drained and emptied by a large mechanical auger.

19. In accordance with the Resource Conservation and Recovery Act ("RCRA") regulations, the drums processed through the Building 43 fuel blending operation were to be empty.

20. The drums were to be visually inspected before being crushed and dropped through a conveyor into a roll-off dumpster that would generally hold 80-100 empty crushed

drums. When full, the dumpster was covered with a tarp and moved to a pick-up area several hundred feet from Building 43.

21. According to evidence developed in the underlying action, when Mr. Lopez picked up dumpsters containing crushed drums, he would drive his Waste Management truck to the dumpster area, attach a J-hook to the dumpster, and a mechanical device would lift the dumpster onto his truck. The operation would take approximately 5 to 10 minutes.

22. After picking up dumpsters at the Chicago Facility on or about April 6, 2001, Mr. Lopez visited the emergency room at St. Mary's Hospital in Kankakee, Illinois complaining of dizziness and nausea. Mr. Lopez was discharged that same day with instructions to follow up with a physician. Thereafter, Mr. Lopez returned to work.

23. On April 29, 2001, Mr. Lopez again visited the emergency room, complaining of vomiting, dizziness, blurred vision, and acute pain in the front of his head. Mr. Lopez was diagnosed with a migraine headache and released. Two days later, Mr. Lopez again visited his own doctor, who suspected that he had contracted meningitis or encephalitis and admitted him to St. Mary's Hospital, where he performed blood lumbar puncture tests. These tests did not reveal the cause of Mr. Lopez's symptoms.

24. After being hospitalized at St. Mary's Hospital for several days, he was transferred to Northwestern Memorial Hospital in Chicago, Illinois. The presumptive diagnosis from the physicians at Northwestern Hospital was encephalitis. While at Northwestern, Mr. Lopez lapsed into a coma and thereafter became paralyzed from the waist down.

25. Lopez recovered from his coma and was released from Northwestern on June 7, 2001. He is currently confined to a wheelchair and suffers from brain damage. According to the

evidence in the underlying action, Lopez had little recollection about his illness, hospitalization, or the events leading up to his illness.

**D. Mr. Lopez Files a Lawsuit and ESIS Retains MMK**

26. On or about September 25, 2002, Mr. Lopez filed a petition for discovery in the Circuit Court of Cook County, Illinois against several respondents, including Clean Harbors, seeking information on the kinds of chemical residues that may have been present at the Chicago facility at the time Mr. Lopez became ill.

27. Clean Harbors provided notice of the petition to PEIC through ESIS. On or about November 11, 2002, ESIS retained MMK and Krauskopf to respond to the petition for discovery.

Upon information and belief, Krauskopf was retained by ESIS without regard to whether he was qualified or maintained the skills and experience necessary to properly and competently represent Clean Harbors' interests.

28. On or about March 27, 2003, Mr. Lopez filed an original action against Clean Harbors in the Circuit Court of Cook County (hereinafter, the "original action"), alleging that he suffered bodily injury as a consequence of exposure to unknown substances at the Chicago Facility, and claiming that his alleged exposure occurred on April 6, 2001. Clean Harbors removed that original action to the United States District Court for the Northern District of Illinois. On July 2, 2003, the original action was voluntarily dismissed.

29. On or about June 30, 2004, Mr. Lopez and Mrs. Lopez filed a second action in the Circuit Court of Cook County, Illinois based on the alleged April 6, 2001 occurrence at the Chicago Facility. The second action was also removed to the United States District Court for the Northern District of Illinois on or about June 22, 2005, and is referred to hereinafter as the Lopez Action.

30. In the Lopez Action, Mr. Lopez alleged, among other things, that he suffered bodily injury as a result of inhaling toxic fumes from crushed barrels at the fuel blending operation at the Clean Harbors Chicago facility on April 6, 2001.

31. Krauskopf and Sax entered their appearances on behalf of Clean Harbors in the Lopez Action. At all relevant times until April 1, 2008, Clean Harbors continued to be represented in the Lopez Action by Krauskopf, Sax and MMK, who were at all times being instructed and directed by ESIS.

32. The central issue in the underlying Lopez Action was the cause of Mr. Lopez's alleged injury. Mr. Lopez's theory was that he was exposed to toxic chemicals while loading the crushed drums at the Chicago Facility on or about April 6, 2001. In support of that theory, Mr. Lopez retained Ernest Chiodo, a lawyer and doctor, to establish a causal connection between Clean Harbors' operations at the Chicago Facility and Mr. Lopez's alleged injury.

33. Dr. Chiodo opined that, among other things, Mr. Lopez's injuries to his central nervous system were caused by long-term exposure to toxic substances and an acute exposure to a "witches brew" of chemicals at the Chicago Facility sometime in April, 2001, resulting in Type 3 Solvent Related Chronic Encephalopathy ("SRCE"). Dr. Chiodo was unable, however, to identify a specific chemical or chemicals to which Mr. Lopez was exposed, a specific date of exposure, a specific dosage of chemical, a specific concentration of chemical, or a specific duration of exposure that caused Mr. Lopez's injuries.

34. ESIS and MMK retained Dr. James Hillman, a purported board certified toxicologist, as Clean Harbors' expert witness to defend against Dr. Chiodo's theory of the cause of Mr. Lopez's alleged injuries. Dr. Hillman opined that there was overwhelming evidence in the medical records that the disease process Mr. Lopez suffered was an acute infection affecting

his central nervous system. Dr. Hillman further opined that there was no basis in the medical literature of an acquired central nervous system **infectious** disease being casually related to an exposure of a toxicant.

35. Dr. Hillman was deposed on December 10, 2007 and again on December 21, 2007. During his depositions, Dr. Hillman admitted that, contrary to his own representations, he was not board certified in medical toxicology. Board certification for medical toxicology is governed by the American Board of Emergency Medicine, which is the delegated body with certification authority, and a member board of the American Board of Medical Subspecialties. The American Board of Medical Subspecialties is the pre-eminent entity that oversees the certification of physician specialists in the United States. Dr. Hillman also admitted that he was not certified by the American Board of Emergency Medicine in the subspecialty of medical toxicology. **He further admitted that he failed the certification examination in the subspecialty of medical toxicology five times between 1994 and 2004.**

36. Dr. Hillman never personally examined Mr. Lopez. Dr. Hillman also testified that he arrived at his conclusions without reviewing the deposition testimony of Mr. Lopez's two treating physicians because **MMK did not provide him with the deposition transcripts.**

37. In addition, MMK did not provide Dr. Hillman with a list of the chemicals that were processed at the Chicago Facility – a list that MMK had produced to the plaintiffs in discovery. Accordingly, Mr. **Lopez's counsel was able to establish during Dr. Hillman's deposition that he did not even know what chemicals Mr. Lopez was alleged to have been exposed to at the Chicago Facility, let alone how they may have affected Mr. Lopez.**

38. Prior to his deposition, neither MMK nor ESIS reported to Clean Harbors that there existed any issues regarding Dr. Hillman's credentials.

39. After the expert depositions were completed, MMK moved to bar Dr. Chiodo's opinion under *Daubert*, arguing that there was no evidence that Mr. Lopez was exposed to toxic chemicals at the Chicago Facility. On these same grounds, Clean Harbors moved for summary judgment. On February 29, 2008, Judge James F. Holderman, Chief Judge of the United States District Court for the Northern District of Illinois, found that Dr. Chiodo's opinions were based upon accepted medical principles and were adequately supported by peer-reviewed medical literature.

40. On March 3, 2008, MMK reported Judge Holderman's ruling to Clean Harbors, and, for the first time, further reported that fundamental problems existed with Dr. Hillman's testimony, including the fact that he was not board certified in medical toxicology by the American Board of Emergency Medicine and that he failed the certification examination in the subspecialty of toxicology five times.

41. Shortly thereafter, Clean Harbors retained counsel of its own, Shefsky & Froelich Ltd., to provide an independent analysis and advice to Clean Harbors regarding the Lopez matter. Thereafter, on April 6, 2008, roughly three weeks before the scheduled trial date, attorneys at Shefsky & Froelich were granted leave to enter their appearances for Clean Harbors.

42. Shefsky & Froelich conducted an immediate review of all materials made available to them and discovered even more problems with ESIS' and MMK's handling of the Lopez Action.

43. Among other things, Shefsky & Froelich discovered that:

- (a) MMK failed to ensure that the proper corporate entity that owned and operated the Chicago Facility was named as the party defendant in the Lopez Action;
- (b) MMK had incorrectly answered interrogatories concerning the types of chemicals processed at the Chicago Facility;

- (c) Mr. Lopez had served requests to admit facts after the close of discovery. Rather than moving to strike the requests or to seek a protective order, MMK, without notice to or consultation with Clean Harbors, responded to the requests to admit. In the process, MMK made inaccurate and damaging admissions;
- (d) MMK had neglected to depose Mr. Lopez's economic expert, Dr. Smith, and neither MMK nor ESIS designated an economic expert on Clean Harbors' behalf;
- (e) MMK incorrectly answered interrogatories concerning the nature and availability of insurance;
- (f) MMK had failed to raise appropriate affirmative defenses;
- (g) MMK did not investigate or conduct discovery from potentially important third-party witnesses;
- (h) MMK did not conduct discovery on Mr. Lopez's workers' compensation claim arising out of his illness, thereby waiving relevant defenses;
- (i) Neither MMK nor ESIS sought an independent medical examination of Mr. Lopez;
- (j) MMK did not investigate or file claims against any potentially culpable third parties;
- (k) MMK failed to prepare for and properly conduct the depositions of Mr. Lopez's expert witnesses, including Dr. Chiodo; and
- (l) MMK did not cooperate fully in turning over file materials to Shefsky & Froelich in order to protect Clean Harbors' interests.

44. As a consequence of ESIS' and MMK's failures to properly investigate, manage and defend the underlying litigation, Clean Harbors concluded that it could not risk taking the Lopez case to trial. As a result, Clean Harbors was forced to enter into an unfavorable settlement with Mr. Lopez. Had Clean Harbors been properly represented by ESIS and MMK in the defense of the Lopez Action, Clean Harbors would have been able to fully and successfully defend the Lopez Action.

45. As a direct and proximate cause of ESIS' and MMK's conduct identified above, Clean Harbors was forced to settle with Mr. Lopez on grossly unfavorable terms, and was required to expend attorneys' fees and costs retaining Shefsky & Froelich, and others, to obtain a proper evaluation and to otherwise protect Clean Harbors' interests. Clean Harbors incurred these additional attorneys' fees and costs as a direct result of ESIS' and MMK's negligence in failing to properly prepare the defense of the Lopez Action.

**FIRST CLAIM FOR RELIEF**  
**(Professional Negligence – ESIS, Inc.)**

46. Clean Harbors incorporates by reference the allegations contained in paragraphs 1 through 45 above as though fully set forth as paragraph 45.

47. ESIS undertook a duty and responsibility to act with the reasonable care and skill of an ordinary professional claims administrator in the provision of claims adjusting and risk management services on behalf of Clean Harbors, including the claims asserted against Clean Harbors in the Lopez Action.

48. ESIS breached its duty to Clean Harbors through one or more of the following acts and omissions, among others, which will become evident through discovery:

- (a) Failing to properly and adequately investigate the Lopez claims before the Lopez Action was filed;
- (b) Failing to retain competent attorneys on Clean Harbors' behalf to defend the Lopez Action;
- (c) Failing to promptly and accurately report to Clean Harbors problems ESIS panel counsel encountered in defending the Lopez Action;
- (d) Failing to supervise the activities of ESIS' panel counsel in the Lopez Action;
- (e) Failing to ensure that Clean Harbors' interests were protected by retaining competent experts;

- (f) Failing to exercise professional care and skill in managing Clean Harbors' claims against other culpable parties in the Lopez Action; and
- (g) Otherwise being negligent and careless in protecting Clean Harbors' interests in defending the Lopez Action which will become apparent through discovery.

49. As a direct consequence of ESIS's negligence, Clean Harbors sustained damages including the costs of settling the Lopez Action, as well as fees and costs paid to ESIS for its deficient claims adjusting services, additional attorneys' fees and costs paid to Shefsky & Froelich, and others, for its efforts to correct and sufficiently defend the shortcomings in the Lopez Action and to adequately protect Clean Harbors' interests in that litigation.

50. As a direct and proximate cause of the acts and omissions of ESIS as identified herein, Clean Harbors suffered damages in an amount to be proven at trial.

**WHEREFORE**, Clean Harbors Environmental Services, Inc., requests this Court enter judgment in its favor and against Defendant ESIS, Inc., and that Clean Harbors receive its actual damages, costs, interest, attorneys' fees, and such other and further relief as this Court deems proper and just.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Contract – ESIS, Inc.)**

51. Clean Harbors incorporates by reference the allegations contained in paragraphs 1 through 45 above as though fully set forth as paragraph 51.

52. ESIS contracted with Clean Harbors to, among other things, properly investigate, evaluate, handle and manage the claims asserted against Clean Harbors under the PEIC Policy, arrange defenses for claims, including hiring and supervising counsel, employing experts, and properly settling claims.

53. In addition, under the ESIS Agreement, ESIS had an obligation to provide Clean Harbors with statistical or loss experience reports concerning the status of each claim.

54. The Lopez Action constituted a "claim" under the ESIS Agreement.

55. Beginning in 2001 and continuing through 2008, ESIS breached its obligations under the ESIS Agreement by:

- (a) Failing to properly investigate, adjust or administer the Lopez Action;
- (b) Failing to retain competent attorneys to defend Clean Harbors in the Lopez Action;
- (c) Failing to provide timely and accurate reports to Clean Harbors concerning the Lopez Action;
- (d) Failing to supervise the actions of its panel counsel to defend Clean Harbors in the Lopez Action; and
- (e) Failing to arrange for proper experts in the Lopez Action.

56. As a direct consequence of ESIS's breach of the ESIS Agreement, Clean Harbors sustained damages, including the costs of settling the Lopez Action, as well as fees and costs paid to ESIS for its deficient claims adjusting services, additional attorneys' fees and costs paid to Shefsky & Froelich for its efforts to investigate and attend to the shortcomings of MMK in the Lopez Action and to adequately protect Clean Harbors' interests in the litigation.

57. Clean Harbors has satisfied all of its obligations under the ESIS Agreement.

58. As a direct and proximate result of ESIS' unilateral dealings and material breach of the terms of the ESIS Agreement, as well as ESIS' breach of the implied covenant of good faith and fair dealing, Clean Harbors has suffered damages in an amount to be proven at trial.

**WHEREFORE**, Clean Harbors Environmental Services, Inc., requests this Court enter judgment in its favor and against Defendant ESIS, Inc., and that Clean Harbors receive its actual

damages, costs, interest, attorneys' fees, and such other and further relief as this Court deems proper and just.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty – ESIS, Inc.)**

59. Clean Harbors incorporates by reference the allegations contained in paragraphs 1 through 45 above as though fully set forth as paragraph 59.

60. Holding itself out to Clean Harbors and the public as a professional service provider, and as a licensed public claims adjuster under **63 PA. CONS. STAT. ANN. §1602**, ESIS owed Clean Harbors a fiduciary duty, including undivided, unselfish, and unqualified loyalty, honesty and trust.

61. ESIS breached its fiduciary duty to Clean Harbors through the following acts and omissions, among others:

- (a) Failing to properly and adequately investigate the Lopez claims before the Lopez Action was filed;
- (b) Failing to retain competent attorneys on Clean Harbors' behalf to defend the Lopez Action;
- (c) Failing to promptly and accurately report to Clean Harbors problems its panel counsel encountered in defending the Lopez Action;
- (d) Failing to supervise the activities of the attorneys it retained to defend Clean Harbors in the Lopez Action;
- (e) Failing to ensure that Clean Harbors' interests were protected by hiring competent experts; and
- (f) Failing to exercise professional care and skill in managing the claims asserted against Clean Harbors.

62. ESIS' conduct in either failing to comprehend or expressly overlooking MMK's lack of qualifications to defend Clean Harbors in the Lopez Action and its failure to properly manage the litigation, was a consequence of ESIS placing its own financial interests above those

of Clean Harbors and was therefore intentional, willful, deliberate, and was undertaken with full knowledge of its effect on Clean Harbors.

63. ESIS' breach of its fiduciary duties has proximately caused significant damage to Clean Harbors in amounts to be proven at trial.

**WHEREFORE**, Clean Harbors Environmental Services, Inc., requests this Court enter judgment in its favor and against Defendant ESIS, Inc., and that Clean Harbors receive its actual damages, costs, interest, attorneys' fees, exemplary damages for ESIS, Inc.'s intentional, deliberate and willful disregard for Clean Harbors, its officers, directors and employees, and such other and further relief as this Court deems proper and just.

**FOURTH CLAIM FOR RELIEF**  
**(Professional Negligence - Sax, Krauskopf and Myers Miller)**

64. Clean Harbors incorporates by reference the allegations contained in paragraphs 1 through 45 above as though fully set forth as paragraph 64.

65. In November, 2001, Krauskopf, Sax and Myers Miller were retained to represent Clean Harbors' interests and to provide legal advice in connection with the petition for discovery filed by Mr. Lopez. Each of them were also later retained by ESIS to represent Clean Harbors' interests and to provide legal advice and services in connection with all phases of the underlying Lopez Action.

66. At all times, Clean Harbors had an attorney-client relationship with Krauskopf, Sax, and Myers Miller.

67. Krauskopf, Sax, and Myers Miller owed Clean Harbors a duty to exercise a degree of professional skill and care in the provision of legal services on Clean Harbors' behalf.

68. Krauskopf, Sax, and Myers Miller breached their duty to Clean Harbors through one or more of the following acts and omissions, among others:

- (a) Filing responses to Mr. Lopez's requests for admission of facts without Clean Harbors' knowledge or consent that contained false and damaging admissions;
- (b) Failing to object or make a motion to strike Mr. Lopez's requests for admission of facts, even though they were served after the close of discovery;
- (c) Failing to investigate or file claims against potentially liable third parties;
- (d) Failing to initiate or take discovery on the affirmative defense of contributory negligence;
- (e) Failing to properly investigate, prepare for, and depose expert witnesses in the Lopez Action;
- (f) Failing to arrange for an independent medical evaluation of Mr. Lopez;
- (g) Failing to depose third party witnesses with potentially exculpatory information;
- (h) Failing to move to dismiss Mr. Lopez's amended complaint;
- (i) Failing to adequately investigate Clean Harbors' operations, processes, and documents relating to contested issues of fact;
- (j) Failing to preserve legal and factual defenses;
- (k) Failing to investigate responses to interrogatories concerning the applicability of insurance coverage;
- (l) Failing to cooperate fully with the transfer of Clean Harbors' file materials to replacement counsel; and
- (m) Otherwise being negligent and careless in protecting Clean Harbors' interests in defending the Lopez Action

69. As a consequence of Krauskopf's, Sax's, and Myers Miller's negligence, Clean Harbors was forced to settle the Lopez Action on unfavorable terms, rather than proceeding to trial on the merits of the case.

70. As a direct consequence of Krauskopf's, Sax's, and Myers Miller's, negligence, Clean Harbors also sustained damages by incurring additional attorneys' fees and costs paid to

Shefsky & Froelich and others for its efforts to investigate, correct and defend the Lopez Action and to adequately protect Clean Harbors' interests in that litigation.

71. **But for Krauskopf's, Sax's, and Myers Miller's negligence, Clean Harbors would have been successful in defending the claims asserted against it in the Lopez Action.**

72. As a direct and proximate cause of the acts and omissions of Krauskopf, Sax, and Myers Miller as identified herein, Clean Harbors suffered damages in an amount to be proven at trial.

**WHEREFORE** Clean Harbors Environmental Services, Inc., requests this Court enter judgment in its favor and against Defendants, Howard Krauskopf, Jason Sax, and Myers Miller & Krauskopf, LLC, jointly and severally, and that Clean Harbors receive its actual damages, costs, interest, attorneys' fees, and such other and further relief as this Court deems proper and just.

**Plaintiff demands a trial by jury.**

Dated: June 23, 2009

**CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.**

By: /s/ Steven D. Pearson  
One of its Attorneys

Steven D. Pearson (No. 6190506)  
Mitchell J. Edlund (No. 6229190)  
Dawn J. Blume (No. 6271961)  
MECKLER BULGER TILSON MARICK & PEARSON LLP  
123 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
(312) 474-7900 - Telephone  
(312) 474-7898 - Facsimile

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# **Exhibit A**

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April 13, 2001

**COVER PAGE**  
**ESIS CONTRACT**

***Client***

Clean Harbors Environmental Services, Inc.  
1501 Washington Street  
PO Box 850327  
Braintree MA 02185

***Sections Included***

- Arbitration Claus
- X Claims Adjusting Services - Occurrence
- Claims Adjusting Services - Reported
- Claims Call-In Services
- Electronic Payment Addendum
- Admin Only Addendum
- Claims Auditing Services
- Loss Control Services
- X RMIS

***File Name***

4128.CON

***Revised Date***

04/13/2001

## ESIS SERVICE AGREEMENT

(This is not a contract of insurance.)

**Note:** The following contract is a composite of provisions related to various services marketed by ESIS, Inc. SECTION I contains general provisions that apply to all parts of the contract. Subsequent sections contain definitions and provisions that are only applicable to the specific service described within that PART. The Client agrees that ESIS may meet its obligations described in this Agreement by engaging, at its reasonable discretion, cost, and on the Client's behalf, the services of persons or firms outside of ESIS, Inc., including the personnel of Insurance Company of North America.

### SECTION I - LIST OF INCLUDED SERVICES; GENERAL PROVISIONS AND DEFINITIONS

**PART A - CONTRACTING PARTIES:** This Agreement is entered into by and between ESIS, Inc., ("ESIS") a California Corporation with an office at 101 Federal Street, 18th Floor, Boston, MA 02110, and Clean Harbors Environmental Services, Inc. (the "Client") with offices at 1501 Washington Street, PO Box 850327, Braintree, MA 02185.

**PART B - SERVICES PROVIDED:** In consideration of the fees listed in SECTION III, ESIS and the Client hereby agree that ESIS will provide the following services to the Client according to the General Provisions and the specific provisions of the applicable numbered PARTS of SECTION II.

Part	Service	Billing Numbers
A	Claims Adjusting Services - Occurrence	4128
B	Risk Management Information Systems (RMIS)	4128

**PART C - DEFINITIONS:** The following definitions are common to all contracts:

1. **Cancellation** shall mean the termination of this Agreement prior to its expiration.
2. **ESIS Fee** means the amount of compensation owed by the Client to ESIS in accordance with this Agreement for specific services rendered.
3. **Expiration** shall mean the termination of this Agreement at the end of the stated term or renewal hereof.

**PART D - OBLIGATIONS AND RIGHTS OF ESIS:** ESIS will provide services as indicated in the PARTS above. See specific "Obligations of ESIS" in SECTION II of this Agreement.

**PART E - OBLIGATIONS OF CLIENT:** The Client shall pay to ESIS the amount of any taxes or assessments which may be imposed upon the Client's purchase of the services provided by ESIS pursuant to this Agreement, and where required by law, said taxes or assessments shall be charged to the Client by ESIS in addition to all other fees for compensation payable to ESIS hereunder.

**PART F - GENERAL PROVISIONS:**

1. SECTION II contains a number of separate PARTS. When a PART is included in the list of SERVICES PROVIDED (SECTION I, PART B), and a fee is shown for those services in SECTION III, then the provisions of those PARTS are included in their entirety and, with SECTIONS I and III, form the entire Agreement. The effective dates and contract periods listed in each PART of SECTION II apply to that PART only. The ESIS SERVICE AGREEMENT shall remain in effect until the cancellation, expiration, or completion of all PARTS.
2. ESIS shall have the right to commingle and deposit in banking accounts, and retain any interest earned thereon, any and all monies which the Client pays to ESIS, including monies for Claim settlements, Allocated Loss Expenses, or compensation paid in advance for services to be rendered by ESIS to the Client.
3. If the Client shall fail to pay any ESIS fee as charged by ESIS <sup>3</sup> within ten (10) days of receipt of ESIS' invoice, ESIS shall have the right to suspend service until such payments are made. The Client agrees to indemnify ESIS and hold it harmless for the full amount of any liability, fees, fines, assessments, judgments, or penalties resulting from an interruption or cessation of ESIS' services which resulted by reason of the Client's failure to pay to ESIS any fee as required hereunder and for the amount of any administrative or legal expenses incurred by ESIS in defending any such action.
4. If the Client fails to make timely payments of any monies owed by the Client to ESIS, whether for Claim settlements, Allocated Loss Expenses, or compensation for services rendered, ESIS may charge the Client interest for late payment at the rate of 1% (one percent) per month. If ESIS shall incur collection expenses in obtaining monies from the Client which are owing to ESIS, the Client shall reimburse ESIS in full for such expenses.
5. This Agreement is for the sole benefit of the parties hereto. The terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by the either party without the other party's prior written consent. This Agreement and its attachments and addenda are the entire Agreement by and between the parties with respect to the services described herein.
6. This Agreement or any individual PARTS hereto may be canceled by either party for any reason whatsoever by giving sixty (60) days prior written notice to the other party.
7. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
8. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall be ineffective as to such jurisdiction, to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction.
9. The interests of the responsible party hereto shall not be prejudiced by an inadvertent error or omission which may occur in the preparation, application, or use of this Agreement; provided, however, that, upon discovery of any such error or omission, rectification thereof is made by the party responsible for such error or omission as promptly as practicable.

## **SECTION II - SERVICE SPECIFICATIONS**

The following detailed specification(s) shall be provided by ESIS as agreed in SECTION I, PART B above.

### **PART A. - CLAIMS ADJUSTING SERVICES (OCCURRENCE)**

**BILLING NUMBER 4128**

ESIS and the Client hereby agree that ESIS will provide Claims Adjusting Services to the Client according to the following terms and conditions:

1. **CLAIMS ADJUSTING SERVICES - EFFECTIVE DATES; RENEWALS:** This PART shall be effective with respect to Claims (as defined herein) resulting from occurrences during the period beginning 12:00 a.m. on November 01, 2000 and ending at 11:59 p.m. on October 31, 2001. However, upon the expiration of this PART and any renewal period or periods, ESIS shall continue to perform its obligations hereunder, on the terms set forth in SECTION III and any Addendum hereto, with respect to Claims arising from occurrences during the term of this PART, until all Claims under this contract have been paid or settled, all applicable statutes of limitations have run, and there is no further possibility that any additional Claims may arise.
2. **CLAIMS ADJUSTING SERVICES - DEFINITIONS:**
  - a. **Allocated Loss Expenses** shall mean any cost or expense ESIS incurs on the Client's behalf as a result of ESIS' engaging the service of firms or persons outside ESIS' organization for work in connection with the investigation, adjustment, settlement, or defense of a Claim. Allocated Loss Expenses include, but is not limited to the following: subrogation; automobile or other physical damage appraisal; all court costs, fees, and expenses; fees for service of process; fees and expenses to attorneys for legal services; the cost of services of undercover operations and detectives; fees to obtain medical cost containment services; the cost of employing experts for the purpose of preparing maps, photographs, diagrams, and chemical or physical analysis, or for expert advice or opinion; the cost of obtaining copies of any public records; and the cost of depositions and court reporters or recorded statements. Allocated Loss Expenses are not included in Claim Transaction Fees.
  - b. **Claim or Claims** shall mean each monetary demand against the Client based upon each itemized loss or damage occurring in the United States or Canada (or in such other locations as may be agreed upon by the parties and specified in an Addendum to this PART), resulting from physical injury to or destruction of tangible property, loss of the use of tangible property, bodily injury, sickness, or disease (including death resulting therefrom) if the demand:
    - 1) results from or arises out of an accident or occurrence which takes place during the term of this PART, and;
    - 2) is reported to ESIS by the Client on a timely basis, and;
    - 3) is a Claim of the type described in SECTION III, but not excluded by SECTION II, PART A.6.b.
  - c. **Claim Fund** shall mean the funds which the Client makes available to ESIS for use in paying Allocated Loss Expenses and Claim payments, but excluding Special Billed items, on the Client's behalf. Claim payments in excess of this threshold shall be paid in accordance with the provisions of SECTION II, PART A.4.f. hereof.

- d. **Claim Transaction Fee** means the amount of compensation owed by the Client to ESIS in accordance with SECTION III of this Agreement.
  - e. **Late Reported Claims** shall mean Claims which are within the definition of Claim and which are reported to ESIS after the cancellation or expiration of this PART and any renewals hereof.
  - f. **Discretionary Settlement Authority Limit** shall mean the maximum amount of money which the Client is authorizing ESIS to spend without obtaining prior approval from the Client in order to settle any one Claim. Allocated Loss Expenses are not subject to nor included in the Discretionary Settlement Authority Limit. The Discretionary Settlement Authority Limit shall be established initially in the amount of \$10,000 for all claims, and may be increased or decreased by the Client; provided, however, that in the event of any such increase or decrease, BSIS may modify the amounts of the Claim Transaction Fees.
  - g. **Occurrence** means an event or series of events deemed by the Client to give rise to one of more Claims. It may include events which are either causative in nature, or the result of some cause or causes (such as the onset of disease, injury, or damage), or both. It is not intended to be the equivalent of any commonly used definition of the term as found in policies of insurance.
  - h. **Special Billed Amounts** - The amount to be paid by BSIS in respect to any single Claim payment that exceeds \$25,000.00 shall be specially billed to the Client and monies paid to ESIS before the check shall be issued by BSIS.
3. **CLAIMS ADJUSTING SERVICES - OBLIGATIONS OF ESIS** - BSIS' obligations under this PART are to:
- a. Investigate, adjust, and otherwise administer Claims, including the arrangement of a defense for litigated Claims, as ESIS deems necessary in accordance with ESIS' best professional judgment as a claims adjuster and state laws and regulations permit for monopolistic states. The Client agrees that ESIS may meet its obligations by engaging, at its reasonable discretion and on the Client's behalf, the services of persons or firms outside of ESIS' organizations.
  - b. Review the facts of each Claim and the law applicable thereto to determine what compensation, if any, should be paid on the Client's behalf for each Claim. ESIS shall obtain the Client's prior approval before offering to settle any Claim for an amount which exceeds the amount of BSIS' Discretionary Settlement Authority Limit, and ESIS shall incur no liability in excess of the Discretionary Settlement Authority Limit as a result of its failure to settle any Claim for an amount within the Discretionary Settlement Authority Limit.
  - c. Determine what Allocated Loss Expenses shall be incurred in the investigation, adjustment, administration, and defense of each Claim.
  - d. Make payments for settlement of Claims and for Allocated Loss Expenses out of funds provided by the Client to ESIS. However, ESIS shall have no responsibility to determine or notify the Client of exhaustion of the Client's deductible aggregate as defined in any policy of insurance.
  - e. Maintain a file on reported Claims. All Claim files will be the Client's property and will be available for inspection by the Client upon reasonable notice to ESIS. The Client may conduct, at no additional charge, one formal file review annually at a mutually agreed upon central location to review a representative number of Claim files. BSIS reserves the right to charge time and expenses involved in formal reviews beyond this standard allowance.
  - f. Dispose of Claim files in accordance with the Client's directions or, in the absence of such directions, at ESIS' discretion as permitted by applicable state and federal laws.

- g. Provide statistical or loss experience reports to the Client concerning the status of (a) Claims, (b) Claim reserves, and (c) Claim payments as agreed upon by ESIS and the Client in writing from time to time.
  - h. Maintain confidentiality with respect to the contents of the Client's files such that the contents thereof are not disclosed to third parties, except as shall be required for ESIS to carry out its obligations under this PART or to comply with requirements imposed by applicable laws or regulations.
  - i. Administer all Claims reported to their conclusion and further investigate, adjust, and otherwise administer any Late Reported Claims according to the terms and conditions of this PART.
4. **CLAIMS ADJUSTING SERVICES - OBLIGATIONS OF THE CLIENT** - The Client's obligations under this PART shall be to:
- a. Refer promptly to ESIS each Claim which falls within the scope of this PART after the Client has received notice of such Claim.
  - b. Pay to ESIS immediately upon execution of this PART the amount necessary to establish the Claim Fund, and maintain the appropriate balance for the duration of this PART.
  - c. Pay to ESIS all Claim Transaction Fees and Claim Fund invoices according to the provisions of this PART. If the Client fails to pay such amounts according to the terms of this PART, ESIS shall have the right to claim a retaining lien on the Client's Claim files in ESIS' exclusive possession until all Claim Transaction Fees and Claim Fund invoices due are paid. This subsection shall survive the expiration or cancellation of this PART until all Claims are closed or some mutual agreement is reached by ESIS and the Client.
  - d. Continue to remit sufficient monies to ESIS, upon presentation of an appropriate invoice, to allow ESIS to maintain the Claim Fund at all times at an amount sufficient to enable ESIS to pay Claims and Allocated Loss Expense payments as required by this PART. The Client agrees that "sufficient monies" as used in this paragraph shall be a sum equal to the sum of
    - 1) all Claim payments and Allocated Loss Expenses, but excluding Special Billed amounts, paid by ESIS during the preceding ten (10) weeks; or
    - 2) any other amount as may be mutually agreed upon by the Client and ESIS.
  - e. ESIS may require the Client to increase the amount of the Claim Fund if the amount of the Claim Fund is insufficient in ESIS' estimation to pay Claims or Allocated Loss Expenses because of unusual circumstances beyond the scope of the standard formula. Moreover, if the Client does not reimburse the Claim Fund on a timely basis following ESIS' mailing of an invoice to the Client, ESIS may immediately require the Client to increase the Claim Fund to a level greater than the amount paid on the Client's behalf for Claim payments and Allocated Loss Expenses during the previous ten (10) week period. If the Client fails to make funds available to ESIS within ten (10) days after receipt of a Claim Fund invoice for payment of Claims and Allocated Loss Expenses in the amount required hereunder, ESIS may suspend its obligation to make such payments and all other Claims services provided by ESIS under this PART until ESIS shall receive funds from the Client for this purpose. The Client agrees that it will indemnify ESIS and hold it harmless for the full amount of any and all liability, fees, fines, assessments, judgments, or penalties resulting from an interruption or cessation of ESIS' Claims services which ESIS caused by reason of the Client's failure to reimburse the Claim Fund to the level required under paragraph D above, or to provide any additional monies for the Claim Fund which ESIS in its discretion may have requested pursuant to this paragraph.

- f. Notwithstanding the other provisions of this PART, in the event that the amount to be paid by ESIS in respect to any single Claim payment shall exceed the Special Bill Amount, upon receipt of ESIS' invoice for this Special Billed Amount, immediately remit to ESIS the full amount of such payment as stated on the invoice. ESIS shall have no obligation to make such payment unless and until ESIS has received payment of this Special Billed Amount from the Client.

**5. CLAIMS ADJUSTING SERVICES - GENERAL PROVISIONS:**

- a. ESIS shall have full authority and control in all matters pertaining to the investigation, adjustment, and administration of Claims covered by this PART, subject to any limitations which ESIS and the Client may have agreed upon as set forth in this agreement or in any Addendum to this PART agreed to and duly executed by both parties hereto.
- b. When and as necessary in ESIS' judgment, ESIS shall have the right to communicate directly with the insurance carrier which is providing coverage to the Client in excess of the amount of the Client's deductible or self-insured retention. ESIS may provide information to any such insurance carrier, including data which relates to any open or closed Claim or loss, regardless of whether such Claim is likely to result in liability to that insurance carrier. When directed by the Client to a specific policy, ESIS shall give notice to the designated ACE insurance company of the existence of an individual Claim. As between ESIS and the Client, the Client shall have the sole responsibility to determine whether and when Claims handled on the Client's behalf and Allocated Loss Expenses incurred on the Client's behalf under this PART equal or exceed, or are likely to equal or exceed, any specific limit or any aggregate limitation applicable to the Client's coverage or deductible/self-insured retention under the terms of the Client's insurance policy or policies.
- c. In the case of any Claim in which the date of the Occurrence or any element thereof is not known or could be disputed factually or legally but which is otherwise within the scope of this PART, ESIS will accept the date or dates assigned by the Client. It is agreed that such acceptance is not an express or implied agreement by ESIS or its agents or employees that the selection of the date or dates of Occurrence is correct in fact or as a matter of law. If the Client and ESIS have, at any time, entered into more than one Claim Service Agreement covering different time periods, acceptance by ESIS of the Client's designated date of Occurrence is not an express or implied agreement that the Client's allocation among its contracts is correct in fact or law. No action of ESIS or its agents or employees shall be construed as an admission or opinion on any issue of fact or law or date or dates of events which may be relevant to the obligations of any insurance company, including the concept of occurrence as used in policies of insurance.
- d. It is understood that ESIS is affiliated with certain insurance company affiliates of ACE USA. Since the Client may or may not consider its Claims referred to ESIS as relevant to an insurance program with one or more of these companies, the Client must identify each Claim individually to a specific policy if the Client believes the Claim to be covered. ESIS claims adjusters will have no affirmative duty to participate in determination of coverage under any insurance policy.

**6. CLAIMS ADJUSTING SERVICES - FEES:**

- a. ESIS shall impose a Claim Transaction Fee charge for each Claim reported by the Client to ESIS. For occurrences which generate more than five Claims, ESIS' Claim Transaction Fee will be fifty percent (50%) of the stated fee for each Claim reported after the first five such Claims. If more than twenty-five Claims result from any one occurrence, ESIS' fee will be the standard charge for the first five Claims and fifty percent (50%) of the standard fee charge for the next twenty Claims, and all additional Claims arising from such occurrence shall be calculated on the basis of time spent and expenses incurred by ESIS with respect to them at a rate that shall be agreed upon in writing.

- b. **General Liability Claims Transactions Fees** as set forth herein shall not be applicable to Claims arising from or related to pollution, toxic material, or environmental impairment of any kind whatsoever including but not limited to pollution of any water, land, or air; arising from or in any way related to asbestos and or asbestos containing materials; or arising from or in any way related to exposure over time to any alleged toxic, harmful or defective material, device, substance, agent, or activity including but not limited to chemicals, drugs, petroleum based products, pharmaceutical products, noise, radiation, electromagnetic fields or repetitive motion.

**PART B. - RISK MANAGEMENT INFORMATION SYSTEMS**

**BILLING NUMBER 4128**

ESIS and the Client hereby agree that ESIS will provide Risk Management Information Services (RMIS) during the period beginning 12:00 a.m. on November 01, 2000 and ending at 11:59 p.m. on October 31, 2001, of the below listed types to the Client according to the following terms and conditions; and provided through mutually agreed upon equipment and installation(s):

**1. RMIS DEFINITIONS:**

- a. **RiskAdvantage** is a standardized on-line risk management computer service provided by ESIS, Inc. and certain affiliated companies of ACE USA.

**2. RMIS - OBLIGATIONS OF ESIS:**

- a. ESIS shall provide the Client computer equipment, reports, software, communication lines, access to program libraries and data files, and/or other products and services consistent with the selected published service level for the above listed services, effective for the period of this PART. The specific equipment and services may vary from time to time because of changes in technology and capabilities, but shall be sufficient to permit the Client access to data appropriate to the level of service negotiated.
- b. All equipment, software products, and services provided by ESIS are the property of ESIS and are furnished to the Client as a client service. ESIS may revise or discontinue the levels of service upon not less than thirty (30) days advance written notice to the Client. Enhancements or corrections to service are not considered revisions and may be provided without prior notice.
- c. ESIS warrants any electronic data processing services furnished hereunder against malfunctions, errors, or loss of data which are due solely to errors on its part. If the Client notifies ESIS in writing and furnishes adequate documentation of any such malfunction, error, or loss of data, then, ESIS will, without charge, re-create the data designated by the client, using the best available technology. With respect to other data that Client caused to be entered into the specific system in question, ESIS will regenerate, without charge, any of the Client's lost data if the Client provides to ESIS adequate backup material.
- d. ESIS will provide basic insurance for all equipment provided to the Client by ESIS as part of this service. ESIS will provide maintenance for all such equipment during normal business hours, provided the Client notify ESIS promptly of all such equipment malfunctions.

- c. ESIS MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY LIABILITY WITH RESPECT TO SOFTWARE, EQUIPMENT, AND DATA BASE OR SOURCE DATA, INCLUDING NOT BUT LIMITED TO, ITS ACCURACY, ADEQUACY, COMPLETENESS, USEFULNESS, OR RELIABILITY, WHICH IS MADE AVAILABLE TO THE CLIENT OR BY THE CLIENT IN CONNECTION WITH ANY RMIS PRODUCTS, EQUIPMENT, OR SERVICES COVERED BY THIS AGREEMENT. THE CLIENT HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES.

**3. RMIS - OBLIGATIONS OF CLIENT:**

- a. The Client agrees to use reasonable measures to protect the information made available to them as part of these services. The Client is responsible for utilizing all available security features and for notifying ESIS promptly for all potential and actual breaches of the security system or systems.
- b. The Client agrees that the information recorded in any of these systems will not be used as a pretext for retaliatory or other illegal or unfair discriminatory employment practices in violation of any federal or state statute or regulation.
- c. The Client agrees that regardless of the cause of any malfunction, error, or lost data, the maximum and only liability of ESIS shall be its obligation under this Agreement to reprocess reports or regenerate data as described above; and that ESIS shall have no liability whatsoever to the Client or any third party for monetary damages as a result thereof.

**4. RMIS - GENERAL PROVISIONS:**

- a. It is understood and agreed that the objective of these systems is to facilitate the electronic exchange of information of the type traditionally shared by means of paper document exchange between a consumer and the provider of Claim service. Accordingly, neither party has any obligation to enter or provide access to the other with respect to information which is intended to be commentary on or otherwise relevant to an actual or potential coverage dispute or any other communication intended to be confidential, privileged, or solely internal as respects the other party.
- b. The Client agrees that regardless of the cause of any malfunction, error, or lost data, the maximum and only liability of ESIS shall be its obligation under this Agreement to reprocess reports or regenerate data as described above; and that ESIS shall have no liability whatsoever to the Client or any third party for monetary damages as a result thereof.
- c. Each party agrees to limit access to these systems to those persons who perform the essential functions of claim and risk management, including that each party shall protect the security access passwords to hardware and communications, except that this provision is not intended to limit either party from generating from these RMIS systems and using reports and statistics for legitimate business purposes, in which case the identities of claimants and others referenced in individual Claims shall be omitted when used outside the system, unless their inclusion is essential to a legitimate business purpose.
- d. Each party agrees that, as to any other persons or organizations, information entered into and generated from these systems is confidential and proprietary, and may be privileged and/or work product protected from discovery by law and/or rules of court. Therefore, neither party will release any information unless:
  - 1) compelled by an order of a court of competent jurisdiction;
  - 2) mandated by an insurance code, claim practices act, workers' compensation law, or other applicable law or regulation to provide information to the claimant or other person;

- 3) mandated by applicable court discovery rules in the opinion of the defense counsel, if any, or the claim professional responsible for the adjustment of the Claim.

In either event, all information sought to be produced will be prescreened by ESIS in consultation with the Client, if such consultation is specifically requested by the Client. If there is an obligation to release part but not all of the information, the part deemed not responsive will be withheld, but nothing in this Agreement is intended to abrogate the duty of either party to comply in good faith with rules of court governing discovery in litigation.

- e. Each party agrees that it will make reasonable efforts to:
  - 1) enter only Claim information that is factually accurate;
  - 2) identify as such information that is comprised of opinions, approximations or estimations, and, when practicable, identify sources;
  - 3) prescreen all source material for references to any person's reputation, health, personal habits and conduct, lifestyle, and other matters of a private nature and decline to enter the same unless the information is necessary to a fair understanding of facts relevant to the Claim.
- f. Each party agrees that the information contained within these RMIS systems must be treated in a confidential manner by all users and each party further agrees that it will educate all of its employees, agents, or other users why may gain authorized access to the system of the need for confidentiality in using the information. Each party will be responsible for the results of any and all actions alleging breach of confidentiality by any of their respective employees, agents, or other authorized users of the information.
- g. In the event of a third party suit alleging defamation, false light, or other invasion or privacy tort, violation of civil rights, or violation of fair employment practice laws, and arising from the use of these systems and this PART, the liable party agrees to indemnify and hold harmless the other party for all sums due under the terms of a judgment or reasonable settlement, including interest and attorneys' fees, upon a final judgment or mutual agreement that one of the parties hereto is liable as charged in such allegations.
- h. Termination or expiration of the Service Agreement for any individual service listed above will be effected by ESIS removing the Client's password from the list of authorized users for that service. Not more than sixty (60) days after the date of termination or expiration of this Agreement, the Client shall return to ESIS all equipment provided hereunder.
- i. Each party agrees that it will not disclose to any third party any information concerning trade secrets, methods, procedures, or any other confidential, financial, or business information of the other party which it learns during the course of its performance of this Agreement without the prior written consent of the other party. Client acknowledges and agrees that all software used by the Client in connection with the services including, without limitation, the screens and output formats generated thereby, are strictly confidential and the property of ESIS. Client will retain exclusive rights to and ownership of all data generated by ESIS for Client pursuant to this Agreement.

**SECTION III - FEES**

**PART A - DUE DATES:** All ESIS' fee invoices are payable not later than ten (10) days after the Client's receipt thereof.

**PART B - DESCRIPTION:** The amounts of ESIS' fees hereunder shall be as follows:

**1. Claims Adjusting Services (Occurrence) Fees:**

- a. **Cradle to Grave: Billing Contract Number 4128** is established for the administration claims which may be presented against the client. ESIS claim fees do not include allocated expense, subrogation/recovery, catastrophes and sales and service fee taxes. A time and expense rate of \$95.00 per hour will be charged for hearing attendance and for the use of our special investigative unit. Subrogation and recovery is charged at a rate of 20% of recovery. Included in the claims management services are quarterly claim reviews if required and the services of a National Claim Coordinator to oversee both Workers Compensation and Liability claims over \$20,000 and 1-800 call in service.

The fees for claims administered under this billing number shall be based on the number of claims reported to and registered by ESIS during the agreement period, at the following rates per claim:

Claim Type	Rate	Estimated Volume	Estimated Annual Fee
Automobile Liability			
Bodily Injury	\$ 800	14	\$11,200.00
Property Damage	\$ 525	40	\$21,000.00
PIP			
Med Pay			
General Liability			
Bodily Injury	\$1150	2	\$2,300.00
Property Damage	\$ 525	2	\$1,050.00
Workers' Compensation			
Medical Only	\$ 110	83	\$9,130.00
Managed Medical			
Indemnity	\$ 945	48	\$45,360.00
<b>Total</b>		<b>189</b>	<b>\$90,040.00</b>

**For Workers' Compensation**, it is agreed that the cost of adjustment of medical bills for compliance to state fee schedule and usual and customary schedules will be charged to each respective claim file as an allocated claim expense.

ESIS does not require the full estimated service fee amount at the inception of the program. We require a deposit of approximately 80% of the estimated service fee amount, which will be billed in quarterly installments. The service fee for APL losses will be \$28,400. The service fee for workers compensation losses is billed under the casualty portion of this program. As claims are reported, the fee per claim is deducted from the service fee deposit. Once the service fee deposit is exhausted, a monthly invoice is generated and is payable within 10 days. Late payments will be assessed interest at a rate of 1.5%.

**2. Risk Management Information Systems (RMIS) Fees:**

**Billing Number(s): 4128**

The total cost for RMIS for the policy period is \$16,725 and includes

- 1 Access of RiskAdvantage with Inquiry, Notes & Reports , 2 users -- Account Location Maintenance & Storage
- 2 sets of quarterly loss runs

N WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by the undersigned duly authorized persons.

**Clean Harbors Environmental Services, Inc.**

**ESIS, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**Michael Kelly**  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Title

**Regional Manager**  
\_\_\_\_\_  
Printed Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CIVIL COVER SHEET**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>(a) PLAINTIFFS</b> CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Massachusetts</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) MECKLER BULGER TILSON MARICK &amp; PEARSON LLP 123 N. Wacker Drive, Suite 1800 Chicago, IL 60606 Phone: 312-474-7900</p>	<p><b>DEFENDANTS</b> ESIS, INC.; MYERS MILLER &amp; KRAUSKOPF, LLC; HOWARD KRAUSKOPF; AND JASON M. SAX</p> <p>County of Residence of First Listed Defendant <u>Pennsylvania</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td style="width:50%;">Citizen of This State</td> <td style="width:5%;">PTF <input type="checkbox"/> 1</td> <td style="width:5%;">DEF <input type="checkbox"/> 1</td> <td style="width:50%;">Incorporated or Principal Place of Business In This State</td> <td style="width:5%;">PTF <input type="checkbox"/> 4</td> <td style="width:5%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input checked="" type="checkbox"/> 5</td> <td>DEF <input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input checked="" type="checkbox"/> 5	DEF <input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input checked="" type="checkbox"/> 5	DEF <input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. vet.)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input checked="" type="checkbox"/> 360 Other Personal Inj.</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury—Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. &amp; Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Rel. Inc. Security Act</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Security/Commodity/Exch.</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p>
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 ADA—Employment</p> <p><input type="checkbox"/> 446 ADA—Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p><b>PRISONER PETITIONS</b></p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>		

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

<p><b>VI. CAUSE OF ACTION</b> (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)</p> <p>28 USC 1332. This is an action for professional negligence.</p>	<p><b>VII. PREVIOUS BANKRUPTCY MATTERS</b> (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)</p>
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**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \$75,000+ **CHECK YES only if demanded in complaint: JURY DEMAND:**  Yes  No

**IX. This case**  is not a refiling of a previously dismissed action.  is a refiling of case number \_\_\_\_\_, previously dismissed by Judge \_\_\_\_\_

DATE June 23, 2009 SIGNATURE OF ATTORNEY OF RECORD /s/ Steven D. Pearson

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS  
ATTORNEY APPEARANCE FORM**

NOTE: In order to appear before this Court an attorney must either be a member in good standing of this Court's general bar or be granted leave to appear *pro hac vice* as provided for by Local Rules 83.12 through 83.14.

In the Matter of

Case Number: 1:09-cv-3789

**Clean Harbors Environmental Services, Inc.**

v.

**ESIS, Inc., et al.**

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:

**CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.**

NAME (Type or print)	Steven D. Pearson		
SIGNATURE (Use electronic signature if the appearance form is filed electronically)	/s/Steven D. Pearson		
FIRM	Meckler Bulger Tilson Marick & Pearson LLP		
STREET ADDRESS	123 N. Wacker Drive, Suite 1800		
CITY/STATE/ZIP	Chicago, IL 60606		
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS)	TELEPHONE NUMBER	312/474-7900	
	06190506		
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE? (Enter "Y" or "N")	Y		
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE? (Enter "Y" or "N")	N		
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR? (Enter "Y" or "N")	Y		
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY? (Enter "Y" or "N")	Y		
IF THIS IS A CRIMINAL CASE, USE AN "X" TO DESCRIBE YOUR STATUS IN THIS CASE.			
RETAINED COUNSEL	APPOINTED COUNSEL		

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS  
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In the Matter of Case Number: 1:09-cv-3789

**Clean Harbors Environmental Services, Inc.**

v.  
**ESIS, Inc., et al.**

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:  
**CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.**

NAME (Type or print)	Mitchell J. Edlund		
SIGNATURE (Use electronic signature if the appearance form is filed electronically)	/s/Mitchell J. Edlund		
FIRM	Meckler Bulger Tilson Marick & Pearson LLP		
STREET ADDRESS	123 N. Wacker Drive, Suite 1800		
CITY/STATE/ZIP	Chicago, IL 60606		
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS)	TELEPHONE NUMBER	312/474-7900	
	06229190		
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE? (Enter "Y" or "N")	N		
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE? (Enter "Y" or "N")	N		
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR? (Enter "Y" or "N")	N		
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY? (Enter "Y" or "N")	Y		
IF THIS IS A CRIMINAL CASE, USE AN "X" TO DESCRIBE YOUR STATUS IN THIS CASE.			
RETAINED COUNSEL	APPOINTED COUNSEL		

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS**  
**ATTORNEY APPEARANCE FORM**

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In the Matter of Case Number: 1:09-cv-3789  
**Clean Harbors Environmental Services, Inc.**

v.  
**ESIS, Inc., et al.**

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:  
**CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.**

NAME (Type or print)	Dawn J. Blume		
SIGNATURE (Use electronic signature if the appearance form is filed electronically)	/s/Dawn J. Blume		
FIRM	Meckler Bulger Tilson Marick & Pearson LLP		
STREET ADDRESS	123 N. Wacker Drive, Suite 1800		
CITY/STATE/ZIP	Chicago, IL 60606		
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS)	TELEPHONE NUMBER	312/474-7900	
	06271961		
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE? (Enter "Y" or "N")	N		
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE? (Enter "Y" or "N")	N		
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR? (Enter "Y" or "N")	N		
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY? (Enter "Y" or "N")	N		
IF THIS IS A CRIMINAL CASE, USE AN "X" TO DESCRIBE YOUR STATUS IN THIS CASE.			
RETAINED COUNSEL	APPOINTED COUNSEL		

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CLEAN HARBORS ENVIRONMENTAL )  
SERVICES, INC., a Massachusetts corporation, )

Plaintiff, )

v. )

Case No. 1:09-cv-3789

ESIS, INC., a Pennsylvania corporation; )  
MYERS MILLER & KRAUSKOPF, LLC, an )  
Illinois limited liability company; HOWARD )  
KRAUSKOPF, individually; and JASON M. )  
SAX, individually, )

Defendants. )

**CLEAN HARBORS ENVIRONMENTAL  
SERVICES, INC.'S DISCLOSURE STATEMENT**

Plaintiff, Clean Harbors Environmental Services, Inc., a Massachusetts corporation, pursuant to FED R. CIV. P. 7.1 and L.R. 3.2, states as follows:

Clean Harbors Environmental Services, Inc. is a Massachusetts corporation that is a wholly owned subsidiary of Clean Harbors, Inc. Clean Harbors, Inc. is a publicly held company that owns 5% or more of the party's stock.

Dated: June 23, 2009

**Clean Harbors Environmental Services, Inc.**

By: /s/ Mitchell J. Edlund  
One of its Attorneys

Steven D. Pearson (No. 6190506)  
Mitchell J. Edlund (No. 6229190)  
Dawn J. Blume (No. 6271961)  
MECKLER BULGER TILSON MARICK & PEARSON LLP  
123 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 474-7900 - Telephone  
(312) 474-7898 - Facsimile  
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