

VIRGINIA:

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IN THE CIRCUIT COURT OF ARLINGTON COUNTY

JUL 9 2008

STeadFAST INSURANCE COMPANY )  
1400 American Lane )  
Schaumburg, IL 60196, )

Plaintiff, )

v. )

THE AES CORPORATION )  
4300 Wilson Boulevard )  
Arlington, VA 22203 )

Serve: )  
CORPORATION SERVICE COMPANY )  
11 S 12th St. )  
Richmond, VA 23218 )  
Registered Agent )

Defendant. )

PAUL FERGUSON, CLERK  
Arlington County Circuit Court  
by Deputy Clerk

CASE NO. 2008 -

858

**COMPLAINT FOR DECLARATORY RELIEF**

COMES NOW the Plaintiff, Steadfast Insurance Company (“Steadfast”), through counsel, and as and for Plaintiff’s Complaint for Declaratory Relief against Defendant, The AES Corporation (“AES”), hereby states as follows:

**Nature of the Action**

1. Steadfast is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Schaumburg, Illinois.
2. AES is a corporation organized under the laws of the State of Delaware, with its principal place of business located in Arlington, Virginia.
3. Pursuant to the Virginia Declaratory Judgment Act (VA. CODE ANN. § 8.01-184, *et seq.*), Steadfast seeks an adjudication of its rights and obligations under a series of commercial

general liability insurance policies issued by Steadfast to AES. The policies in issue are identified more fully herein and are attached as Exhibits “A-E” hereto (hereinafter “the Policies”).

4. This insurance coverage dispute arises out of allegations asserted against AES and a number of other defendants involved in the energy industry in an underlying lawsuit captioned *Native Village of Kivalina v. ExxonMobil Corp., et al.*, CV 08-1138 SBA (N.D. Cal.) (hereinafter “*Kivalina* Lawsuit”), filed in the United States District Court for the Northern District of California, in which the plaintiffs seek to recover damages caused by the environmental phenomenon commonly referred to as “global warming.” A true and correct copy of the *Kivalina* Lawsuit Complaint (hereinafter “*Kivalina* Complaint”) is annexed hereto as Exhibit “F.”

5. For the reasons set forth below, Steadfast seeks a declaration that it is not obligated to provide either defense or indemnity coverage to AES under the Policies for the claims asserted against AES in the *Kivalina* Lawsuit.

#### **The Underlying *Kivalina* Lawsuit**

6. The plaintiffs in the *Kivalina* Lawsuit, the Native Village of Kivalina and the City of Kivalina (collectively the “*Kivalina* Plaintiffs”), are governing bodies of an Inupiat village located on the Northwest coast of Alaska, approximately seventy miles north of the Arctic Circle. *Kivalina* Complaint at ¶¶ 1 and 12-15.

7. The *Kivalina* Plaintiffs contend that global warming is destroying the land upon which Kivalina is located because of massive erosion caused by the reduction and melting of Arctic sea ice that formerly acted as a protective barrier to coastal winter storms, storm waves and surges. *Kivalina* Complaint at ¶¶ 4 and 16.<sup>1</sup>

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<sup>1</sup> According to the *Kivalina* Plaintiffs, due to rising temperatures caused by global warming, Arctic sea ice adjacent to Kivalina forms later in the year, attaches to the coast later, breaks up earlier and is less extensive and thinner than usual, leaving Kivalina’s coast more vulnerable to waves, storm surges and erosion. *Kivalina* Complaint at ¶¶ 16, 185 and 187.

